



# THE GLOBAL HUMAN RIGHTS IMPLEMENTATION AGENDA:

## The role of national parliaments

POLICY BRIEF | NOVEMBER 2018



The Commonwealth



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# THE GLOBAL HUMAN RIGHTS IMPLEMENTATION AGENDA

## The Role of National Parliaments

London, Marlborough House

November 2018



The Commonwealth

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The Debating Chamber of the Scottish Parliament

## Executive Summary

The promotion and protection of human rights is central to the *raison d'être* and work of parliaments. Parliaments are the natural 'guardians' of universal human rights, due to their legislative powers, their role as national debating chambers, their oversight function and their budgetary responsibilities. This key role in the global human rights 'ecosystem' has been repeatedly recognised by, inter alia, the Inter-Parliamentary Union (IPU), the UN Human Rights Council and the Commonwealth.

Over recent years, a clear focus of discussions around the evolving position of parliaments in the universal human rights system has been their role in the implementation, by States, of international human rights obligations and commitments. As part of a wider global 'human rights implementation agenda,' the IPU, the UN and the Commonwealth have each taken important steps to assert the role of parliaments, especially parliamentary human rights committees, in a systemic manner throughout the international human rights 'implementation-reporting cycle.' This means leveraging parliaments' legislative, oversight and budgetary roles to support the effective domestic implementation of the recommendations of the UN's human rights mechanisms, the transparent monitoring of progress, and objective and balanced international reporting.

In 2012, the Commonwealth Secretariat and the IPU collaborated in hosting an international parliamentary workshop in Geneva on: 'Strengthening the role of parliamentarians in the implementation of the Universal Periodic Review (UPR).' The aim of the meeting was to better understand the ways in which members of parliament can contribute to the UPR, and to identify ways in which the Commonwealth, the IPU, and other international partners might usefully support parliamentarians in that regard.

Then, between 2013 and 2016, the Commonwealth Secretariat, in partnership with the Commonwealth Parliamentary Association (CPA), convened four regional seminars for parliamentarians to consider their actual and potential role in promoting and protecting universal rights. These regional seminars led to the adoption of landmark declarations – the Mahé Declaration, the Kotte Declaration, and the

Pipitea Declaration – that commit parliamentarians from the African, Asian and Pacific regions to enhanced engagement with international and regional human rights mechanisms. As a vehicle for taking forward that commitment, the seminars also led to the establishment of the Commonwealth Africa Parliamentary Human Rights Group (CAPHRG). Similar groups for the Asian and Pacific regions are in the process of being established.

Moving forward, the Commonwealth, together with civil society actors such as the Universal Rights Group, is at the vanguard of progressive calls for the international community to consider international standards or principles governing the role of parliaments in the domestic implementation of international human rights obligations and commitments. During the 31st session of the Human Rights Council in March 2016, former Commonwealth Secretary-General, Kamalesh Sharma, said: 'We believe there is merit in considering the potential of a set of international principles or standards, such as the Paris Principles, for parliaments.'

The present report, produced by the Commonwealth Secretariat and the Universal Rights Group, seeks to map and analyse contemporary debates, decisions, and initiatives focused on parliamentary engagement with the universal human rights system, and to assess the contribution of the Commonwealth to worldwide efforts to strengthen that engagement and thereby improve the on-the-ground enjoyment of human rights. In order to do so, the report looks at current efforts, at the UN, to strengthen the implementation of human rights recommendations and the realisation of human rights norms, and how parliaments are being positioned as key stakeholders in those efforts. It then addresses the contribution of Commonwealth parliaments to that wider movement, including through agreements on declarations of principle; the establishment of parliamentary human rights committees, caucuses, associations and networks; and the exchange of good practice between Commonwealth legislatures.



# I. Introduction

The promotion and protection of human rights is central to the *raison d'être* and work of parliaments. Parliaments are the natural 'guardians' of universal human rights,<sup>1</sup> due to their legislative powers, their role as national debating chambers, their oversight function and their budgetary responsibilities.

The central importance of human rights to the work of parliaments, and the central importance of parliaments to the enjoyment of human rights, has long been recognised. For example, the Statutes of the [Inter Parliamentary Union](#) (IPU) state, in Article 1.2c, that the organisation shall, *inter alia*, 'contribute to the defence and promotion of human rights, which are universal in scope and respect for which is an essential factor of parliamentary democracy and development.'<sup>2</sup> In a similar vein, the Constitution of the Commonwealth Parliamentary Association (CPA) states, in its preamble, that parliamentarians are united in pursuing respect for rule of law and the full enjoyment of individual rights and freedoms.<sup>3</sup>

In order to strengthen this role, the IPU's two most recent strategy documents, for 2012-2017 and for 2017-2021, identify the protection and promotion of human rights as one of the key strategic directions of the organisation. For example, the strategy for 2012-2017, entitled 'Better Parliaments, stronger democracies,' positioned parliaments as the 'guardians' of universal human rights due to their legislative oversight responsibilities.' It drew particular attention to capacity building (including through the establishment and/or strengthening of national parliamentary human rights committees) 'to help raise awareness about the International Bill of Rights, [...] strengthen engagement between parliaments and the UN human rights system,'<sup>4</sup> and 'promote the ratification and implementation of relevant international legal instruments.'<sup>5</sup> The Strategy also called for greater parliamentary involvement in key UN policy structures and debates, with particular priority afforded to the Human Rights Council. Likewise, the strategy for 2017-2021, entitled 'Strong democratic parliaments serving the people,' includes, as one of the IPU's principal objectives, the protection and promotion of human rights (objective 3).

Importantly, while the 2017-2021 strategy represents, in some respects, a continuation of the IPU's long-standing commitment to human rights, it equally represents an important new departure. That is because, before this strategy, the IPU's focus (in the context of international human rights policy and law) had been, principally, on strengthening parliamentary involvement in, and engagement with, international-level process and mechanisms (e.g. the Universal Periodic Review). Now, as part of a newly emergent international human rights 'implementation agenda,'<sup>6</sup> the IPU has adapted the emphasis of its human rights work from global normative debates and engagement to a more explicit focus on the role of parliaments in the domestic implementation of established norms – i.e. the realisation of international human rights obligations and commitments. In the introductory preamble to objective 3, the IPU asserts that 'parliaments and their members are uniquely placed to help translate international human rights norms into national realities.'<sup>7</sup> 'The IPU,' the strategy paper continues, 'will raise parliamentary awareness of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as other key international human rights treaties. The role of parliaments in the implementation of these treaties and, where they have not been ratified, their ratification, will be the focus of this work'<sup>8</sup>. 'The IPU,' it concludes 'will serve as a bridge between parliaments and the UN human rights machinery, and promote synergies that will strengthen action and improve efficacy.'<sup>9</sup>

Indeed, the IPU has already been active in translating these strategic objectives into practical action. Between 2014 and 2016, it organised, in collaboration with OHCHR, five regional seminars for parliamentarians on the role of parliaments in helping translate international human rights commitments into national realities, namely in Bucharest in February 2014, in Montevideo in July 2014, in Rabat in September 2014, and in Manila in February 2015. A fifth seminar was held in Nadi, Fiji, in November 2016, which, in addition to human rights, also covered the role of parliaments in implementing the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs).

The IPU's latest (2016) 'Handbook for parliamentarians on human rights,'<sup>10</sup> published jointly with OHCHR, also reflects and contributes to this movement. It devotes an entire section to the role of parliaments in 'ratifying human rights treaties' and in 'ensuring national implementation [of international human rights obligations and commitments]. Its advice to parliamentarians covers leveraging the legislature's role in 'adopting enabling legislation,' 'approving the budget,' 'overseeing the executive branch,' and 'following up on recommendations and decisions.'<sup>11</sup>

In June 2018, the IPU, together with OHCHR, organised a workshop on 'Parliaments as guardians of human rights: the case for strong parliamentary human rights committees and the development of international principles to support their work.' The workshop, which involved parliamentarians, State representatives, IPU and UN officials, and other stakeholders, considered the findings of a new study, prepared by OHCHR in cooperation with the IPU (see below).<sup>12</sup> During the meeting, participants shared experiences and good practices in the establishment and development of parliamentary human rights committees, including as a means of promoting parliamentary involvement in, and oversight of, government implementation of international human rights obligations and commitments. Some of the practices shared during the June workshop will be included in a new 'compilation of best practices' report on parliamentary engagement with the Council and its UPR, currently under production by the IPU secretariat.

The vital role of parliaments in promoting respect for universal human rights norms has also been repeatedly recognised by the United Nations, especially by its [Human Rights Council](#) (the Council) and the General Assembly. For example, the Council has adopted four resolutions (resolutions 22/15, 26/29, 30/14, and 35/29) that acknowledge 'the crucial role that parliaments play in, *inter alia*, translating international commitments into national policies and laws and hence in contributing to the fulfilment by each State Member of the United Nations of its human rights obligations and commitments and to the strengthening of the rule of law,'<sup>13</sup> and which also recognise 'the leading role that parliaments could play in ensuring the implementation of recommendations made at the



Meeting of the Committee on Democracy and Human Rights during the 138<sup>th</sup> Assembly of the IPU, Geneva, 2018

sessions of the universal periodic review and by other human rights mechanisms at the national level.'<sup>14</sup>

Notwithstanding, the Council has also recognised that much work remains to be done to strengthen these roles in the future, and to further explore 'possible synergies' to ensure that UN human rights mechanisms have 'the greatest impact at the national level.' To explore and generate such synergies, the Council has convened two panel discussions (May 2013 and June 2016) on the role of parliaments. During those discussions, policymakers noted the multifaceted way in which parliaments can and do work to promote and protect human rights, including, *inter alia*, by: ratifying human rights treaties; adopting laws to enshrine human rights standards; providing the legal frameworks for the judiciary to administer justice; participating in the formulation of government policy; overseeing the actions and administration of the executive branch; offering a platform for domestic civil society and national human rights institutions (NHRIs) to provide independent assessments of government performance in the field of human rights; and by scrutinising the passing the State budget. To fulfil this role, parliamentarians can: establish human rights committees; introduce private members bills; address oral and written questions to government



officials; invite governments to explain policies in a certain domain; and request the establishment of parliamentary enquiry committees to look into particular human rights issues. Moreover, as opinion leaders, parliamentarians are in a unique position to raise public awareness about human rights and influence the agenda of their political parties.

The most recent iteration of the Council's regular resolutions on the role of parliaments in the promotion and protection of human rights is resolution 35/29, adopted in June 2017. Operative paragraph 1 of resolution 35/29<sup>15</sup> encourages States:

*'[...] in accordance with their national legal framework, to promote the involvement of parliaments in all stages of the universal periodic review reporting process through, inter alia the inclusion of the national parliament as a relevant stakeholder in the consultation process for the national report and in the implementation of supported recommendations by the State concerned, and to report on such involvement in their national report and voluntary mid-term reports or during the interactive dialogue session of the universal periodic review.'*

This paragraph is important as it represents official recognition, by States, of the central role parliaments must necessarily play throughout the 'implementation-reporting cycle,' if international human rights obligations and commitments are to be effectively implemented. Parliaments (e.g. via human rights committees) must, in other words, be centrally involved in preparing national reports to the UPR, Treaty Bodies, and the Special Procedures (including by leveraging their oversight function to comment on the degree to which the government has implemented previous recommendations), and – crucially – in supporting the implementation of relevant recommendations (especially by leveraging their legislative and budgetary functions).

Resolution 35/29 goes on, in operative paragraph 5, to request OHCHR to: 'prepare a study, in close cooperation with the IPU and in consultation with States, UN agencies and other relevant stakeholders, on how to promote and enhance synergies between parliaments and the work of the Human Rights Council and its universal periodic review.' Importantly, the paragraph also asks OHCHR to propose 'elements that could serve as orientation to strengthen [parliamentary] interaction towards the effective promotion and protection of human rights.' In other words, with

resolution 35/29, the Council requested OHCHR, in cooperation with IPU, to elaborate 'draft principles' on the contribution of parliaments to the promotion and protection of human rights, especially their contribution to the implementation of States' international human rights obligations and commitments.

The report requested in resolution 35/29, together with (in annex) the proposed 'draft principles on parliaments and human rights,' was published on 28 May 2018, and was considered by the Council at its 38th session.

**The Commonwealth** has played a central role in these and other international efforts to better define and leverage the unique role of parliaments and parliamentarians in the human rights work of the UN, especially the Council and its mechanisms, including the UPR.

In 2012, the Commonwealth Secretariat and the IPU collaborated in hosting an international parliamentary workshop in Geneva on: 'Strengthening the role of parliamentarians in the implementation of the Universal Periodic Review.' The aim of the meeting was to better understand the ways in which members of parliament can contribute to the UPR, and to identify ways in which the Commonwealth, the IPU, and other international partners might usefully support parliamentarians in that regard. A key outcome of the meeting was the recognition that international organisations, including the Commonwealth, have a key role to play in promoting the effective participation of parliamentarians in the UPR process.

Then, between 2013 and 2016, the Commonwealth Secretariat, in partnership with the Commonwealth Parliamentary Association (CPA), convened four regional seminars for parliamentarians to consider their actual and potential role in promoting and protecting universal rights. These regional seminars led to the adoption of landmark declarations – the Mahé Declaration,<sup>16</sup> the Kotte Declaration,<sup>17</sup> and the Pipitea Declaration<sup>18</sup> – that commit parliamentarians from the African, Asian and Pacific regions to enhanced engagement with international and regional human rights mechanisms. As a vehicle for taking forward that commitment, the seminars also led to the establishment of the Commonwealth Africa Parliamentary Human Rights Group (CAPHRG). Similar groups for the Asian and Pacific regions are in the process of being established.

These and related efforts, together with associated technical assistance and capacity-building support, have already begun to result in tangible improvements in the implementation of UN human rights recommendations in a number of States. For example, pursuant to the Mahé Declaration, a Kenyan parliamentarian took steps to establish a national cross-party human rights caucus – the Kenyan Parliamentary Human Rights Association (KEPHRA).

Moving forward, the Commonwealth is at the vanguard of progressive calls for the international community to consider international standards or principles governing the role of parliaments in the domestic implementation of international human rights obligations and commitments. During the 31st session of the Human Rights Council in March 2016, former Commonwealth Secretary-General, Kamallesh Sharma, said: 'We believe there is merit in considering the potential of a set of international principles or standards, such as the Paris Principles, for parliaments.'<sup>19</sup>

The present report seeks to map and analyse contemporary debates, decisions, and initiatives focused on parliamentary engagement with the

universal human rights system, and to assess the contribution of the Commonwealth to worldwide efforts to strengthen that engagement and thereby improve the on-the-ground enjoyment of human rights. In order to do so, the report looks at current efforts, at the UN, to strengthen the implementation of human rights recommendations and the realisation of human rights norms, and how parliaments are being positioned as key stakeholders in those efforts. It then addresses the contribution of Commonwealth parliaments to that wider movement, including through agreements on declarations of principle; the establishment of parliamentary human rights committees, caucuses, associations and networks; and the exchange of good practice between Commonwealth legislatures.

The report is based on field visits (e.g. to Kenya), face-to-face interviews and phone interviews with over forty Commonwealth parliamentarians,<sup>20</sup> as well as relevant desk research – especially covering UN and other international resolutions, declarations and reports, and relevant articles, books, and other publications.



Commonwealth Parliamentary Conference on the Rule of Law and Human Rights, held in London, 24 – 26 January 2017

## II. The International Human Rights 'Implementation Agenda'

The development of international human rights norms is seen as one of the great success stories of the UN. Since the adoption of the Universal Declaration of Human Rights by the General Assembly on 10th December 1948, the international community has moved to create a comprehensive global code of human rights norms governing practically every area of the relationship between the individual and the State.

But what are the real world, practical, tangible implications of this global code? The primary responsibility for promoting and protecting human rights lies with States, but do States comply with the standards and obligations that they themselves have set down and ratified? What do States do with the recommendations generated by the main human rights mechanisms? How do States seek to transform international norms into local reality, and do they succeed? How does the Human Rights Council support States (e.g. through capacity-building and technical assistance) to strengthen implementation and compliance?

As the National Democratic Institute for International Affairs has noted in a paper on the role of parliaments in promoting and protecting human rights: the problem today is no longer to set international human rights standards, but rather 'to secure the implementation and enforcement of existing legal instruments.'<sup>21</sup> 'How,' asks NDIIA, 'can we ensure that States live by the human rights commitments they have made at national, regional and international levels?'<sup>22</sup>

Awareness of this international human rights 'implementation gap' is not new. States and UN officials have been discussing it ever since the first international human rights conventions were adopted. Indeed, in 2006, the then UN Secretary-General, Kofi Annan, asserted that the primary goal of the newly created Human Rights Council should be to lead the international community from 'the era of declaration' to 'the era of implementation.'<sup>23</sup>

It is in this context that growing international interest in the role of parliaments should be understood. Over the past few years, States, NGOs,

and UN independent experts have slowly but steadily switched their focus from the continued 'widening' and/or 'clarification' of international human rights norms (i.e. more conventions, optional protocols, resolutions) towards a greater focus on 'deepening' – i.e. how to strengthen the domestic realisation of those norms. Debates about the role of parliaments in legislating on human rights and in overseeing government compliance with international law, have been an important part of that shift – a shift that some are calling the 'new global implementation agenda.'<sup>24</sup>

Today, the domestic implementation of universal human rights obligations and commitments is at the very top of the international political agenda. For example, in his statement at the opening of the 37th session of the Human Rights Council in early 2018, UN Secretary-General António Guterres underscored the urgent need 'to reverse the current backlash' against human rights, by focusing on the domestic implementation of the rich output of recommendations generated each year by the international human rights mechanisms. The Secretary-General also acknowledged that a key part of such a 'global implementation agenda' must be to integrate human rights recommendations into the overall UN planning and action, especially at national level through Resident Coordinators, Country Teams, and UN Development Assistance Frameworks (UNDAFs). Finally, he drew attention to the importance of improved human rights implementation for both his prevention agenda, and for the realisation of the SDGs - 'leaving no one behind.'

These important themes were also repeated in the aforementioned report (HRC/38/25) by the High Commissioner for Human Rights on the 'Contribution of parliaments to the work of the Human Rights Council and its universal periodic review.' The report draws States' attention to the enormous value of the recommendations generated each year by the UN human rights machinery - recommendations which, when clustered, help States identify key 'gaps in implementation at the country level, both in law and

in practice'. These recommendations also provide a reform 'blueprint,' giving guidance to States on how to 'bolster national human rights institutions and national capacities, foster resilience and create an environment conducive to addressing possible root causes of human rights violations,' (i.e. prevent human rights violations and crises). The High Commissioner also recalled the central importance of the human rights 'implementation agenda' for the successful realisation of the SDGs, arguing that most SDG targets are grounded in international human rights law.

Whilst this emerging debate has provided space for better understanding and leveraging the role of parliaments, that has not been the main focus of the 'implementation agenda.' It is the executive branch of government that proposes and negotiates new international human rights instruments, that signs those instruments, and that engages with the international human rights mechanisms and receives recommendations therefrom. It is also the executive branch that is expected to periodically report back to the international community on progress with implementation. The main focus of the emerging implementation agenda has therefore been, by extension, the machinery through which governments themselves (rather than other branches of the State such as the legislature or judiciary) seek to translate universal norms into local reality.

In that regard, a particular focus of inter-governmental discussion and movement over recent years has been the development of so-called 'national mechanisms for reporting and follow-up' (NMRFs) or 'national mechanisms for implementation, reporting and follow-up' (NMIRFs).<sup>25</sup>

As those names suggest, these structures are mandated to take recommendations from the UN human rights mechanisms (together, in some cases, with recommendations from regional human rights bodies), cluster and prioritise them, and coordinate the actions of different parts of governments and other agencies of the State to pursue their implementation. The same structures then receive feedback from, and monitor implementation by, different parts of the government/State, and prepare

subsequent national reports to the international or regional mechanisms, thereby completing the 'implementation-reporting cycle.'

The UN Secretary-General has identified these emergent national mechanisms as key to the success of the international human rights system and, by extension, to the success of the 2030 Agenda. According to the Secretary-General, 'the success of States in their efforts to promote and protect human rights, with the support of the UN, will undoubtedly depend on national mechanisms for reporting and follow-up being in place to deal with the tasks of implementation of recommendations and reporting on these efforts and the impacts achieved in close cooperation and consultation with national stakeholders.'<sup>26</sup>

In 2016, OHCHR published the results of a first global study of these national implementation mechanisms, entitled 'National Mechanisms for Reporting and Follow-up: a practical guide for effective engagement with the international human rights mechanisms.'<sup>27</sup> This important report represented a first concerted effort to map evolving State practices in this area.

OHCHR's study recognised that States are expected to implement and report on an increasingly wide array of international human rights recommendations. Especially in the case of developing countries, these requirements can quickly become unmanageable. In order to adequately address the situation, and in so doing, engage with international human rights mechanisms in a more meaningful and effective way, OHCHR reports that a number of governments have therefore 'adopted a comprehensive, efficient approach to reporting and follow-up, including [...] the setting up of NMRFs.'<sup>28</sup>

A review of OHCHR's survey, together with related UN reports such as the UN Development Group's (UNDG) 2017 study on 'UN Country Team support to tracking the follow-up of human rights recommendations'<sup>29</sup> and the High Commissioner's 2018 report on the 'Contribution of parliaments to the work of the Human Rights Council and its universal periodic review,' as well as other important contributions to the new 'implementation agenda' such as the outcome report of the third Glion Human Rights Dialogue (Glion III) on 'Human rights implementation, compliance and the prevention of violations,'<sup>30</sup> published by Norway, Switzerland



and the Universal Rights Group (URG) in 2016, and the establishment of a new State-led 'group of friends' on national implementation and reporting in 2017 (see below), reveal a clear global movement towards a more systematic, institutional approach to implementing international (and regional) human rights recommendations, tracking progress, monitoring impact, and streamlining reporting. Interestingly, whilst this movement includes countries from all regions of the world and all levels of development, it is often Small States (with limited national capacity), especially Commonwealth Small States (e.g. Bahamas, Mauritius, Mozambique, Samoa, Seychelles), that appear to be in the vanguard.<sup>31</sup>

During a panel debate at the 37th session of the Human Rights Council in February 2018, Portugal delivered a joint statement on behalf of the 28 members of the afore-mentioned 'group of friends.' Recognising that the key *raison d'être* of the newly emergent national mechanisms is to boost national implementation, the group began to use the term 'national mechanisms for implementation, reporting and follow-up' (hereinafter NMIRFs).

Through the reports of OHCHR and others (e.g. the report of Glion III and UNDG's 2017 study), and the various statements delivered by the group of friends, the idea has begun to gain traction that, while there is no 'one-size-fits-all' approach to domestic implementation, successful and effective NMIRFs do nonetheless share certain common characteristics.<sup>32</sup> This has led to tentative suggestions that the future establishment and development of NMIRFs might be guided by certain common principles (OHCHR often refers to them as 'capacities'). For example, it has been suggested that in order to be effective, NMIRFs should:

**Be 'standing' in nature** – they should be stable and permanent, with a formal legal or administrative mandate (e.g. via a government decree).<sup>33</sup>

**Enjoy high-level political backing** – for example, some NMIRFs are convened by heads of State or by senior ministers.<sup>34</sup>

**Be comprehensive** – the NMIRF should engage on all human rights issues, and with all human rights mechanisms at the international and regional levels. Some NMIRFs (e.g. in Paraguay and Ecuador), also now have responsibility for implementing the SDGs

(thus seeking to leverage the substantial overlap between international human rights obligations and commitments, and the SDG targets).<sup>35</sup>

**Coordinate** and facilitate implementation by relevant line ministries and agencies; rather than implement themselves (this is an important distinction as many States are wary of creating 'additional levels of bureaucracy').<sup>36</sup>

**Be inclusive** – to be effective, implementation must engage and involve all relevant parts of government (line ministries), State agencies (e.g. the police and penitentiary services), State specialised bodies (such as the national statistical offices), parliaments, and judiciaries. Implementation should also proceed in consultation with the national human rights institutions and civil society, and, in many good practice examples, with international development partners, including UN Resident Coordinators and Country Teams.<sup>37</sup>

**Emphasise implementation** – the purpose and mandate of an NMIRF should emphasise domestic implementation (i.e. not merely 'follow-up' or 'reporting'). This should include the capacity to receive, cluster and prioritise all relevant human rights recommendations (from all relevant international and regional mechanisms); and then coordinate and direct implementation actions across government / the State.<sup>38</sup>

**Track and measure progress** – NMIRFs should have a clear mandate to track progress with implementation and impact by maintaining a national database of recommendations,<sup>39</sup> and/or by applying human rights (output and outcome) indicators.<sup>40</sup>

**Facilitate timely and objective reporting** – in many cases, NMIRFs help States streamline their international reporting procedures and thus reduce their reporting burden.<sup>41</sup>

**Ensure public transparency and accountability** – NMIRFs should ensure that information on progress with implementation, impact and reporting is made available to domestic civil society and the general public, for example via a publicly accessible website (linked to the national database).<sup>42</sup>

As part of the growing interest in NMIRFs, in 2015 Brazil and Paraguay tabled a Council resolution on 'promoting international cooperation to support national human rights follow-up systems and processes.'<sup>43</sup> Through resolution 30/25, the

Council encouraged more States to establish such systems, and decided to convene an inter-sessional half-day panel discussion during the 26th session of the UPR Working Group in November 2016, to exchange national experiences and good practices with national implementing and reporting structures.<sup>44</sup> In 2017, Brazil and Paraguay tabled a follow-up resolution (Council resolution 36/29), which focused on the emerging practice in some States of using NMIRFs to also coordinate the implementation of, and reporting on, the Sustainable Development Goals (SDGs) and targets.<sup>45</sup>

Moreover, as noted above, in 2017, Portugal and the Universal Rights Group (URG) established a 'Group of Friends on domestic implementation, including through the establishment and development of NMIRFs.' Today, the Group of Friends includes around 40 States, including many Commonwealth States such as Botswana, Seychelles, Fiji, Bahamas and Australia, together with representatives of OHCHR and other UN agencies. In March 2017, Portugal delivered a joint statement<sup>46</sup> on behalf of the Group to the 34th session of the Human Rights Council, in which it explained the Group's main objectives:

- To create an informal space for dialogue and exchange between States that have established or are in the process of establishing NMIRFs, or that are simply willing to engage in dialogue on questions of implementation, follow-up, impact, and reporting.

- To create a space for developing activities that would support the further development of such national mechanisms.
- To create a space for sharing good practice, lessons-learned, and challenges faced by States at domestic level in implementing, tracking, and reporting on human rights recommendations and identifying ways to better overcome challenges – including through the convening of a series of regional consultations on NMIRFs, in 2018 and 2019.
- To create an informal channel allowing for communication, reflection, and the sharing of information with OHCHR, other interested UN agencies and programmes, other international organisations (e.g. the Commonwealth, the IPU), Treaty Bodies, Special Procedures, NHRIs, civil society, and other relevant stakeholders.

Since its establishment, the Group of Friends has delivered a number of joint statements at the Human Rights Council, seeking to build momentum behind and help direct the 'implementation agenda.' Delivering a statement on behalf of the Group at the 38th session of the Council in July 2018, Portugal welcomed the growing international focus on domestic implementation and impact, and argued that national mechanisms for implementation, reporting and follow-up (NMIRFs) are 'the keystone' of that global human rights agenda (and, potentially, also of the 2030 Agenda). Portugal also underscored the important role of parliaments, NHRIs and civil society, individually



Hon. Graham Perrett MP, Australia, speaking at the Commonwealth Parliamentary Conference on the Rule of Law and Human Rights, London 2017



and in combination, in supporting, overseeing, and independently reporting on national human rights implementation and impact.

The Group also seeks to leverage the UPR mechanism to power the development of NMIRFs. Ahead of every State under review's appearance before the UPR Working Group, the Group of Friends delivers advance questions, asking for information about implementation and reporting (including the role of parliaments, NHRIs and NGOs therein). During each review, the Group offers standard recommendations to States on the establishment and/or strengthening of NMIRFs.

## Parliaments

While discussions on how to bridge the 'implementation gap' have, to-date, focused heavily on executive action; consideration of the roles of other branches of the State have nonetheless also been an important part of the emerging 'implementation agenda.' In particular, after long years of neglect, the role of parliaments has begun to receive increased attention.

Addressing the Council in February 2013, Commonwealth Secretary-General Kamalesh Sharma drew attention to this role, arguing that constructive engagement by and with parliaments is essential for the effectiveness and impact of the UPR mechanism, especially vis-à-vis the implementation of accepted recommendations.<sup>47</sup> Later that same year, Karen McKenzie, Head of Human Rights at the Commonwealth Secretariat, buttressed this point, noting that 'parliaments have an important role to play in the effective and sustainable implementation of Universal Periodic Review recommendations.'<sup>48</sup>

As noted in Part I of this report, like the Commonwealth, the IPU has also begun to focus far more on promoting the role of parliaments in domestic implementation and oversight. Speaking during a Council panel debate in 2013, then IPU Secretary-General, Anders. B. Johnsson, stated that 'the mere fact of recognising that parliaments have a critical contribution to make to the work of the Council is fundamental. Human rights are not technical matters; they often require tough political discussions and decisions. The political component is therefore inevitable. We believe that rather than try to keep the politics out, it is

important to embrace the political process for what it is. Parliaments can help promote public debate on human rights and seek input from all segments of society. Moreover, they can lend democratic legitimacy to the outcome of that debate and galvanise public support for implementation.' The IPU's 2017-2021 strategy paper, 'Strong democratic parliaments serving the people,' asserts that 'parliaments and their members are uniquely placed to help translate international human rights norms into national realities.'<sup>49</sup> It goes on to commit the IPU, as a matter of priority, to focus on raising parliamentary awareness of the international human rights instruments, and to strengthen 'the role of parliaments in the implementation of these treaties and, where they have not been ratified, their ratification.'<sup>50</sup>

The central importance of parliaments to the success – or otherwise – of the global 'implementation agenda' has likewise been recognised by the UN. The High Commissioner for Human Rights has repeatedly emphasised 'the importance of the active participation of parliaments in the follow-up process [...] also bearing in mind that more than 50 per cent of Universal Periodic Review recommendations require or involve parliamentary action.'<sup>51</sup> The UN Secretary-General has similarly called for a stronger and deeper role for parliaments, and has underscored the particular importance of 'parliamentary committees with an exclusive human rights mandate,' the establishment of which 'sends a strong political message and should be encouraged.'<sup>52</sup>

The increasing international focus on the role of parliaments partly stems from a belated acknowledgment, on the part of UN member States, that they are failing to make sufficient progress in bridging the long-standing universal human rights 'implementation gap.' This has led, in turn, to acceptance of the need to launch a meaningful process of reflection as to the possible reasons for that failure. One result of that process has been a growing understanding that many of the steps required to bring domestic laws into line with international standards require either new legislation or legislative amendment.<sup>53</sup> The heightened interest in the role of parliaments also stems from an increasing awareness that international monitoring of State compliance with their international obligations, through periodic State reports to and dialogues with

Treaty Bodies, Special Procedures, and reviewing States under the UPR, is heavily dependent on State self-assessment; and that, in most cases, State self-assessment means government self-assessment.<sup>54</sup>

The UPR offers a case in point. The main input into the UPR review is the National report (the other two reports – the UN System report and the 'Other Stakeholders' report – are shorter and receive less attention by reviewing States in the UPR Working Group). According to the Council's Institutional Building Package (IBP),<sup>55</sup> the National report should be compiled following broad national consultations,<sup>56</sup> including with civil society, NHRIs, parliamentarians and judges. In reality, however, research by the Universal Rights Group (URG) and others suggests that very few governments are heeding this call.<sup>57</sup> National reports are instead often drafted by foreign ministries, following some limited consultations with relevant line ministries. This has led to increased scepticism, on the part of international partners and NGOs, as to the objectivity and veracity of the reports and the picture they paint of the human rights situations in States. That has in turn led to calls to strengthen national-level reviews of implementation – as a precursor to any international review. Parliaments are, by their very nature (being, after all, the embodiment of the human right to participate in the conduct of the public affairs of one's country – article 25 of the ICCPR), perfectly placed to drive such domestic reviews and scrutiny.<sup>58</sup>

As the Westminster Foundation and Oxford University have noted, 'in contrast to the government, judiciary and civil society groups, parliaments are the place where government policies are (or should be) debated and scrutinised. In parliament, competing policy objectives are balanced to ensure respect for human rights and thus the common good. By virtue of their constitutional mandate to represent the people, parliaments are vested with the necessary powers to fulfil their fundamental role as a guardian of human rights.'<sup>59</sup>

In addition to the above points, a further driver of moves to enhance the role of parliaments is an understanding of the need to 'increase the [domestic] democratic legitimacy of [international human rights] standards.'<sup>60</sup> This means encouraging more debates in parliaments about what human rights obligations require, and whether they are

found in domestic law (e.g. national constitutions) or international law (including international human rights treaties the State has voluntarily ratified). Such discussion among elected representatives helps to democratise human rights by encouraging politicians to take ownership of these fundamental values and to properly consider applicable human rights standards in their work.

As has been widely recognised, parliaments discharge their role as 'guardians of human rights' in a number of ways.

First, they legislate the legal framework for human rights at the national level. They ratify international treaties, and work to ensure that the norms set forth in those treaties are translated into national law. In this regard, parliaments must necessarily play an important role in implementing UN human rights recommendations. Many of those recommendations require new or amended legislation. For example, by some estimates as many as 50-70% of accepted UPR recommendations require legislative action in order to be implemented.<sup>61</sup>

Second, parliaments approve the budget and set national policy priorities. They must ensure that sufficient funds are provided for human rights implementation and monitoring, and that these funds are used accordingly.<sup>62</sup>

Third, parliaments oversee the action of the executive branch and keep the executive's policies and actions under constant scrutiny. This oversight power includes ensuring that the government, administration, and other relevant bodies comply with the State's international human rights obligations, including by implementing the recommendations of the international human rights mechanisms.<sup>63</sup>

Finally, members of parliament are natural public opinion leaders and can thus help create a 'human rights culture' in their countries.<sup>64</sup>

In addition to their own direct contribution to recommendation implementation and oversight, parliaments can also act as a platform to enable other national actors, especially NGOs and NHRIs, to report on government performance and thus to hold the executive to account against the State's international obligations.<sup>65</sup> Recognising this crucial role, Human Rights Council resolution 26/29 invites States 'to promote the involvement of parliaments in all stages'<sup>66</sup> of the work of UN human rights

mechanisms, including the UPR. This includes involving parliaments in the preparation of national reports (e.g. in the context of Treaty Body reviews and the UPR), involving parliamentarians in the implementation of recommendations, and even including parliamentarians in national delegations to the UPR Working Group.<sup>67</sup>

Yet despite the increased focus on the role of parliaments, and increased awareness of the importance of that role, actual parliamentary involvement in, for example, UPR recommendation implementation, remains the exception rather than the rule. That is partly because some States are reluctant to promote parliamentary involvement in an area (i.e. international human rights law and multilateral diplomacy) seen to be the exclusive domain of national governments (executives), and partly because governments fear that involving parliaments (which are, by their nature, highly political and complex bodies) will reduce their 'room for manoeuvre' in Geneva, as well as their ability to respond quickly to diplomatic developments. However, probably the principal reason for the overall absence of parliamentary involvement and influence in UN human rights procedures and mechanism, is that interest in the role of parliaments in implementing international human rights obligations and commitments is (like interest in the 'implementation agenda' itself) relatively new. Most States have only recently begun to consider how to strengthen domestic implementation processes, and have therefore only recently started to grapple with questions of parliamentary, NGO, and NHRI involvement in those processes. Likewise, parliaments have only (relatively) recently begun to understand and look to expand their vital role.<sup>68</sup>

## Human rights indicators

Even where a State takes documented steps to implement a certain recommendation, it does not necessarily mean those steps have had a measurable impact on the on-the-ground enjoyment of human rights. This in turn raises important questions: what is 'implementation' and what is 'impact,' and how can they be measured?

In recent years, the UN, led by OHCHR, has done considerable work in developing a system of human rights indicators to measure compliance and implementation and to monitor domestic human rights trends.<sup>69</sup> This work draws a distinction between 'output indicators' and 'outcome indicators.' The former refers to evidence of a State having taken steps, in line with UPR

recommendations to, for example, amend a certain piece of legislation linked to the right to safe drinking water, or to conduct torture prevention training within the police force.<sup>70</sup> The latter then takes the analysis one step further and seeks to measure the degree to which these policy steps have resulted in improvements in the enjoyment of the right to water (e.g. more people linked to the mains water supply), or in reductions of incidences of torture.<sup>71</sup> In other words, what has been the real world impact on the enjoyment, by individual citizens, of their human rights?

## International support for strengthened implementation

GA resolution 60/251 establishing the Human Rights Council makes clear that a core competence of the Council is to 'promote...technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned.'<sup>72</sup> With the adoption of the institution-building package (IBP), member States of the Council decided to dedicate a single agenda item (item 10)<sup>73</sup> to fulfilling this mandate.

In line with the Council's expected methods of work (as outlined in GA resolution 60/251), item 10 should provide an inclusive platform for all countries to engage in a 'genuine...results orientated'<sup>74</sup> dialogue on challenges faced, a space where they can request relevant technical and capacity-building support, and a space where relevant parts of the UN and the wider international community can extend offers of support in order to 'promote the full implementation of human rights obligations undertaken by States.'<sup>75</sup>

As part of widening contemporary interest in the domestic implementation of international norms, States and NGOs have begun to question the degree to which the UN is delivering on this important capacity-building mandate. This has led to the emergence of proposals to improve the delivery of such support. For example, it has been suggested that relatively little thought has been given to the suitability or utility of the Council's current 'item 10 toolbox.' Are item 10 panel debates really the best way of hearing about, and understanding, the capacity building needs of developing countries? Are Special Procedures (which were originally created for a very different purpose) the best means of mobilising and

delivering support to all developing countries that wish to receive it, especially to help them implement recommendations?

This has led to an important follow-up question: should the Council consider the creation of new types of item 10 mechanisms, tools, or platforms, explicitly designed to enable the international community to respond to developing country requests for capacity-building support, especially in the context of implementing UN human rights recommendations?

As part of the emerging debate over how the international community can better support domestic implementation, OHCHR has also taken a number of important steps to help States improve national-level compliance with their international obligations. OHCHR delivers technical assistance and capacity-building support both directly, via its 60 or so field presences, and indirectly, by driving UN-wide responses via the undg Human Rights Working Group. According to the High Commissioner, 'much of [this] technical cooperation to States is closely linked to the implementation of recommendations.'<sup>76</sup>

Further increasing this OHCHR implementation 'footprint' was, according to High Commissioner Zeid Ra'ad Al Hussein in his opening remarks at the third Glion Human Rights Dialogue (Glion III), 'the main objective of [his then] Change Initiative.' 'We want to take the staff of my Office out of Geneva and into the field, with an equitable geographical spread that can promote human rights in every region. The vital importance of that goal is the reason why [...] I will continue to work towards implementation.'<sup>77</sup>

Beyond the Council and OHCHR (i.e. the UN's 'human rights pillar,') the wider UN system is also scaling up its support for the domestic implementation of international human rights recommendations, especially those generated by the UPR.

This UN-wide effort is coordinated through the undg Human Rights Working Group, and aims, inter alia, to ensure that every UN Country Team is mobilised to support States with the implementation of human rights recommendations, including by integrating them, where appropriate, into UN Development Assistance Frameworks (UNDAFs). According to the UN High Commissioner: 'Our common goal is to make sure

that every Resident Coordinator understands why human rights concerns, and long-term investments in rule of law institutions, the eradication of discrimination, and the rights of the marginalised and deprived, must be prioritised over apparently conflicting short-term political or economic factors.'<sup>78</sup> In a clear sign that this message is getting through, in 2017 the undg published a ground-breaking study (already referenced in this report) on 'UN Country Team support to tracking the follow-up of human rights recommendations.'<sup>79</sup> The study explores the specific role of the UN system at the country level in supporting the establishment or strengthening of NMIRFs, and then in working with NMIRFs to support the implementation and tracking of, and reporting on, recommendations from the international human rights mechanisms. By 'drawing on emerging good practices' the study seeks to 'encourage similar activities among UN country teams at large, and to strengthen [UN system-wide] coherence.'<sup>80</sup>

The undg study also recognises the crucial role and contribution of parliaments, including in the context of engaging with NMIRFs (i.e. to leverage their legislative powers to support implementation), and in the context of independently 'tracking' government progress with implementation and compliance.<sup>81</sup> It notes that most parliaments have established committees with some kind of human rights mandate. In some cases, parliaments have established dedicated human rights committees, with responsibility for scrutinising and amending legislation against the benchmarks set by international human rights law. These committees also discharge 'important monitoring [or oversight] functions,' and many act as focal points for national-level engagement and dialogue between parliamentarians, government departments, representatives of the judiciary, national human rights institutions, and civil society.<sup>82</sup>

The undg's study offers two examples to illustrate the central importance of parliaments: Uganda and South Africa.

In Uganda, the report notes, a parliamentary Human Rights Committee (established in 2012 and comprised of 26 parliamentarians from across the political spectrum)<sup>83</sup> is mandated to scrutinise all legislative bills from a human rights perspective; to track executive progress with the implementation of international and regional



human rights recommendations; and to ensure that the government is complying with the decisions of the Ugandan Human Rights Commission (NHRI).

In South Africa, the UNDG survey notes that all periodic reports submitted to the international human rights mechanisms (e.g. to the Treaty Bodies or under the UPR) must be debated in Parliament. Under the 1996 Constitution, the Parliament is mandated to review these reports (as part of its oversight function) and conduct domestic-level scrutiny of Government performance on the implementation of recommendations generated by the mechanisms during previous reporting rounds. This involves holding 'public hearings, [summoning] ministers, and request[ing] documents and reports from a wide range of departments and civil society groups.' In the case of South Africa, parliamentarians may even be included in national delegations to the Treaty Body reviews in Geneva.<sup>84</sup>

The above developments have been given further impetus by the adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDG). The Danish Institute for Human Rights (DIHR) has calculated that over 90% of the SDG targets are grounded in international human rights law.<sup>85</sup> This means that securing meaningful progress towards the realisation of the 2030 Agenda 'leaving no one behind' will be impossible in the absence of progress with the implementation of States' human rights obligations and commitments. Or, seen the other way around,

by making progress with the implementation of UPR, Treaty Body and Special Procedures recommendations, States will automatically take strides towards the achievement of over 90% of the SDG targets. The emergence of a new initiative at the Human Rights Council on 'Human rights and the SDGs,' led by Chile and Denmark with the support of the DIHR and URG, is just one sign that States are increasingly understanding and beginning to leverage these 'complementary and mutually-reinforcing agendas,'<sup>86</sup> especially at domestic level (e.g. by implementing and reporting on both human rights obligations and SDG commitments in a 'joined up' way.)

The Commonwealth is a key part of this wider international effort to support stronger, more inclusive and more effective mechanisms or processes to implement, track and report on international human rights obligations and commitments, including by enhancing the role of parliaments within such mechanisms or processes. In 2013, Commonwealth Heads of Government underscored this commitment; 'Heads remain committed to assisting countries to build capacity to work with the UPR and implement accepted recommendations, with the assistance of the Commonwealth Secretariat as appropriate. They noted the work being done by the Commonwealth Secretariat in this regard, particularly with Small States, and encouraged these efforts to continue.'

<sup>87</sup>

### III. Recognition of the Role of Parliamentarians by the Human Rights Council

The vital role of parliaments in promoting respect for universal human rights norms has been repeatedly recognised by the Human Rights Council (e.g. resolutions 22/15, 26/29, 30/14 and 35/29), as well as by the General Assembly (e.g. resolutions 65/123, 66/261 and 68/272).

In the first of the Council's resolutions on the matter, adopted in March 2013, States acknowledged the 'crucial role that parliaments play, inter-alia, in translating international commitments into national policies and laws and hence in contributing to the fulfilment by each Member State of the United Nations of its human rights obligations and commitments and to the strengthening of the rule of law.'<sup>88</sup> To take forward this theme, the Council decided to convene a panel discussion on the subject during its next regular session in the summer of 2013.<sup>89</sup>

During the subsequent debate, States recognised the central importance of parliaments in the domestic promotion and protection of human rights, and underscored the importance of fully engaging parliaments in the process of translating universal norms into improved national policies and practice. In the context of the UPR, it was noted that parliaments should be involved at every stage of the 'UPR cycle.' According to a number of States (e.g. Cuba, Egypt, Gabon, Thailand), parliamentarians should be involved in the preparation of the national UPR report, the State's review before the UPR Working Group, and in national implementation processes or mechanisms (e.g. NMIRFs). One notable good practice that emerged from the panel discussion was the above-mentioned requirement in South Africa, that all national reports to the UPR and Treaty Bodies be reviewed by parliament before submission to the UN.<sup>90</sup>

Council delegations drew particular attention to the legislative prerogatives of parliaments (e.g. it was noted that 60-70% of UPR recommendations require new or amended parliamentary legislation in order to be realised<sup>91</sup>), their oversight powers (i.e. holding governments accountable against

their international obligations and accepted UPR recommendations), and their central role in approving national budgets and allocating resources. Calls were made to improve the delivery of technical assistance and capacity-building support for parliamentarians, to empower them to fully play these roles.

One year later, in June 2014, the Council adopted a further resolution (resolution 26/29) which, inter alia:

- Acknowledged 'the leading role that parliaments could play in ensuring the national-level implementation of recommendations made during the UPR and by other human rights mechanisms.'<sup>92</sup>
- Encouraged States to involve parliaments in all stages of the UPR reporting process, and to include information on that involvement in their national reports and voluntary mid-term reports.<sup>93</sup>
- Welcomed and further encouraged the practice of States under review (SURs) including parliamentarians in their national delegations to the UPR Working Group.<sup>94</sup>
- Encouraged all relevant stakeholders to promote and enhance cooperation between the national parliaments, NHRIs and domestic civil society.<sup>95</sup>

Taking forward these themes, and as noted earlier in this report, between 2014-2016, the IPU and OHCHR organised a series of regional seminars for Central and Eastern Europe (2014), South America (2014), Africa (2014), Asia (2015), and the Pacific (2016). The seminars aimed to enhance the role of parliaments in the international human rights system, and, importantly, focused on domestic implementation - 'translating international human rights commitments into national realities' – and tracking progress.



OHCHR Pacific workshop on National Mechanisms for Reporting and Follow-up (NMRFs), Fiji, 2017

The outcomes of the first four seminars were presented to delegations during a side event at the 29th session of the Council in June 2015. During the event, the UN Deputy High Commissioner for Human Rights again underscored the vital role of parliaments in ensuring that 'States respect and implement their international human rights obligations, and voluntary pledges and commitments.'

During its 30th session in September 2015, the Council adopted a further resolution that again acknowledged 'the crucial role that parliaments play in, inter alia, translating international commitments into national policies and laws, and hence in contributing to the fulfilment by each State ... of its human rights obligations and commitments and to the strengthening of the rule of law.'<sup>96</sup> It also decided to hold a further panel debate in June 2016 'to take stock of the contribution of parliaments to the work of the Council and its universal periodic review and to identify ways to enhance further that contribution.'<sup>97</sup>

During the June 2016 panel debate, OHCHR reflected on the impressive progress made, in only three years, in moving UN member States to a new understanding and recognition of the importance of the role of parliaments, especially in the context of 'translating international norms and standards in domestic laws and in the implementation of UPR recommendations.'<sup>98</sup> Yet OHCHR, together with other panellists, also recognised that meaningful and systematic parliamentary engagement with the UN human rights mechanisms remained the exception rather than the rule. To move beyond this situation, participants drew attention to the importance of awareness-raising and capacity-building among parliamentarians, of governments consulting parliaments during the preparation of national UPR reports and including parliamentarians in delegations to the UPR Working Group, and of establishing single NMIRFs that proactively engage and consult with parliaments.

Taking forward some of these ideas, Professor Murray Hunt,<sup>99</sup> former Legal Adviser to the Joint Committee on Human Rights of the UK Parliament, made a number of important proposals, including:

- All parliaments should establish human rights committees, supported by a legal service of human rights experts, to mainstream human rights across the work of national legislatures.<sup>100</sup>

- Formal networks for dialogue and coordination between parliaments should be created, similar to the Global Alliance of National Human Rights Institutions (GANHRI).<sup>101</sup>
- Guidelines or principles of parliamentary engagement with the UN human rights mechanisms, and parliamentary involvement in implementing and reporting on UN recommendations, should be elaborated.<sup>102</sup>

Responding to the panellists, States from all regions agreed on the importance of systemically involving parliamentarians during all stages of the UPR cycle, including implementation, monitoring and reporting. Others used the debate to offer examples of good practice in that regard. For example, Australia, also speaking on behalf of Canada and New Zealand, explained that the Australian Parliamentary Joint Committee on Human Rights examines, as a matter of course, all bills and legislative instruments to assess their compatibility with international human rights standards. Similarly, in Canada, the Legislative Committee regularly considers the issue of compliance with international human rights norms when reviewing and debating proposed legislation; while in New Zealand, under section 7 of the Bill of Rights Act 1990, the Attorney General is required to notify the House of Representatives should the provisions of any legislative bill appear to be inconsistent with domestic and international human rights law.<sup>103</sup>

In an important example of the convening and oversight power of parliaments, Canada also drew attention to the work of its Standing Senate Committee on Human Rights and its House of Commons Sub-Committee on International Human Rights, which have held public hearings with the participation of representatives of government, civil society, and indigenous organisations to review recommendations from Canada's UPR, and to issue follow-up recommendations to the executive branch. Furthermore, Australia drew attention to the importance of involving parliaments throughout the UPR process, and in that regard informed the Council that it had included parliamentarians in its delegation before the UPR Working Group in November 2015.

As noted earlier in this policy brief, the most recent iteration of the Human Rights Council's resolutions on the contribution of parliaments (resolution 35/29<sup>104</sup>) was adopted in June 2017, and, inter alia, asked the High Commissioner to 'prepare a study

[...] on how to promote and enhance synergies between parliaments and the work of the Human Rights Council and its universal periodic review.' It also requested that the High Commissioner propose 'elements that could serve as orientation to strengthen [parliamentary] interaction towards the effective promotion and protection of human rights.'

The subsequent report,<sup>105</sup> considered by the Council at its 38th session, represents the most comprehensive UN study to-date, of the emerging global human rights 'implementation agenda,' and the place of parliaments within that agenda. Based on a summary of Council resolutions and discussions (including a 2016 Council panel debate) on the matter, the High Commissioner's report presents a number of important observations and recommendations, including that:

- Parliamentarians should work consistently to mainstream international human rights norms into national legislation.
- They should identify adequate resources and develop relevant expertise to enable them to become more fully involved in the international human rights arena.
- The Belgrade Principles on the relationship between national human rights institutions (NHRIs) and parliaments should be implemented by all relevant stakeholders, and parliaments and NHRIs should work closely together with civil society, to promote scrutiny of domestic legislation and practice against universal human rights standards.
- The Human Rights Council and its mechanisms should consistently verify that States are involving parliaments at all stages of the implementation-reporting cycle.
- Parliamentarians must be allowed to actively participate in emerging NMIRFs, and thereby to support the implementation of recommendations for which legislative action is required.
- A set of UN principles or guidelines should be developed to encourage and help parliamentarians become more proactively and systematically engaged with the work of the UN human rights mechanisms, including by promoting parliamentary involvement in national implementation, oversight, and reporting.

- Parliaments, especially parliamentary human rights committees, should systematically and robustly oversee the human rights policies and actions of national governments, especially in terms of the degree to which governments are implementing the recommendations of the UN human rights mechanisms.

The report also proposes an initial set of 'Draft principles on parliaments and human rights' (in annex), which aim, in particular, to guide parliaments in setting up and maintaining effective parliamentary human rights committees. The draft principles encourage parliaments, inter alia, to ensure that the responsibilities and functions of human rights committees include:

- To press for the State's ratification of international and regional human rights instruments.
- To introduce and review bills and existing legislation to ensure compatibility with international human rights obligations and propose amendments when necessary.
- To lead parliamentary oversight of the work of the government in fulfilling its human rights obligations, as well as political commitments made in international and regional human rights mechanisms.
- To review draft national budgets from the perspective of the implications on the enjoyment of human rights.
- To ensure that development assistance and cooperation funds support the implementation of recommendations from international and regional human rights mechanisms, in countries that receive such funds.
- To engage and consult with the national human rights institution and civil society representatives on human rights issues.
- To lead parliamentary action in response to national human rights developments, including through legislative initiatives, parliamentary inquiries, public hearings, public debates, and the issuing of reports.

The draft principles also make clear that parliaments and their human rights committees (where they exist) should be centrally involved in the State's engagement with the international human rights system. Parliaments should, in this regard:



- Participate in the national consultations held in preparation of and during the drafting process of reports to the international and regional human rights mechanisms.
- Review and comment on draft government reports to the international human rights mechanisms (e.g. UPR, Treaty Bodies).
- Actively participate in the UPR Working Group and in Treaty Body reviews, either as part of the government delegation or on its own.
- Participate, through designated focal points, in the NMIRF, and ensure that UN human rights recommendations requiring legislative reform, the adoption of new laws, or budgetary adjustments are identified and given priority consideration.
- Oversee the degree to which the government is implementing recommendations of international and regional human rights mechanisms.

## Other relevant parts of the international community

Growing interest in, and recognition of, the role of parliaments in improved implementation of international norms, has not been confined to the Human Rights Council. A non-exhaustive summary of some examples of this interest and recognition is presented below.

Indeed, two years before the Council's first resolution on the subject, the [UN General Assembly](#) had already committed, in a resolution passed in December 2010, to taking a more systematic approach to integrating parliamentary contributions into major UN deliberative processes, and to UN reviews of State progress in fulfilling international commitments.<sup>106</sup> In May 2012, the General Assembly adopted a first resolution specifically addressing the role of parliaments at the UN.<sup>107</sup> In May 2014, it adopted a further resolution recognising the need for greater interaction and calling for stronger cooperation between the UN, national parliaments, and the IPU.<sup>108</sup>

In another example, in 2012, at a [UN High-level meeting on the rule of law](#), heads of State and of government welcomed the increasingly close

cooperation between the UN, the IPU, and national parliaments, and recognised the essential role of parliaments in strengthening domestic rule of law in line with international norms.<sup>109</sup> During the meeting, the UN Secretary-General made clear that only by more fully involving key domestic actors like parliaments, would the UN ever be able to achieve its goals, including the full enjoyment of human rights.<sup>110</sup> He also underscored the important role of legislatures in bringing 'democratic legitimacy' to the domestic application of universal norms – including by ensuring that those norms make sense to the general population. The meeting also repeated the point that parliaments should be involved at all stages – from the decision to ratify, to the process of domestic implementation, and to international reporting on progress.<sup>111</sup>

[OHCHR](#) has also repeatedly welcomed efforts to strengthen the role of parliaments in the protection and promotion of human rights, and has emphasised the importance of considering draft international principles on the role of parliaments, similar to the Paris Principles on national human rights institutions and the Bangalore Principles of Judicial Conduct.<sup>112</sup> Any international processes set up to develop such principles would necessarily need to be led by, and enjoy the full support of, parliaments themselves, perhaps using the IPU as a platform for consultations.

In 2010, the [UN Treaty Body](#) monitoring the implementation of the Convention on the Elimination of Discrimination Against Women (CEDAW) issued a statement recommending that States Parties ensure the full participation of parliamentarians when implementing the Convention, and during the international reporting process.<sup>113</sup>

Finally, in September 2015, the [University of Oxford's 'Parliaments, rule of law and human rights' project](#) organised a high-level international conference on the role of parliaments in the protection and realisation of the rule of law and human rights. The conference aimed to help parliaments further develop their role in promoting and protecting human rights, including by, inter alia, considering the desirability of a set of internationally agreed principles and/or guidelines, distilling the essence of the good practices that had begun to emerge around the world.<sup>114</sup>

## IV. Commonwealth Parliamentary Involvement in the Work of the Council and its Mechanisms, including the UPR: a Reality Check

The previous sections of this report reveal that remarkable progress has been made, over the past few years, in generating international consensus around the idea that parliaments must be central actors in the implementation of international human rights obligations and recommendations, if the international community is to ever bridge the long-standing 'implementation gap' referred to by UN Secretary-General Kofi Annan in 2005.<sup>115</sup> Important steps have also been taken, with the Commonwealth very much in the vanguard, in disseminating this new understanding to world governments and parliaments, in exchanging nascent good practice, and in identifying certain principles that might guide parliamentary involvement in international human rights processes and mechanisms, including the UPR.

However, research conducted by the Universal Rights Group (URG) supports the words of caution conveyed by OHCHR during the June 2016 Human Rights Council panel debate; namely, that meaningful parliamentary engagement remains the exception rather than the rule.

URG research and analysis for this report, including through a detailed review of the UPR national reports (first and second cycles) of all Commonwealth member States, supported by face-to-face and/or telephone interviews where necessary (to seek further clarification), suggest that only around 10-12% of Commonwealth members proactively and explicitly consulted parliaments in preparation for their first cycle UPR reporting. This proportion increased slightly during the second cycle, but only by one or two percentage points.<sup>116</sup>

It is a similar story with the inclusion of parliamentarians in UPR national delegations (first and second cycles). According to URG research, very few (perhaps as few as five) Commonwealth

State delegations to the UPR Working Group have included parliamentarians. These are Australia, Barbados, Nigeria, Pakistan and Swaziland. Nigeria and Pakistan did so during both the first and second cycles,<sup>117</sup> while Australia included two Members of Parliament during its second cycle review. It is perhaps interesting to note that in at least three of these States, the national parliament has established a dedicated human rights committee or caucus.

These trends mainly represent a failure, on behalf of States represented in Geneva and New York, to translate emerging international consensus on the role of parliaments at the UN, into reformed and improved domestic practice. This is partly a problem of political will – many States in Geneva still exhibit signs of a latent 'tension' between the executive and legislative branches of government; and partly a problem of coordination and capacity. For example, one Asian diplomat explained that: 'Council resolutions and/or UPR outcome reports are sent by the Geneva Mission to our Foreign Ministry, which then shares them with concerned line ministries – not with the parliament.'<sup>118</sup> Similarly, an African diplomat noted that: 'UPR recommendations are sent to the Foreign Ministry and from there to the UPR Coordinating Committee [of the government]; but that Committee does not include any parliamentarians.'<sup>119</sup> Of all the diplomats interviewed for this report, none were able to report that their government, as a matter of course, transmits relevant UN resolutions or recommendations to the speaker of parliament, or to the chairs of relevant parliamentary committees.

It could be correctly pointed out that, even in the absence of a systematic and consistent process of information dissemination from the executive to the legislature, parliamentarians could in-any-case receive UN human rights resolutions or recommendations via civil society or NHRIs.

Yet based on the results of URG's interviews, this does not appear to be happening either. For example, interviews with Commonwealth NHRI representatives and parliamentarians demonstrate that very few of them have taken concrete steps to implement the 2012 'Belgrade Principles on the relationship between NHRIs and parliaments.'<sup>120</sup> For example, one NHRI representative noted that his national mandate is mainly understood as focusing on 'human rights protection' – not on 'pursuing the government to check whether or not they have implemented some UPR recommendation.'<sup>121</sup>

Yet these trends also represent a failure of parliamentarians themselves to press for their inclusion in international human rights reporting and implementation processes. For example, one African parliamentarian acknowledged that he was largely 'unaware of the mechanics of the UN human rights system.' 'I certainly do not know,' he continued, 'what recommendations have been made to my country by the UN.'<sup>122</sup> Another Asian parliamentarian concurred: 'Except for one or two female MPs, no one is interested in international human rights obligations and commitments. The whole UN human rights machinery seems very distant, and is certainly not considered a vote winner.'<sup>123</sup>

Based on these and other interviews conducted by URG, (with around sixty Commonwealth members of parliament from all regions), the broad (though certainly not universal) failure of parliamentarians to mobilize themselves to demand deeper involvement in international human rights implementation and reporting, appears to be mainly the result of a lack of awareness about international human rights law, the Human Rights Council, the Council's mechanisms, including the UPR, and the Treaty Bodies.

For example, very few MPs are aware of the resolutions adopted by the Council on the role of parliaments. 'This is the first I have heard of it,' said one.<sup>124</sup> Similarly, very few reported that they have ever engaged with the executive branch in discussions about the Council and its mechanisms, and even fewer have asked the government for copies of national reports to the UPR or to UN Treaty Bodies, or have tried to provide input into those reports.<sup>125</sup> At a deeper, more fundamental level, it appeared from the URG's interviews with MPs that, with a few notable exceptions, there

is remarkably little understanding about how the international human rights system works, about how important it is, or about how parliaments should be (but often are not) involved. Linked with the last point, it appears that very few parliamentarians view a State's obligations under international human rights law as something that they might usefully 'leverage to drive domestic improvements in human rights.'<sup>126</sup>

So, what next? How to translate the undeniable progress, at UN level, in driving understanding of, and agreement around, the role of parliaments as central agents in the new global push to bridge the human rights 'implementation gap,' into real and tangible progress on the ground?

In answer to this question, there are three main steps that need to be taken - broadly in line with the proposals of Professor Murray Hunt<sup>127</sup> - in particular (in the context of this report) by parliaments or bodies representing parliaments.

First, parliaments should ensure that they provide substantive input into on-going UN discussions about the creation and evolution of NMIRFs. In particular, parliaments should make the case that NMIRFs must be inclusive in nature, involving national legislatures as a matter of course (not as a matter of chance), and that parliamentarians should be engaged throughout the cycle - ratification, reporting, implementation, monitoring, reporting – and not just when the executive needs them (e.g. to ratify a treaty). Linked with this point, if States do move ahead with the development of international principles or guidelines on NMIRFs, then again, it will be important for parliaments, represented by organisations such as the IPU, CPA and the Commonwealth Secretariat, to provide input into the principles (including in order to make sure they are compatible with any principles developed by legislatures themselves, governing parliamentary involvement in implementation.) Second, there should be a renewed push to encourage all parliaments to establish human rights committees (or other entities with a similar function), as central nodes of engagement with the international human rights system. Third, networks for dialogue, cooperation, mutual support and the exchange of good practice, should be further developed, especially regionally. Fourthly, international guidelines or principles of parliamentary engagement with the UN

human rights mechanisms, and parliamentary involvement in implementing and reporting on UN recommendations, should be elaborated and agreed. And lastly, to support the foregoing, organisations such as the Commonwealth and the IPU should continue, and scale up, their awareness-raising, technical assistance and capacity-building activities with parliaments and parliamentarians, so that MPs more fully understand the importance of the international human rights instruments and mechanisms, and how the system works; and are therefore empowered to demand 'a seat at the table' (as one Commonwealth MP put it).<sup>128</sup>

Regarding the first point, the fact that so few parliaments are consulted by governments, as a matter of course, in the process of implementing international human rights commitments, underscores the central importance of recent moves, across countries from regions, to establish and elaborate (with support from OHCHR<sup>129</sup> and the UNDG) single national NMIRFs. By creating a single, streamlined and inclusive national structure for the elaboration of all UN (and regional) human rights reports, for coordinating the implementation of all recommendations, for measuring impact, and for promoting public accountability, the establishment and further development of NMIRFs has the potential to significantly simplify the interface between universal norms and national policies. This, potentially, would offer particular benefits to parliaments, who would then be consulted and involved as a matter of course, not as a matter of chance.

The foregoing is especially true for Small Island Developing States (SIDS) and Least Developed Countries (LDCs), which often struggle to coordinate reporting and implementation obligations under multiple human rights treaties, and vis-à-vis the UPR and Special Procedures (e.g. following country missions). OHCHR pilot projects for the development of NMIRFs in countries such as Paraguay<sup>130</sup> and Ecuador,<sup>131</sup> have shown that single national structures, backed by information technology solutions, can significantly reduce reporting burdens and streamline implementation. These pilot projects have seen States develop single national platforms that: retrieve (from the Universal Human Rights Index managed by OHCHR) all human rights recommendations directed to them from Treaty Bodies, the UPR and Special Procedures; automatically cluster

and prioritise those recommendations (based on national priorities); automatically place them in a publicly accessible database or matrix; transmit recommendations to relevant line ministries, parliamentary committees, judicial bodies, etc.; receive regular updates on progress from those ministries and committees; collate those progress reports and presents them in a central database; apply human rights outcome indicators to measure the impact of implemented recommendations; and help generate periodic/update reports for Treaty Bodies, UPR or Special Procedures. Different 'off the shelf' versions of the software used in these pilot countries, which in some cases are also able to link implementation, monitoring, and reporting of human rights obligations and commitments with States' commitments under the 2030 Agenda for Sustainable Development, will be made widely available by various organisations in 2018.<sup>132</sup>

The particular benefits of NMIRFs to Small States, including Small State parliaments, perhaps help explain why it is these States (especially Commonwealth Small States) that are in the vanguard of international efforts to develop NMIRFs and to leverage information technology. For example, some of the world's most progressive, inclusive, and effective NMIRFs can today be found in countries such as the Bahamas, Mauritius, the Seychelles and Samoa. In the case of Samoa, the Government has also created a national database of recommendations and has launched a publicly accessible website which allows individuals, civil society organisations, and parliamentarians to track progress with implementation.<sup>133</sup> According to interviews conducted for this report, cross-checked against OHCHR's recent survey of NMIRFs, 34 Commonwealth States have already established some form of national coordinating mechanism (within government) to lead on the implementation of UPR recommendations - sometimes together with Treaty Body and Special Procedures recommendations. These are not necessarily fully developed NMIRFs, but can nevertheless act as the basis for the development of more inclusive and comprehensive coordination and reporting structures.

Amongst other advantages, providing the structures are open and inclusive, this move towards single NMIRFs has the potential to make the process of human rights implementation, monitoring, and reporting more understandable



and accessible to parliamentarians. This is especially so where NMIRFs, backed by their founding statute, are mandated to involve parliamentarians as a matter of course. Samoa's NMIRF, for example, is mandated to include and involve all relevant line ministries, parliamentarians, the national statistical office, the police, and the prisons service. Where parliamentary participation is mandated by statute, this may also have the additional benefit of encouraging parliaments to streamline and improve

their own means of engaging with NMIRFs and the international human rights system – for example, by establishing standing human rights committees.

The second, third and fourth points – on the establishment of human rights committees, the creation of networks for dialogue and cooperation, and the development of international principles – will be addressed in the following sections of this report.

## V. Parliamentary Human Rights Committees: a Vital yet Underdeveloped Tool

URG research suggests that, today, around 28% of Commonwealth parliaments have established specialised human rights committees (i.e. committees that have an explicit mandate to inter alia promote and protect human rights). Efforts to increase that percentage, led by the Commonwealth Secretariat, the Commonwealth Parliamentary Association (CPA) and the IPU, retain the potential to have a strong amplifying effect on the capacity of States to implement their international human rights commitments, especially where such efforts occur in parallel with executive branch moves to develop NMIRFs.

As noted by the IDA<sup>134</sup> and the IPU,<sup>135</sup> committees are the 'engine rooms' of parliaments.<sup>136</sup> It is here that the majority of parliamentary work is carried out: legislation is scrutinised and amendments considered, government policy and conduct overseen, and recommendations made to the parliament as a whole (i.e. its plenary).

In the context of international human rights obligations and commitments, it is parliamentary committees that should, in principle, consider the merits of ratifying a human rights treaty, receive and consider accepted UPR recommendations and/or other UN human rights recommendations requiring legislative amendment, hold government departments accountable vis-à-vis the overall implementation of the State's obligations and commitments, and consider and debate government progress reports on implementation as well as 'shadow reports' from NGOs and NHRIs.

There are normally two types of committees: permanent and non-permanent. The bulk of parliamentary business is carried out in permanent (often called standing) committees that operate on a continuous basis from one parliamentary term to the next. Non-permanent committees (also called ad hoc, select, study or investigative committees) are created to inquire into and report on a particular matter. They may be established at any time by a resolution of parliament. Such committees have

a limited life span and usually cease to exist upon the presentation of their final report to plenary. Parliaments composed of two chambers often establish joint committees to study and report on questions concerning both chambers.

Human rights are generally dealt with by standing committees, although ad hoc or select committees may be established to examine a particularly important contemporary human rights concern.

Based on URG research, it appears that today's Commonwealth parliaments address human rights in two principle ways; either as a 'horizontal issue' that is best dealt with by a range of relevant committees (i.e. the concept of human rights mainstreaming), or as an issue that forms a major part of, or all of, the mandate of a dedicated 'human rights committee.'

According to parliamentarians interviewed for this report, the 'human rights mainstreaming' model is based on a belief that 'every committee is a human rights committee.'<sup>137</sup> Examples of Commonwealth parliaments that have adopted this approach include those of New Zealand and South Africa. (Notwithstanding, it is important to note that these parliaments do often have specific committees dealing with certain aspects of international human rights law, such as women's rights or children's rights.)

Other Commonwealth parliaments (e.g. Australia, Canada, Cyprus, Nigeria, Uganda) have taken the decision to bring the majority of human rights-related work 'under one roof' and have therefore established a dedicated human rights committee. According to those interviewed for this report, this approach has a number of advantages. First, the establishment of committees with an exclusive human rights mandate sends a strong political message to the people, to the government and to other State bodies. Second, parliaments following this approach argue that dedicated human rights committees help promote the mainstreaming of human rights across other relevant committees, by



Umushyikirano National Dialogue, Rwandan Parliament, Kigali, 2015

providing a single hub or focal point to coordinate and drive a parliament-wide human rights agenda. A third benefit of standing human rights committees is their permanence – they are able to continuously monitor and act upon human rights concerns through domestic political cycles and/or international human rights reporting cycles. Fourth, according to some Commonwealth parliamentarians, the creation of dedicated human rights committees can also help build the capacity and knowledge of members, by allowing them to focus on and cover all human rights issues in an interconnected and interdependent (i.e. 'holistic') manner. This awareness and expertise can then be passed onto other committees. Finally, the establishment of a single human rights committee promotes institutional clarity, creating a single focal point for parliament's multifaceted role in implementing, monitoring and reporting on international/regional obligations and commitments. It was this desire to bring greater coherence and institutional clarity to parliamentary

work on human rights that led Uganda's Parliament, in 2011, to move away from a cross-committee mainstreaming model for dealing with human rights and towards the establishment of a single Human Rights Committee (see Box 5). For example, a human rights committee is a natural parliamentary interlocutor for government officials coordinating the NMIRF, and also offers a natural platform for parliamentary scrutiny (in the presence of NGOs and NHRIs) of government progress with implementation.

Excluding petition committees, which have a long parliamentary tradition and can be considered the first 'human rights committees' (see Box 1), modern parliamentary committees with an exclusive human rights mandate were first created in the early 1980s in South America, beginning with Bolivia in 1982. Since then, parliaments all over the world have slowly but steadily followed the lead of those early pioneers.

### Box 1 – Petitions Committees

As the IPU has noted, the right to petition is at least as old as the institution of parliament itself.<sup>171</sup> It has even been argued that the world's oldest parliament – the UK Parliament – originated in meetings of the King's Council where petitions were considered. In France, the right to petition parliament for redress of grievances has existed almost permanently since the French Revolution. With the increase in the influence and importance of parliaments, petitioning them became one of the main methods of airing public grievance and seeking redress. As a consequence, many parliaments decided to set up special committees to cope with the increasing number of petitions. These committees can be considered as the first human rights committees as their aim was – and still is – to provide a means through which individuals might seek redress for alleged violations of their rights by the State.

Today, petitions committees continue to play a prominent role in the human rights protection work of parliaments (as distinct from the more human rights promotion-focused work of general human rights committees), including Commonwealth parliaments.

For example, Sri Lanka's Committee on Public Petitions examines and makes decisions on petitions from individuals or groups regarding infringements of fundamental rights or other injustices by a public official. After such petitions are presented to Parliament, they are referred to the Committee for deliberation on appropriate action. The Committee can call for oral and written evidence from relevant officials and/or the petitioner, and may also organise onsite visits. Once the Committee has reached a decision on a case, the authority concerned (e.g. a relevant government ministry or the police) is directed to take any measures recommended by the Committee. The Committee also reports to Parliament on its findings and recommendations, and its report is published by Parliament.

Another example is Namibia's Standing Committee on the reports of the Ombudsman. Under the country's 1990 Ombudsman Act, the Committee is entrusted, inter alia, to: receive, examine and report on the annual report of the Ombudsman; to confirm that the Government and other State agencies are responding to queries and cooperating with the Ombudsman; and to ensure that all complaints are dealt with and properly investigated.



### Box 2 – Australia's Joint Parliamentary Committee on Human Rights

Australia's Parliamentary Joint Committee on Human Rights was established in 2012 by a resolution of the Senate<sup>138</sup> (in-turn agreeing to a resolution of the House of Representatives) giving effect to the 2011 Human Rights (Parliamentary Scrutiny) Act. Key functions of the Committee include:

- To examine bills and other legislative instruments that come before either House of the Parliament for compatibility with international human rights standards. To aid parliamentarians in this regard, each new federal bill must be accompanied by a 'Statement of Compatibility' with Australia's international human rights obligations;
- To examine existing legislative acts, and Government policies and practice, to assess their compatibility with the core international human rights conventions to which Australia is Party, as well as with other human rights commitments.
- To inquire into any human rights matter referred to it by the Attorney General, and report to both Houses of the Parliament.

Finally, in an important innovation that might be usefully replicated elsewhere, under the 1986 Australian Human Rights Commission Act, the Australian Human Rights Commission (Australia's NHRI) is mandated to assess the extent to which the Federal Government is meeting its international human rights obligations, and to submit its independent views in that regard to Parliament for its consideration. In 2017, the Australian Parliament's Joint Committee on Human Rights proposed concrete changes to the Human Rights Commission Act, including to, inter alia, strengthen the relationship between the Commission and Parliament.

Notwithstanding, today, the number of parliamentary committees with a pure human rights mandate remains relatively small. They include: Angola, Argentina, Australia (Commonwealth), Austria, Azerbaijan, Belgium, Bolivia, Brazil, Burundi, Cambodia, Canada (Commonwealth), Chad, Colombia, Cyprus (Commonwealth), Ecuador, Guatemala, Honduras, Lebanon, Lithuania, the former Yugoslav Republic of Macedonia, Mexico, Nigeria (Commonwealth), Panama, Peru, Philippines, Surinam, Togo, Turkey, Uganda (Commonwealth), the United Kingdom (Commonwealth), Uruguay, and Yemen.<sup>139</sup>

The majority of parliaments have instead chosen to include human rights as one of a number of (often inter-related) issues to be dealt with by a specific committee. For example, Belarus has a standing committee for human rights, national relations and mass media;<sup>140</sup> Benin has a committee on law, administration and human rights; Cameroon (Commonwealth member) has a committee on constitutional affairs, human rights and liberties, justice, legislation and administration; Chile has a committee on human rights, nationality and citizenship; Thailand has a committee on justice and human rights; and Zambia (Commonwealth member) has a committee on legal affairs, governance, human rights and gender. Canada's House of Commons also follows this model. Whereas the Senate has created a dedicated human rights committee (see Box 3), the House of Commons has established a committee covering both justice *and* human rights.

In other cases, a committee may have a clear mandate in the field of human rights, even though the words 'human rights' do not appear in its official name. For example, in the Australian Senate, the Standing Committee on Regulations and Ordinances, and the Standing Committee on the Scrutiny of Bills both enjoy explicit mandates to safeguard human rights by ensuring that appropriate standards of fairness and equity are applied to delegated legislation as well as to bills and acts of parliament.

Where they exist, these 'human rights committees' (whether they deal exclusively with human rights or address human rights alongside other concerns) usually enjoy both legislative and oversight functions. Regarding the former, they are entrusted with the examination of legislative bills from a human rights angle – to ensure that they comply with national





### Box 3 – Canada's Senate Standing Committee on Human Rights

In his foreword to the second report of the Senate Standing Committee on Human Rights, entitled 'Promises to Keep: Implementing Canada's Human Rights Obligations' (December 2001), the Committee chair outlined the rationale behind the establishment of a committee dealing exclusively with human rights. It would, he said:

'Provide a unique interface between government and non-governmental actors in the human rights field. [Its] work will allow parliamentarians to deepen their knowledge of human rights issues [and] will help to ensure that human rights issues receive the concentrated attention they merit and that all parliamentarians are better able to fulfil their responsibility to protect and promote such rights.'

<sup>141</sup>

In chapter II, the report states that:

'Because Parliament as a whole is a generalist body and must address a variety of policy imperatives, it is vital that any enhanced role for Parliament in human rights be structured so as to ensure that human rights do not get lost in the shuffle, but are instead the subject of focused attention.'

<sup>142</sup>

The report further draws attention to the fact that:

'The creation of a parliamentary committee for human rights also has the potential to give a greater sense of urgency to human rights issues, and gives visible encouragement to those within and outside government who are working to give human rights a greater priority in the public policy agenda.'

<sup>143</sup>

The Standing Committee on Human Rights is mandated to monitor the implementation of Canada's domestic and international human rights obligations and provides, through its reports, recommendations for improved compliance to government departments and agencies. The Committee also monitors and seeks to provide rights-based inputs into the evolution of federal level legislation. Finally, members of the Committee are regularly updated on international human rights policy developments, including at the UN Human Rights Council and at the Organisation of American States.

and international human rights law. For example, Australia's Parliamentary Joint Committee on Human Rights is mandated, inter alia, to examine bills and other legislative instruments that come before either House of the Parliament for compatibility with international human rights standards (see Box 2). Similarly, the UK Joint Committee on Human Rights (JCHR) is empowered to scrutinise all bills presented to Parliament for their compliance with the 1998 Human Rights Act and with international human rights instruments to which the UK is Party, (see Box 4), while Zambia's Committee on Legal Affairs, Governance, Human Rights and Gender Matters is mandated to make recommendations to the Government to review policies, amend bills or revise legislation in light of Zambia's international human rights obligations. Finally, the Committee on Human Rights of Nigeria's House of Representatives scrutinises all new government bills against the human rights standards set down in national law and in the international conventions to which Nigeria is Party.

Regarding the latter, the most advanced committees have put in place elaborate oversight procedures for scrutinising government action to implement the State's international human rights obligations and commitments; and for assessing Government policies and practice against national (as set down, for example, in a country's constitution) and international law.

For example, Nigeria's Parliamentary Human Rights Committee organises regular public hearings during which members invite Government officials to present updates on compliance with the country's international human rights obligations, and also invite civil society and Nigeria's international partners to offer their views. Likewise, in South Africa, the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Children, Youth and Disabled Persons, monitors and evaluates government progress in this field with special reference to the State's relevant international human rights obligations. This means, in practice, that the Committee scrutinises the degree to which the executive is implementing relevant recommendations generated by Treaty Bodies, the UPR, and Special Procedures.<sup>144</sup>

In another interesting example, in the UK, the JCHR understands its mandate to include the examination of reports made by the UK Government under regional and international

human rights instruments, and under other international mechanisms (e.g. the UPR). It therefore regularly requests the UK Government to share its periodic reports to the UN so that parliamentarians may assess compliance.<sup>145</sup> Notwithstanding, according to sources in the UK Parliament, 'it is not always easy to convince the Government to share its reports in a timely manner.'<sup>146</sup>

Finally, human rights committees often maintain a special relationship with NHRIs and human rights civil society. This allows them to receive domestic 'shadow' reports on government policy and practice, which can then be compared against the government's own claims. From the research undertaken for this report, it appears that most domestic human rights reporting to parliament, on the part of NHRIs and NGOs, takes the form of general surveys and critiques of the human rights situation in the country, although a few parliaments do solicit more targeted NGO and NHRI analyses of government progress with the implementation of UPR, Special Procedures, and/or Treaty Body recommendations. Increasing the degree to which NHRIs and domestic civil society adopt this more targeted approach to national (and international) reporting, using the State's international human rights obligations as a 'hook' is a key goal of the international 'implementation agenda.'



### Box 4 – UK Joint Committee on Human Rights

The JCHR was set up in 2001 as a consequence of the 1998 Human Rights Act, which incorporated the European Convention on Human Rights into national law. The Committee is empowered to 'consider matters relating to human rights in the United Kingdom' and to consider remedial orders under the Human Rights Act. It interprets this to include: (a) scrutiny of all bills presented to Parliament for their compliance with the Act and other international human rights instruments to which the UK is Party; (b) examination of reports made by the UK Government under such instruments; and (c) examination of the performance of public authorities in relation to their duties under the Act.

In May 2016, the Westminster Foundation for Democracy (WFD) and Oxford University produced a report on 'Strengthening parliamentary capacity for the protection and realisation of human rights.' The report reviews emerging practices vis-à-vis parliamentary human rights committees around the world, and proposes seven key practices, together with a number of sub-practices, 'which can assist parliaments and parliamentarians to fulfil their role in the protection and realisation of human rights.'<sup>147</sup> Some of these proposals are briefly summarised below.

First, the report argued that parliaments must set-up adequate internal structures to enable them to fulfil their responsibilities to protect and realise human rights. These internal parliamentary structures should ensure rigorous, regular, and systematic monitoring of the government's performance of its responsibilities to secure the rights and freedoms recognised in national law under international law.<sup>148</sup>

Second, parliaments should establish/further develop specialised (and standing) human rights committees. Moreover, these should adhere to the following principles:<sup>149</sup>

- They should be established by parliament (i.e. not the executive), and their permanent existence should be enshrined in parliaments' standing orders;
- Their remit should be broadly defined, covering the full panoply of human rights, as recognised in and protected under both national and international law;
- They should be composed in such a way so as to guarantee their independence and pluralism;
- They should be conferred with the powers and prerogatives necessary for the effective fulfilment of their mandate; and
- They should be supported by a specialised secretariat with expertise in international human rights law and policy, and which is independent from both government and civil society.

Third, a key function of parliamentary human rights committees should be to inform wider parliamentary awareness, knowledge and informed debate about human rights.<sup>150</sup> This should include taking the lead and reporting to the plenary on human rights-based scrutiny of legislative bills,



assessing executive compliance with human rights cases decided before national courts, analysing and measuring the degree to which the government is implementing international and regional human rights recommendations, and conducting national inquiries into pressing human rights concerns.

Fourth, the report called for parliamentary human rights committees to adopt appropriate working methods, which are published and kept under regular review in the light of practical experience.<sup>151</sup> Working methods should be transparent; facilitate access for NGOs, NGRIs, and the victims of human rights violations; and encourage regular government reporting on, and public scrutiny of, the domestic human rights situation as well as compliance with the State's international human rights obligations and commitments.

Fifth, parliaments should ensure that adequate human rights education and training programmes are put in place, for both parliamentarians and members of the secretariat.



### Box 5 – Uganda's Human Rights Committee

Prior to 2011, Uganda's Parliament shared responsibility for human rights promotion and protection among numerous sectoral committees, including the Legal and Parliamentary Affairs Committee, the Committee on Equal Opportunities, and the Committee on Defence and Internal Affairs.

However, following the 2011 elections, Parliament moved to replace this mainstreaming approach, which had often led to human rights concerns and considerations being 'side-lined in the legislative process,' to a more centralised approach built around a dedicated Human Rights Committee.

The Committee is mandated, inter alia, to ensure that legislative proposals are consistent with the human rights guarantees contained in the Ugandan Constitution and in the international human rights instruments to which Uganda is Party.

## VI. The 'Implementation Agenda': Defining and Promoting the Role of Parliaments

Between 2013 and 2016, the Commonwealth hosted a series of regional seminars on the role of parliaments in the promotion and protection of human rights, with a particular focus on leveraging parliamentary prerogative to promote the fulfilment, by governments, of their international human rights obligations and commitments.<sup>152</sup>

The seminars aimed to provide a platform for Commonwealth parliamentarians from the Caribbean, Africa, the Pacific, and Asia to exchange information and experience with regard to the current role of parliaments in promoting the implementation of States' human rights obligations and commitments, and to consider how to strengthen that role in the future. In particular, the seminars looked at the role of parliaments in: supporting the implementation of the recommendations of the UN human rights mechanisms through legislation; overseeing government policy and practice, ensuring consistency with the State's international human rights obligations; and ensuring adequate budgetary appropriations for human rights. The seminars also provided an opportunity for parliamentarians to build awareness about the international human rights instruments, the Human Rights Council, and the international human rights compliance (reporting) mechanisms (i.e. the UPR, Treaty Bodies and Special Procedures); and to discuss the roles and responsibilities of parliaments in engaging with those mechanisms (including in the context of reporting and follow-up).

The seminars, which were held in Trinidad and Tobago (2013), Seychelles (2014), New Zealand (2015) and Sri Lanka (2016), resulted in the adoption of three important regional declarations: the Mahé Declaration (of African parliamentarians),<sup>153</sup> the Pipitea Declaration (Pacific parliamentarians),<sup>154</sup> and the Kotte Declaration (Asian parliamentarians).<sup>155</sup> These regional declarations represent a pioneering attempt by parliamentarians to clarify and define the optimal role of legislatures in the promotion and protection of universal human rights standards, including by supporting the implementation of UN human

rights recommendations, overseeing government progress with the overall implementation of those recommendations, and overseeing government policy and practice to assess its compliance with State obligations. The declarations address the role of parliaments at national, regional and international levels, (see below).

These Declarations are important in their own right, but are also seen, potentially, as important contributions to eventual draft international principles or guidelines on the role of parliaments in the promotion and protection of human rights, including in the context of the domestic implementation of universal norms.



National Assembly in Cape Town, South Africa, 2018



Presentation by Kagwiria Mbogori at the Pacific Regional Seminar on the role of parliamentarians in the promotion and protection of human rights, Wellington 2015





## Mahé Declaration<sup>156</sup>

During the meeting of African parliamentarians, participants reaffirmed the unique role of legislatures in safeguarding and upholding the rights of citizens and its corresponding role in promoting universal human rights norms.<sup>157</sup> The ability of parliaments to influence national policies and budgets, monitor policy implementation programmes at local level, address the needs and concerns of constituents, and act as a catalyst for the realisation of human rights at all levels, were emphasised. As such, African parliamentarians declared a common commitment to:

- Raise awareness, in parliament, about international and regional human rights instruments and mechanisms, and about the importance of parliamentary engagement therewith.<sup>158</sup>
- Ensure that human rights norms and principles are reflected in new laws, and address human rights 'gaps' in existing legislation as appropriate.
- Take steps to integrate human rights education into curricula at all institutions of learning.<sup>159</sup>
- Establish parliamentary committees with express responsibility for human rights and fundamental freedoms.<sup>160</sup>
- Proactively seek and avail themselves of international technical assistance in the field of human rights, as appropriate.<sup>161</sup>
- Promote the establishment of Paris Principle-compliant NHRIs, and strengthen the independence and security of existing ones.<sup>162</sup>
- Encourage dialogue and promote exchanges of good practice among African parliaments.<sup>163</sup>
- Take appropriate steps to increase parliamentary participation in national processes or mechanisms for implementation, reporting and follow-up; covering recommendations generated by all relevant international and regional human rights mechanisms.<sup>164</sup>
- Establish a Commonwealth Africa Parliamentary Human Rights Group (CAPHRG): a network of advocates and lawmakers mandated to promote inter-parliamentary co-operation, share best practices and strengthen engagement vis-à-vis the implementation of UPR and other recommendations.<sup>165</sup>



## Pipitea Declaration<sup>166</sup>

At the conclusion of the meeting in New Zealand, Pacific parliamentarians committed themselves to return to their national legislatures and place human rights at the centre of their work. Through the Pipitea Declaration, they recognised parliament as a primary national body responsible for safeguarding and upholding the rights of citizens; and reaffirmed the unique role of parliaments in promoting and overseeing the implementation of the State's international human rights obligations, including via the implementation of recommendations generated by the UN human rights mechanisms. Participants also committed themselves to:

- Take forward their responsibility, as parliamentarians, to raise awareness of international and national human rights norms and mechanisms, and of the importance of parliamentary involvement and engagement.
- Advocate for human rights principles to be reflected in new laws, addressing gaps in existing legislation where necessary.
- Advocate for the integration of human rights education into curricula at national institutions of learning.
- Seek to establish a suitable parliamentary forum to promote human rights and fundamental freedoms.
- Proactively seek and avail themselves of international technical assistance, for example from the Commonwealth Secretariat, in the field of human rights, as appropriate.
- Promote the establishment of Paris Principles-compliant NHRIs, and the strengthening of existing institutions.
- Encourage all relevant national stakeholders to promote and enhance human rights cooperation between national parliaments, NHRIs and civil society.
- Encourage dialogue and promote the exchange of information and good practice on salient human rights issues and challenges in the Pacific, including equality and non-discrimination, climate change, indigenous peoples' rights, corruption, and violence against women and children.
- Take appropriate steps to increase parliamentary engagement in national processes of implementation, monitoring and reporting, covering international and regional human rights mechanisms, including UN Treaty Bodies, the Universal Periodic Review and Special Procedures.
- Where appropriate, build the role of sub-national parliaments in promoting human rights principles and in engaging with NHRIs and the international human rights mechanisms.
- Support the establishment of a Commonwealth Pacific Parliamentary Human Rights Group, a network of lawmakers charged with promoting inter-parliamentary co-operation; strengthening parliamentary engagement with the UPR, Treaty Bodies and Special Procedures; pursuing the durable implementation of relevant recommendations; enhancing interaction between parliaments and NHRIs; operationalizing the Pipitea Declaration; and strengthening efforts to promote and protect human rights.





## Kotte Declaration<sup>167</sup>

Through the Kotte Declaration, Asian parliamentarians recognised the key role of parliaments in safeguarding and upholding human rights, and their corresponding role in respecting, promoting and embracing diversity and pluralism. They also asserted the importance of parliamentary engagement with international human rights instruments and mechanisms (including the UPR), and parliamentary participation in national processes of implementation, monitoring and reporting. Participants also committed themselves to:

- Raise domestic awareness of international human rights norms and mechanisms, and the concomitant roles and responsibilities of parliaments.
- Advocate for universal human rights principles to be reflected in new laws, and to address gaps in existing legislation where necessary.
- Strengthen the protection of human rights through parliamentary questions, motions, financial oversight and budgetary allocation.
- Advocate for the integration of human rights education into curricula at national institutions of learning.
- Establish parliamentary forums, where they do not exist, to promote national dialogue on human rights.
- Proactively seek and avail themselves of international human rights technical assistance, for example from the Commonwealth Secretariat.
- Promote the establishment of Paris Principles-compliant NHRIs, and strengthen the independence and capacity of those already in existence.
- Support the establishment of a South Asian regional mechanism for the promotion and protection of human rights, similar to those established in other regions.
- Promote and enhance cooperation among parliamentarians, and between parliamentarians and all relevant national stakeholders, including NHRIs, civil society, community leaders and young people.
- Encourage dialogue and promote exchanges of good practice on salient human rights issues and challenges in Asia, including: freedom of conscience, freedom of expression, freedom of peaceful assembly, freedom of association, violence against vulnerable groups including women and children, and early, child and forced marriage.
- Take appropriate steps to enhance the participations of parliaments in national human rights implementation and reporting processes (covering the recommendations of regional human rights mechanisms, UN Treaty Bodies, the UPR and Special Procedures).
- Support the establishment of an Asian Commonwealth Parliamentary Human Rights Group, a network of lawmakers tasked with promoting inter-parliamentary co-operation; strengthening parliamentary engagement with the UPR, Treaty Bodies and Special Procedures; following-up on the effective and sustainable implementation of the recommendations of these mechanisms; enhancing interaction between parliaments and NHRIs; operationalizing the Kotte Declaration; and furthering efforts to promote and protect human rights.



Commonwealth Regional Seminar on the Role of Parliamentarians in the Promotion and Protection.

## VII. Other Commonwealth Parliamentary Human Rights Groupings, Caucuses or Networks



### Kenya Parliamentary Human Rights Association (KEPHRA)

As a result of the Mahé Declaration, in 2014 Kenyan parliamentarians from the Commonwealth Africa Parliamentary Human Rights Group founded a cross-party caucus of Members of the Kenyan Parliament committed to the promotion and protection of human rights. It was officially registered under the Societies Act in 2014 and is recognised by both houses of Parliament. The Kenya Parliamentary Human Rights Association (KEPHRA) has active members from six political parties representing over 20 committees in both the National Assembly and the Senate. The caucus aims to affirm and protect universal values such as human rights, truth, peace, social justice and human dignity. It has a particular focus on overseeing the Kenyan State's compliance with its international human rights obligations and commitments.<sup>168</sup>

Objectives of KEPHRA (commonly known as 'the human rights caucus')<sup>169</sup> include to develop the capacity and skills of members to more effectively participate in parliamentary committees, and thereby promote human rights through improved legislation and through executive oversight; boost national awareness of and engagement with international human rights norms and mechanisms; develop pro-human rights platforms at political party level; and build a dynamic secretariat to support members.

KEPHRA's 2015-2018 Strategic Plan has a number of key objectives, including to build the capacity of its members, including through human rights education and training; scrutinise legislation and national human rights action plans based on Kenya's international human rights obligations and commitments; oversee government policy and practice to assess its compatibility with the State's obligations and commitments; monitor

government implementation of UPR, Special Procedures and Treaty Body recommendations; and conduct human rights fact-finding missions to promote accountability for violations.



### South Australian Parliamentary Human Rights Network

As a result of the Pacific Regional Seminar and the Pipitea Declaration, in September 2015 Australian parliamentarians convened a briefing for their fellow national MPs and eventually moved to set up a South Australian Parliamentary Human Rights Network to act as a forum to discuss State-level human rights concerns.

A further meeting was held in March 2016. The conveners of the Network are planning to table a motion in Parliament to officially recognise the group. Further meetings are scheduled to address issues including gender equality, the rights of refugees and migrants, and human rights and climate change.



Launch of the KEPHRA Strategic Plan 2015-2018, Nairobi, 2015



## VIII. Conclusions

Today, the domestic implementation of universal human rights obligations and commitments is at the very top of the international political agenda. For example, in his statement at the opening of the 37th session of the Human Rights Council in early 2018, UN Secretary-General António Guterres underscored the urgent need 'to reverse the current backlash' against human rights, by focusing on the domestic implementation of the rich output of recommendations generated each year by the international human rights mechanisms.

Whilst this emerging agenda has provided space for better understanding and leveraging the role of parliaments within the international human rights system, that has not been the main focus. It is the executive branch of government that proposes and negotiates new international human rights instruments, that signs those instruments, and that engages with the international human rights mechanisms and receives recommendations

therefrom. It is also the executive branch that is expected to periodically report back to the international community on progress with implementation. The main focus of the emerging implementation agenda has therefore been, by extension, the machinery through which governments themselves (rather than other branches of the State such as the legislature or judiciary) seek to translate universal norms into local reality.

In that regard, a particular focus of inter-governmental discussion and movement over recent years has been the development of 'national mechanisms for implementation, reporting and follow-up' (NMIRFs). These mechanisms are mandated to take recommendations from the UN human rights mechanisms (together, in some cases, with recommendations from regional human rights bodies), cluster and prioritise them, and

coordinate the actions of different parts of government, agencies of the State (e.g. the police), parliamentarians and judges, to pursue their implementation. The same structures then receive feedback from, and monitor implementation by, different parts of the government/State, and prepare subsequent national reports to the international or regional mechanisms, thereby completing the 'implementation-reporting cycle.'

The quantitative and qualitative development of NMIRFs around the world is the subject of intense reflection, debate and exchange at the UN. One key aspect of those discussions is how NMIRFs should engage and consult with, and be subject to oversight on the part of, national parliaments (especially human rights committees) and parliamentarians. This question will become increasingly important as States begin to consider and elaborate operational norms for NMIRFs – perhaps in the form of new universal 'principles' for the development of national implementation and reporting mechanisms.

At the same time, the broader role of parliaments in the domestic implementation of international human rights obligations and commitments has, as this report illustrates, become the subject of growing interest – at the IPU, the UN and the Commonwealth.

For example, the three Commonwealth regional seminars described in this report, all demonstrated a keen and growing interest, among parliamentarians, in the question of how best to leverage parliamentary prerogatives to promote the fulfilment, by States, of their international human rights obligations and commitments. The three regional declarations adopted at those seminars – the Mahé Declaration (of African parliamentarians), the Pipitea Declaration (Pacific parliamentarians), and the Kotte Declaration (Asian parliamentarians) – represented a pioneering attempt to clarify and define the optimal role of legislatures in the promotion and protection of universal human rights standards, including by supporting the implementation of UN human rights recommendations, overseeing government progress with the overall implementation of those

recommendations, and overseeing government policy and practice to assess its compliance with State obligations.

The Commonwealth's important work in promoting consideration and elaboration of universal principles to guide the engagement of national parliaments with the UN human rights system and mechanisms (including the area of implementation) is now also being mirrored at the UN. In an important new UN report considered by the Human Rights Council at its 38th session, by the UN High Commissioner for Human Rights offered a detailed review of the emerging global human rights 'implementation agenda,' including the place of parliaments therein.

Importantly, the report also proposed an initial set of 'Draft principles on parliaments and human rights,' which aim, in particular, to guide parliaments in setting up and maintaining effective parliamentary human rights committees. Those principles make clear that parliaments should be centrally involved in the State's engagement with the international human rights system. Parliaments should, in this regard:

- Participate in the national consultations held in preparation of, and during, the drafting process of reports to the international and regional human rights mechanisms.
- Review and comment on draft government reports to the international human rights mechanisms (e.g. UPR, Treaty Bodies).
- Actively participate in the UPR Working Group and in Treaty Body reviews, either as part of the government delegation or on its own.
- Participate, through designated focal points, in the NMIRF, and ensure that UN human rights recommendations requiring legislative reform, the adoption of new laws, or budgetary adjustments are identified and given priority consideration.
- Oversee the degree to which the government is implementing recommendations of international and regional human rights mechanisms.



Panel discussion on the contribution of parliaments to the work of the Human Rights and its Universal Periodic Review during the 23<sup>th</sup> session of Human Rights Council.

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