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2011 Inamori Ethics Prize Speech: Democracy and Freedom Under Law: The Obligations of Lawyers

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Democracy and Freedom Under Law

The Obligations of Lawyers

Beatrice Mtetwa

Transcript of the 2011 Inamori Ethics Prize Speech

It is a great honor for me this evening to give this talk to such a distinguished audience as yourselves. It is my hope that my choice of topic will not only be of interest to you but will be relevant to what the Inamori Ethics Prize stands for.

I am grateful to your selection committee for choosing me as the recipient of this year's award. I am particularly honored to receive a prize from someone whose background is in communications as I am passionate about all forms of communication, as I believe that no society can enjoy true democracy without the free flow of information, be it through telecommunications, print media, the airwaves, social media, and all other forms of free and unrestricted media.

My defense of media practitioners in Zimbabwe is premised in my belief that democracy and freedom of the media, expression, telecommunications, go hand in glove and are two sides of the same coin. This is why the world over, autocratic regimes target the media and all forms of communication to suppress any dissent. And this is precisely why Zimbabwe still considers journalists, telecommunications operators, media owners as enemies of the state. Despite the global explosion in telecommunications, particularly the social media, Zimbabwe remains in a time warp where it not only continues to harass and intimidate journalists, but has also put a lid on entry into basic telecommunication tools such as television and radio by independent players. Zimbabwe continues to have only one state-controlled television station which continues to resist transformation into a public broadcaster. Despite legislation which now permits the licensing of private broadcasters, Zimbabwe is yet to license independent television and radio operators and Zimbabweans continue to be served daily doses of partisan propaganda which serves the interests of one political party. Most of you would be shocked to learn that the telecommunications regulator is fiercely resisting the introduction of BlackBerry services by telecommunications operators in an obvious attempt to avoid occurrences such as we have seen in those

countries where social media has been used to mobilize protests against autocratic and oppressive leaders.

In recognition of the importance of telecommunications in the democratic discourse, I was part of a team that used a very weak freedom of expression clause in the Zimbabwean Constitution to challenge government's refusal to license what would have been Zimbabwe's first cellular telephone operator. Although it was a long shot and was fiercely opposed by Mr. Mugabe's government at the time, which used every excuse in the book, the operator was ultimately licensed, not by the government, but by the courts which bravely declared the company duly licensed when it became obvious that government was intent on dragging its feet in the formal licensing process. That company is currently Zimbabwe's largest cell phone operator and it is the same company battling to get authority to launch its BlackBerry services which are taken for granted the world over. Unfortunately, the brave and innovative Constitutional Court bench of the '90s was unceremoniously reconstituted in the early 2000s and for most lawyers, the Constitutional Court has now become the last port of call in the endeavor to attain the semblance of democratic principles through the use of the law. However, for record-keeping purposes and for posterity, I believe that the only effective exposure of the denial of basic rights to the Zimbabwean people is litigation, even in circumstances where the conclusion is foregone.

It is my firm belief that the enjoyment of basic democratic principles is closely tied to the judiciary. Without an independent, impartial, robust, and brave judiciary, liberal constitutions and other legal provisions cannot translate into rights that the ordinary man in the street can enjoy. For me, judiciary includes more than just judges and other authorities who perform judicial functions, it also includes independent, free, and courageous lawyers who routinely push the envelope of the enjoyment of fundamental rights to the limits regardless of any possible reprisals. As the numbers of human rights lawyers, particularly with experience, continues to decline it is my hope that my recognition today will help inspire young lawyers to venture into this branch of the law.

The risks of this branch of the law are, at least in Zimbabwe, not limited to physical harm or other acts of intimidation which target one's physical person. The risks are in fact more often than not economic and invariably affect livelihoods and in a country like Zimbabwe where the economy is not performing, economic and financial viability sometimes takes center stage. When my children were younger and did not understand my branch

of the law, they could not understand why a “famous” lawyer like me did not enjoy the kind of lifestyle other lawyers enjoyed by way of trinkets, fancy motor vehicles, etc. Although I had done human rights cases from the early '90s, these really did not get much attention as Zimbabwe was virtually a one-party state with no credible opposition. As a result, I had a fair amount of corporate clients whose work paid the bills and who did not mind being associated with me. However, when a credible opposition emerged in the early 2000s, and I was one of those lawyers who successfully represented litigants deemed oppositional by Mr. Mugabe’s then-ruling party, the flight of corporate clients from my portfolio was incredible due to the vindictive nature of the then-ruling party. This discouraged many lawyers from pursuing this kind of practice, which resulted in a marked decline of human rights defenders. Dr. Inamori, I am certain that my recognition here today will inspire many young Zimbabwean lawyers to recognize the importance of pursuing right over might and finance and that there is no prize that can be attached to the enjoyment of fundamental rights by a people. I shall therefore return to Zimbabwe vigorously inspired to pursue my duty to use the law to attain for Zimbabweans the highest possible enjoyment of their fundamental rights and freedoms. I will continue to encourage young human rights defenders that it is worth doing this kind of work and that concepts such as the rule of law are not just jurisprudential but can be translated into the enjoyment of democratic values if lawyers challenge any abuse of power by officials. I therefore thank you and all those associated with this award for your foresight in ensuring that ethical values are recognized.

Thank you.