

15th Annual Steve Biko Memorial lecture

Sponsored by the Steve Biko foundation and the
University of Cape Town

Cape Town 11 September 2014-09-06

Address by Ms. Navi Pillay

United Nations High Commissioner for Human Rights
{Retired}

Former judge on the International Criminal Court, UN
International Criminal Tribunal for Rwanda and the High
Court of South Africa [KZN]

As many of you know, I retired as UN High Commissioner for Human Rights eleven days ago. This is the first public engagement I have undertaken, even before I unpacked my bags. I do so for the opportunity to honour Steve Biko.

Thank you, Mr. Nkosinathi Biko SBF CEO, and Ms. Y. Obenewa Amponsah, SBF Director, for your kind invitation to deliver this lecture.

You have invited me to reflect on my tenure as UN High Commissioner for Human Rights and share my insights as to what we as citizens can do to advance human rights in South Africa, on our continent and the International community.

Before I do so, I wish to add my voice to the worldwide acclaim for Steve Biko and his courageous contribution to the liberation of South Africa. I was a very young lawyer in the seventies and defended many members of SASO and BCM in the courts. I had started my law practice in 1967 and after three years, was qualified to take on candidate attorneys. The first of them were Gaby Pillay, my husband and Ben Langa, a close comrade of Steve Biko.

Together we provided free legal services to a stream of BCM colleagues, who refused to collaborate with laws that oppressed us. Their bravery and principled stand made a lasting impression on me. From these early lessons learned from Steve Biko and BCM, I have remained consistent in calling on all individuals to stand up for your rights.

A life cut short and yet a life that not only contributed to the dismantling of apartheid in South Africa, but also informed international human rights norms and standards. Amongst these was the decision by the UN Security Council to ban arms sales to South Africa in November 1977 and his death also served as

a catalyst towards finalisation of the UN Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.

The action that each of us can and should take against human rights violations wherever they occur is as Biko himself urged: not to be a spectator but a participant. Just as individuals around the world cared about anti-apartheid activists and human rights defenders, like Biko, and demanded that their Governments support our struggle for freedom, so we should watch out for the safety and freedom of human rights defenders, journalists and NGOs who are facing arrests, detention and even death for their critical work.

It is moving to be amongst so many friends today, in order to commemorate the 37th anniversary of Biko's murder and to celebrate his life. Advances in human rights protection in National and International arenas is largely due to the push by civil society actors. Twenty years ago, 7000 participants gathered for the World Conference on Human Rights, in Vienna. It was June 1993, shortly before we achieved democracy.

For the first time, many South African NGOs were able to participate in a UN conference. I was amongst them, hanging out in the basement, little knowing that I will one day fill the post of High Commissioner for Human Rights, a post that was the outcome of Vienna.

Western countries favoured civil and political rights; the Eastern bloc and many developing countries argued that economic, social and cultural rights, and the right to development, had priority. In addition, a sizeable group of states were vigorously arguing that the Universal Declaration of Human was the product of a specifically western culture, and that in reality; human rights should be considered relative to the characteristics and traditions of different cultures.

Yet, as discussions unfurled, a consensus emerged. The key to this is the notion of universality, indivisibility and interrelatedness of all human rights. You see, a number of States had been resisting the entire concept of economic and social rights—because they saw them as aspirations rather than rights intrinsic to human dignity and freedom.

The vision of an inter-related and inter-dependent constellation of human rights allowed for economic and social rights to be on board, as well as the right to development.

The debate regarding the so-called cultural specificities of human rights was resolved with an equally deft and inclusive approach. Of course all countries are indeed not the same, and all voices must, naturally be heard. But these cultural specificities in no way erode the universality of human rights.

The formula that ultimately created consensus on this point was:- you choose your path, but the goal is something we all hold in common. Your specificity will influence the way you move forward. But that goal of human dignity and human freedom, via implementation of the human rights elucidated in the International Bill of Rights—is something we all share.

And so the assembled delegates overcame major differences on contentious issues such as universality, sovereignty, impunity and how to give a voice to victims. The result was a powerful outcome document: the Vienna Declaration and programme of action (VDPA).

The VDPA is the most significant human rights document produced in the last quarter of a century and one of the strongest human rights documents of the past hundred years. It crystallised the principle that human rights are universal,

indivisible, interdependent and interrelated, and firmly entrenched the notion of universality by committing States to the promotion and protection of all human rights for all people “regardless of their political, economic and cultural systems.”

The Vienna Conference led to historic advances in many vital areas, among them Women’s rights; the NGO slogan “Women’s rights are human rights” was heard loudly; the fight against impunity for serious human rights violations, by the creation of the International Criminal Court and stronger UN mechanisms to protect the rights of minorities, migrants and children.

But we must recognise that in many areas, we have failed to build on the foundations of the VDPA. The inspiring opening promise of the Universal Declaration—that all human beings are born equal in dignity and rights, and that these will be respected as such—is still a dream for far too many people.

The challenge is how to get Governments to implement the legal framework that they themselves set and deliver on the undertakings they made to protect and promote the human rights of all. How to ensure that the policies and actions they take are people-centred and follow a rights-based approach?

Today, an alarming number of armed conflicts are raging in Syria, Gaza, Ukraine, Sudan, South Sudan, Iraq, Somalia, Democratic Republic of Congo, Central African Republic and Afghanistan, to name a few.

Time and again, the International community has promised to protect civilians from slaughter and gross violations of rights. And yet, even as I speak to you now, civilians and others are being killed in their thousands: 191000 in Syria; 2000 in Gaza; women are being abducted and raped, children lose their lives or

are forcibly recruited to fight, hospitals and ambulances are targeted, millions of people have been displaced and indiscriminate shelling and deliberate massacres stain the earth with the blood of innocents.

All this is intolerable. In 2005, world leaders at their World summit adopted by consensus the concept of the Responsibility to protect. Yet grave human rights violations continue to happen at the hands of both governments and rebel groups with impunity.

Human rights are still not universally respected or viewed as indivisible and interrelated, despite our promise to make them so. States still continue to make arguments about cultural relativity. Women, minorities and migrants are still discriminated against and abused. The right to development is still not accepted by everybody. Economic inequalities have resulted in a world of super rich and extremely poor people. Power still corrupts and leaders are still ready to sacrifice their people to retain it.

NGOs today face unprecedented challenges including restrictive laws, reprisals and lack of funding. Human rights defenders, journalists and aid workers come under attack and face imprisonment and attacks because of their work. These are disturbing signs of regression.

This brings me to look at the way forward and the efforts of the United Nations system and the office of the High Commissioner for Human rights, OHCHR, in particular.

Twenty years ago, following Vienna, the post of High Commissioner for human rights was created by the UN General Assembly. This was to ensure that an independent, authoritative voice would speak out against human rights

violations wherever they occur, to advance the protection and promotion of human rights and the right to development and to utilise the weight of the United Nations to support human rights for all.

It was my honour to occupy this post for the past six years. I soon realised what a unique and powerful mandate was entrusted to the High Commissioner and how enormous the task is of watching out for all rights of all people all over the world.

When I first addressed the Human Rights Council in September 2008, I pledged to embark on an open-minded, frank and reciprocally reinforcing interaction based on the premise that the credibility of human rights work depended on impartiality and commitment to truth with no tolerance for double standards, having engaged with the Council for six of its eight years of existence, that promise has stood the test of time.

The human Rights Council, a subsidiary of the UN General Assembly and consisting of 47 elected member states, began its work in 2006, replacing the Commission on Human Rights, which, although controversial, had laid the bedrock of the International Human Rights system. South Africa was elected a member in 2006-June 2010 and was re-elected for the 2014-2016 term. The High Commissioner for Human Rights is the secretariat to the Human Rights Council. The Council has gained credibility for its first round of the Universal periodic review, which examined every UN member state's human rights record without exception. The public review conducted by other states has been admirably universal, impartial and non-selective, and has had remarkable success in encouraging states to recognise and resolve gaps in human rights protection with new emphasis on dialogue with civil society.

The HR Council has also been increasingly receptive to human rights situations holding a succession of important special sessions and establishing Commissions of Inquiry and fact-finding missions with a view to securing accountability, justice and reparations for victims. Such as the three COIs following the Israeli operations in Gaza, and for Syria, Libya and the Democratic Republic of Korea and investigations in Sri Lanka and Iraq.

There are now 48 separate Special Procedures thematic or country-based mandates with 72 experts appointed by the Council. There are several South African experts, example, Christof Heyns special reporter on extra judicial, summary or arbitrary executions and Rashida Manjoo on Violence against women.

The combination of independence, expertise and UN-bestowed authority is potent. It is critical that all member states cooperate fully with the Special procedures, including by accepting their visits. I hope that South Africa will be more responsive to accepting these visits. Requests made in 2008 by the SRs on racism and extrajudicial, summary or arbitrary executions are still unheeded.

The human rights treaty bodies have grown in number and weight. Two major new international treaties on persons with disabilities and disappearance and nine important substantive and procedural Optional protocols have been adopted since Vienna. The number of ratifications by states has grown to 2010 states parties to 18 treaties and protocols. These bodies set out principles, review state reports together with NGO participation and make recommendations. You may have followed the recent highly publicised examination of the Vatican by the Committee against Torture and Rights of the Child into child-sex abuse cases involving Catholic priests.

It would be a welcome development if every state becomes a party to all the treaties. The Convention on the Rights of the Child is almost unanimously ratified. The Convention on the rights of migrant workers and their families is woefully short of support. The United States, Somalia and South Sudan are the only states that have not ratified the Convention for the Elimination of all forms of Discrimination against Women.

Human rights and democratic principles have been founding principles of the ANC and almost immediately after the end of apartheid, in 1993 and 1994; a number of human rights treaties were ratified. In November 2007, South Africa became one of the first batches of countries to ratify and sign the International Convention on the Rights of people with Disabilities and its Optional Protocol.

Nevertheless, it is unfortunate that South Africa has not ratified the International Covenant on Economic, Social and Cultural Rights, one of the two major human rights treaties, the other being the International Convention on Civil and political rights.

The Office of the High Commissioner for Human rights, building on the work of each high commissioner, has grown from a small entity of just over 100 staff and a presence in two countries outside Geneva, to more than 1000 staff and 58 field presences worldwide. These include embedding human rights advisers in Security Council-mandated peace missions.

The office provides technical advice, capacity and training to States and civil society organisations. We work in close partnership with NGOs and directly serve some 4000 NGOs registered with the Office. On the many official visits I have conducted to States, (numbering 79, as a matter of fact) I always held

discussions with local NGOs and this in turn informed my interchange with heads of States, heads of government and ministers.

It is therefore, a matter of great concern that so many State authorities continue to ignore or repress civil society organisations, human rights defenders and the media. These organisations and individuals inject the lifeblood into human rights: they are the promoters of change, the people who ring the alarm bell about abuse, disregard for the rule of law, corruption and creeping authoritarianism.

I do believe the Office has filled a major vacuum in the UN system and become an increasingly strong and authoritative advocate for victims across the globe, a voice for the voiceless. And a voice, created by States, that is in a position to remind states of the laws and promises they have made which they are failing to live up to.

Following criticism of the UN's own failure to protect people caught in the midst of conflict in the Balkans, Rwanda, Sri Lanka and Gaza, the Secretary General established the Rights up Front Plan of Action for rapid and united action to prevent conflict and protect human rights. Another central aspect of the Rights up Front plan is better preparedness by the UN system, to ensure quick, appropriate and concerted reaction to early warning of human rights crises.

This is the culmination of our efforts to mainstream human rights within the United Nations, including its political, humanitarian, economic, and peacekeeping and development related work. I am relieved to report that this level of mobilisation is now taking place within the United Nations to stem the current crises I referred to earlier.

UN principals also agreed that human rights are at the core of our collective efforts in transitioning to a new development agenda, OHCHR will continue to work to ensure that all of the future sustainable development goals will be firmly anchored in universal human rights and values. We must also ensure that the new goals rest on a strong accountability framework and that a global partnership effectively addresses power imbalances in global governance systems.

During my term as High Commissioner, the UN Security Council paid increasing attention to human rights and invited me to address the Council more times than all the previous high commissioners put together. I reported on the human rights situation in Syria, Libya, Mali, Central African Republic, Occupied Palestinian Territory, South Sudan and Ukraine. On 21st August, I addressed the Security Council on prevention of conflict and made bold to state that lack of responsiveness on the part of the Council led to the loss of thousands of lives.

I have urged the Council on a number of occasions to refer situations where war crimes and crimes against humanity are suspected to having been committed, to the International Criminal Court for accountability. Regrettably, the international community remains unable to consistently react strongly and quickly to crises, including situations of grave human rights violations with high potential for regional overspill.

These increasing requests from the Security Council for information and advice on human rights issues are most welcome. They demonstrate heightened recognition that human rights are fundamental to peace, security and development and testify to the stature that OHCHR has developed.

One of the first challenges I faced as High Commissioner was the organisation of the Durban Review Conference, which resulted in a landmark plan of action that sets a principled international agenda for the global movement against racism and discrimination. It also inspired a series of expert workshops on the prohibition of incitement to racial and religious hatred resulting in the Rabat plan of Action.

I am disturbed by the recent increase across the political spectrum in several states, including Europe, of a discourse rooted in anti-immigrant and racist sentiment and religious intolerance. The new European parliament will include a German Party leader who has said;

“Europe is the continent of white people, and it should remain that way”

A French party leader who has compared peaceful Muslim street prayers to the military occupation of her country by the Nazis. An Italian member who has been found guilty of arson for setting fire to the pallets of migrants sleeping under a bridge.

There is a road to perpetration of human rights violations and hate speech—particularly by political leaders — is on that road. Discriminatory rhetoric has also targeted people because of their sexual orientation and gender identity. I welcome the African Commission on Human and Peoples’ Rights’ recent call for states to take steps to protect persons from human rights violations on the basis of sexual orientation and gender identity.

Conclusion:

In conclusion let me say a few words on what we as South Africans can do more for the advancement of human rights in our country, on the African continent and internationally.

South Africa's fight against apartheid is one that not only influenced the United Nations human rights agenda, but also created the expectation that South Africa would emerge as a principled voice of fundamental human rights on the International scene. The lives lost to apartheid and the support mobilised against it both within and beyond the borders of South Africa, means that it can use its standing in the world to advocate for causes that espouse and uphold the Universal Declaration of Human Rights.

In this vein, South Africa has led on a number of important human rights initiatives during inter-governmental negotiations. This includes taking an active and proactive stand in combating racism, xenophobia and related intolerance, which led to the DDPA, supporting resolutions against Israeli occupation of Palestine; support for economic, social and cultural rights that aim to eliminate poverty and supporting the first UN resolution on sexual orientation and gender identity.

However, South Africa can do more and should not lend support to decisions that conflict with our constitutional values. This includes recent resolutions in the Human Rights Council on the right to protest, reprisals against human rights defenders, and protection of the family and the internet to name a few. South Africa has sided with those who invoke the so-called non-interference in the internal affairs of a country to block scrutiny of serious human rights violations such as in the case of Sri Lanka. These positions recall the apartheid government's response to criticism of its policy of institutionalisation of race.

People, not only in Africa, but all over the world, look to South Africa for moral leadership. The real challenge is to bring to life the realities of peoples' lives from across the world in an impartial manner so that the rule of law that member states created is implemented and respected.

We all have a role to play to act and be the change we want to see.

Thank You.