



## OVERVIEW

'Human rights' are sometimes regarded merely as a slogan. Yet, the canons of human rights benefit both nations and their peoples. Everywhere, human rights are both sword and shield.

Unfortunately, the value of human rights as a practical tool of governance and politics is often obscured. However, over the years, the human rights framework - of unqualified adherence to the tenets of peace and justice, universal respect for the dignity of the human being, inclusiveness and non-discrimination - has become an indicator for political performance at home and abroad. As a universally acknowledged set of rules, it levels the playing field and protects the vulnerable from exploitation and abuse from those with unequal power.

Internationally, the language of human rights permeates the field of foreign relations, aid and trade negotiations. At home, its tenets have become a marker for good governance. The role of parliamentarians – as members of the international community and as representatives of their people – is vital to the evolution of human rights. The ideals of human rights inform and deepen democracy. They also assist development both at home and abroad and are a means of creating a fairer and more equitable world order.

The aim of the module is to illustrate practical ways by which law makers can make human rights a practical, living reality for all. The following units explain relevant concepts and show case real examples of their application across the Commonwealth. They are intended to assist parliamentarians in their efforts to fulfil their mandate of promoting, protecting and realising human rights. Units 1 and 2 introduce human rights and explain their particular importance to law-makers. Units 3 and 4 focus on the international sphere of human rights – both the standards that have been developed and the various structures that have been developed internationally and regionally to better protect the rights of all people. The remaining units illustrate the many ways that human rights can be brought home – through a variety of mechanisms, policies, legislation, processes and structures.

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# UNIT 1: UNDERSTANDING HUMAN RIGHTS

## Overview

“Human rights” have been described and defined in countless ways, but over time a consensus has developed over what is meant by human rights. This unit explores this, and explains their nature. It also discusses the evolution of human rights, sources in varied cultures and traces the prominent debates.

## Learning Objectives

By the end of this unit, you will:

- Understand what human rights are and the principles at the centre of human rights
- Recognise that human rights values are an inseparable element of every country’s political and cultural heritage
- Recognise that there is an international consensus on human rights

## Commentary

### What are human rights?

The notion of human rights is founded on core values of freedom, equality, equity and justice. It insists on equality of treatment for all and no discrimination against anyone. Human rights are basic guarantees of entitlements and freedoms that every human being must enjoy in order to be able to live a life of dignity and pursue opportunities to realise one’s full potential. Human rights include the rights to live free from fear and want; to be treated as an equal and not to be discriminated against; to be protected from cruel, inhuman and degrading treatment; to have equal opportunities for the pursuit of livelihood; to be free to own and dispose of property; to be in good health and receive care and treatment when ill; to receive education; to have shelter; to express one’s thoughts and opinion freely; to pursue the religion of one’s choice; and most importantly to have access to justice and an effective remedy when one or more of these entitlements are violated. Human rights belong to all persons no matter who they are, what they do or where they come from, that is to say, they must be enjoyed by every person irrespective of citizenship, nationality, race, ethnicity, language, gender, class, caste, religion, political opinion or abilities.

Human rights are not a privilege that may be granted to a chosen few or a discretionary gift or reward. They are the means and measure that, when fulfilled, will: ensure human needs are met, human potential realised, opportunity is equally available to all, benefits are equitably shared and the weakest are included and protected. The central notion of equity permits special groups like women, children, minorities and those that have traditionally suffered disadvantage or are vulnerable, to be specifically protected to ensure their equality of status and opportunity.

It is inherent in human rights that they are:

**Universal:** which means they apply equally to all people, no matter their religion, race, nationality or socio-economic status;

**Interrelated and Indivisible:** which means that each right depends upon another for its fulfillment, they must be realised together and no right can be prioritised over another;

**Inalienable:** which means that these rights are innate to all human beings and cannot be exchanged for something else or traded away.

However, human rights are not just moral imperatives or noble ideas – they are concrete standards with legal recognition in widely diverse societies. Human rights standards provide a precise yet constantly evolving legal regime, which also provide remedies and cast obligations – especially on those who wield power over the outcomes of people's lives.

Since the State is well recognised as the principal entity mandated to secure the well being of all, it is also seen as the primary duty holder and has the key responsibility for **respecting, protecting, promoting** and **fulfilling** the human rights of all peoples. Norms and standards for this as well as the limitations on powers are to be found in the international human rights regime as well as obligations that States have undertaken under constitutional mandates laid down at home. State institutions, mechanisms and processes are required to be informed by and geared toward the realisation of everyone's human rights.

The State is not only accountable for the actions of its agents and employees in the protection of human rights, but it is also responsible for creating and maintaining an atmosphere conducive to the enjoyment of human rights by all, without violation by other individuals, groups or entities. Parliaments with their law making power, executives involved with policy implementation and day-to-day administration, and judiciaries in their role as adjudicator and umpire are all expected to further the human rights agenda, ensure there are no violations and achieve the realisation of a culture of rights across the board.

## **Evolution of Human Rights and the Debates**

The present consensus around the legitimacy of human rights, its content, values and priorities has not been reached without contention.

The modern articulation of human rights as a binding agreement between States is a 20<sup>th</sup> century phenomenon. The crimes against humanity committed during World War II had moved the conscience of the planet. Determined never to allow a repeat of such evil, world leadership sought to craft a new regime based on international understanding of commonly held principles. Every nation wanting to be a member of the UN is required to adhere to the [UN Charter](#) which at its very outset reaffirms -

*"...faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..."* (Preamble)

Consequent to this commitment to act together for peace and justice, 48 States adopted the [Universal Declaration of Human Rights](#) (UDHR) in 1948, laying down commonly accepted norms and standards necessary to ensure a dignified life for all human beings.<sup>1</sup> Subsequently, human rights became part of international law through legally binding agreements that furthered the principles contained in the UDHR. The stage was set to codify human rights norms and standards and breach the hitherto impregnable notion of the supremacy of the sovereign States being safe within their borders. In order to prevent the tragedies of the past from reoccurring, these treaties for the first time made the States amenable to international scrutiny.

Critics point out that the process of drawing up the international human rights instruments was dominated by the victors of World War II, and that the views of millions from the developing world went unrepresented because most were then under colonial domination.

However, these claims are not entirely true. By the early 20<sup>th</sup> century many countries already had explicit provisions in their constitutions and/or laws for the protection of the rights of their peoples. These include Latin American countries like Mexico, Uruguay and Columbia, which after several conflicts launched by peasants and workers, had provided legal protection to life, property and some basic liberties. The influence of Latin American and Asian countries that were formerly colonies is most visible in the recognition accorded to the right to self determination. The rights to work and social security were important contributions of countries like Panama, Cuba and Chile and international trade unions and labour organisations, which sent representations to the drafting committee of the UDHR. Labour related rights found strong proponents in countries with Communist regimes. The gender sensitive phrasing of the very first Article of the UDHR came about at the insistence of women delegates from India and Pakistan.<sup>2</sup> Afghanistan, Pakistan, Saudi Arabia, Syria and Turkey played an active role in voicing the views of the Islamic world. Irrespective of geography and size, countries as small as Haiti, Costa Rica, Lebanon and the Philippines participated as equals in the debates and brought their own experiences to be reflected in the wording of the UDHR. In fact, before consensus was reached every word, every article and every nuance of the UDHR was debated by the members of the UN - the majority of which were from developing countries.

Nevertheless, the notion of human rights is criticised for privileging western thought to the exclusion of experiences of Asian, African and Pacific societies. This, however, ignores that human rights are the outcome of battles against the tyranny of power. Whether waged in the Americas, Europe, Africa or elsewhere, aspiring nations folded their experiences of struggle into the modern articulation of human rights. From Europe and America came the experience of forced labour, serfdom, oppressive taxes, lack of representation in 'elected' bodies, witch trials and religious persecution. Their expression of protest resonates with the struggles of the developing world.

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<sup>1</sup> Though the UDHR has no binding value it has come to be recognized as the first universally accepted policy statement on human rights. All subsequent human rights instruments draw from and build upon the basic norms and standards contained in it. The UDHR is referred to in hundreds of court judgments on human rights issues, thereby attesting to recognition accorded to its norms in domestic law.

<sup>2</sup> Dr. Hansa Mehta and Lakshmi Menon prevailed over the committee to change the original draft which read- "All men are born free and equal in dignity and rights" to the current reading - "All human beings are born free and equal in dignity and rights."

The contribution of colonial Africa and the Caribbean communities to the human rights discourse finds its strongest and finest expression in the movement to abolish slavery. Even though the abolitionist movement is best documented in America and Western Europe, the participation and influences of those from [Western Africa](#) are undeniable. Thinkers and journalists from Ghana, Nigeria, Sierra Leone, Liberia, Trinidad, Antigua and beyond travelled to the West to advocate for an end to slavery even as they struggled to secure rights to land, equal treatment and most importantly self-determination within their own countries. The movement to secure freedom from colonial domination informed the international debate on human rights. These important contributions to the human rights movement from the developing world often get left out in the popular narratives of the evolution of human rights resulting in the perceived 'alien ness' of the concept.

Much criticism of human rights has centred around the fear that the concept of the 'individual' - shorn of all other socio-political and religio-cultural identities except that of being 'human' as the holder of rights - digressed from religion and culture. However, the core values of human rights such as respect for a fellow being, equality and non-discrimination are also the professed values of all major and contending religions. For example, [Islam](#) provides for the protection of the rights of people of other faiths. [Buddhism](#) voiced one of the earliest protests against institutionalised discrimination in South and Southeast Asian cultures and envisioned a society based on compassion, love and justice for all – the same aims of human rights.

Traditionalists also argued that the individualism of human rights detracts from the valuable cohesion provided by membership of a cultural group and that the interests of the community should take precedence over that of the individual. This was sharply delineated in the struggle for recognition of women's rights as human rights. Women, who have long faced deeply entrenched discrimination in all societies, called for special protection of their interests and the seemingly irreconcilable could be resolved only through human rights values.

*"The objective of the Platform for Action, which is in full conformity with the purposes and principles of the Charter of the United Nations and international law, is the empowerment of all women. The full realization of all human rights and fundamental freedoms of all women is essential for the empowerment of women. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. The implementation of this Platform, including through national laws and the formulation of strategies, policies, programmes and development priorities, is the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms, and the significance of and full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities should contribute to the full enjoyment by women of their human rights in order to achieve equality, development and peace." (Article 9, Beijing Declaration and Platform for Action, 1995)*

The division of the international community into Capitalist and Communist blocs and their rivalries created an artificial divide between civil and political rights on the one hand and economic, social and cultural rights on the other. The Communists prized economic and social rights such as the right to work, right to education, right to health and other basic entitlements over civil liberties such as freedom of speech and

expression and the right to freedom of movement and the right to protection of private property. The developed countries of the West were vocal in the protection of these latter freedoms at the core of democracy. This divergence of opinion led to the creation of two separate international covenants – [International Covenant on Civil and Political Rights](#) and the [International Covenant on Economic, Social and Cultural Rights](#) - and delayed their adoption by almost two decades.

The debate on the primacy of one set of rights over the other had disastrous outcomes such as providing dictators the excuse to deny fundamental rights and freedoms on the pretext of realising economic, social and cultural rights. These were themselves then 'postponed' under the pretext of lack of adequate resources to fulfill them.

### ***The Vienna Declaration and Programme of Action, 1993***

Though objections to human rights continue to be voiced – often by those keen to defend themselves from its disciplines – much of the debate has been put to rest in the modern consensus that has grown around human rights.

At the World Congress on Human Rights in Vienna in 1993, more than 7000 delegates from 171 UN member States and representatives of 840 NGOs gathered to set out a revitalised programme of action to make human rights a reality for all. All agreed that the civil, political, economic, social and cultural rights included in the UDHR and other international instruments were universal, indivisible, interdependent and interrelated, which must be treated globally by the international community in a fair and equal manner, on the same footing, and with the same emphasis. While recognising the importance of the right to development of all peoples and nations, the right of all people to a safe environment and sustainable development, and the claims of marginalised collectives to special treatment in recognition of group rights, the signatory states agreed that even in these contexts the individual is the ultimate beneficiary of rights. The rights of the collective cannot be realised to the detriment of the rights of its individual member.

Once again a broad consensus was forged across the globe with the active participation of representatives of diverse countries. [The Vienna Declaration and Programme of Action](#) provides the international community with a reinforcing framework for planning, dialogue and cooperation that enables an integrated approach to promoting human rights. Most particularly, human rights was reaffirmed as central to the work of all UN organs, and States agreed to increase cooperation among themselves to promote them. The consensus on human rights evolved at the time of the adoption of the UDHR was sealed. The global conferences of the 1990's and the reviews since all reconfirm the universal worth accorded to human rights and the argument that they are 'alien' cannot be an excuse for non-performance.

## Conclusion

Whatever the debates that ebb and flow around human rights, the greatest endorsement of its universalism lies in its echo through the imagination of peoples across the world. The modern articulation has captured the essence of justice, which though expressed differently in different cultures, is deeply held by all humankind. Validation of human rights lies in the repeated global endorsements from individuals and collectives, governments and civil society. The ability of the human rights regime to nuance itself in response to the complexities of technological innovation and to encompass non-State actors such as, militants, multinationals and multilateral institutions shows its lasting value.

There is common acknowledgement that human rights is both a useful tool for governance with which to balance and umpire power relations, and also a fair set of rules to live by in a diverse, changing, interrelated and interdependent world. Governments are today seen as legitimate by their own people and the international community only when they abide by human rights benchmarks. As well, the endeavours of governance and development are premised on always seeking to promote, protect and fulfill human rights. Rights advocates would argue that in a globalising interconnected world where borders mean little, the realisation of human rights is the very *raison d'être* for the continued existence of the State. Perhaps this is part of the reason why the UDHR has been expanded upon and refined into legally binding obligations, and why these reiterations are to be found seeping into universal consciousness in all regions of the world via myriads of regional, constitutional and domestic instrumentalities.

## Study Questions

1. What principles and values lie at the heart of human rights?
2. What responsibility does the State have in relation to human rights?
3. What are some of the counter-arguments to claims that human rights are just western constructs?
4. Why was the 1993 World Conference important in the development of human rights?

## Recommended Reading

ETC Human Security Manual on Understanding Human Rights:

<http://www.etc-graz.at/human-security/manual/modules/Manual%20komplett.pdf>



# UNIT 2: THE IMPORTANCE OF HUMAN RIGHTS TO DEMOCRACY, GOVERNANCE AND DEVELOPMENT

## Overview

There is now an acceptance amongst the international community about the centrality of human rights and their importance in democracy and development. This unit explores the link between human rights, democracy, good governance and pro-poor development. It emphasises that human rights protection is indispensable to entrenching substantive democracy and promoting pro-poor development.

## Learning Objectives

At the end of this unit, you will recognise:

- the value and uses of human rights for deepening democracy, securing good governance and realising pro-poor development

## Commentary

### Common Roots of Democracy and Human Rights

“My notion of democracy is that under it the weakest should have the same opportunity as the strongest”.

- *Mahatma Gandhi (1869-1948), leader of India's non-violent struggle for freedom*

The greatest protection of human rights emanates from a democratic framework grounded in the rule of law. A functional democracy that accommodates diversity is increasingly becoming the planet's best bet against the concentration of power in the hands of a few and the abuse that inevitably results from it. The Commonwealth too, rejects foreign domination, authoritarian dictatorships, military regimes and one-party rule. All nations of the Commonwealth have chosen democracy as their preferred form of government and this is affirmed in the official position that undemocratic nations are not welcome in this community of nations wedded to the principles of liberty and democratic political processes that are spelt out in the [Singapore Declaration, 1971](#). Yet the challenge before the Commonwealth today is to deepen this democracy from just its basic electoral form into a common enterprise between people and government. While the strength and level of democracy in different parts of the Commonwealth may vary, the human rights framework offers the key means to move from basic electoral democracy to the fully-fledged version.

The principle – ‘all power ultimately rests with the people and must be exercised with their consent’ lies at the heart of democracy. Democracy is premised on the recognition and protection of people's right to have a say in all decision making processes which itself is based on the central principle of equality of all human beings. The exercise of this fundamental political right requires guarantee of crucial freedoms - to express one's thoughts and opinion without fear, to seek and receive information, to form associations and to assemble in a peaceful manner to discuss public affairs amongst others. Accommodation of the views of minorities is essential to prevent democracy from degenerating into despotism by the majority. The purpose of democracy like that of human rights protection is to uphold the dignity of

every individual and to ensure that the voices of the weakest are also heard. Its core values - freedom, equality, fraternity, accommodation of diversity and the assurance of justice underpin human rights norms as well.

## **Democracy, Good Governance and Human Rights**

*"The care of human life and happiness and not their destruction is the only object of good government"*

*- Thomas Jefferson (1743-1826), author of the Declaration of Independence and 3<sup>rd</sup> President of the United States of America*

Across the Commonwealth [democracy is endorsed](#) as the only legitimate means of governance. Democracy is no longer equated with the mere ability to hold regular elections – this is just the starting point. The Commonwealth has recognised that to be meaningful, mere representative democracy must deepen into substantive and participatory democracy. As the [Commonwealth Expert Group in Democracy and Development](#) stated: *"The scope of democracy must ...be widened beyond elections, so that democratic institutions and processes facilitate, protect and reinforce the full range of human rights"*.

The goals of human rights are sometimes summed up as freedom from fear and want and to be able to develop one's potential. These are also the aims of governance. Governance is much more than the business of running the State machinery to keep one's borders safe and the law and order situation under control. States also have the mandate to eliminate inequalities and inequities entrenched in society that result in the exploitation and the marginalisation of certain groups, depriving them of basic rights to a life of dignity. In addition, States have, at the international level, undertaken to guarantee protection for the human rights of all citizens. The test of governance is the degree to which the State machinery delivers on these commitments. Every human right corresponds to a human aspiration and a norm of treatment that everyone is entitled to. The international human rights regime, which is continuously evolving with the progress of time, provides universally accepted legal standards against which the performance of the State machinery can be measured. At a minimum, parliamentarians in a democracy must actively work to promote people's welfare, rejecting all forms of discrimination and exclusion, facilitate development with equity and justice, and encourage the most comprehensive and full participation of citizens in decision-making and action on diverse issues affecting society.

Good governance requires that all work of the State be informed by fundamental democratic principles that underpin human rights as well. The five [pillars of good governance](#) – transparency in decision-making processes, ensuring people's participation, responsibility in the exercise of power, accountability of the decision-makers and responsiveness to people's needs – uphold the edifice of substantive democracy. Anything less will result in despotism and tyranny of power. A human rights lens on democracy and governance not only privileges justice and equity above all but most importantly takes the provision for human well-being by governments from mere promises into the realm of precise legal obligation.

## Human Rights and Pro- Poor Development

Poverty is a brutal denial of human rights and this must be recognised at the outset by policy-makers – governments, donors, international organisations and individual parliamentarians. It is a condition generated by chronic situations where individuals, families and entire communities are deprived, and as such may suffer from some or all of the following conditions – homelessness, lack of education, ill-health, lack of opportunities for livelihood and the inability to access public services or indeed access justice itself. Each of these conditions in turn corresponds to the violation of internationally recognised human rights standards namely, the [right to adequate housing, the right to educational opportunities, the right to health facilities, the right to work, the right to livelihood, the right of equal access to public services and the right to seek justice.](#)

### *Poverty and the Commonwealth*

Most people living in the Commonwealth today are poor. Too many of them are among the absolute poor. A third of the 200 million citizens of the Commonwealth live on less than US\$1 a day – the internationally accepted measure of extreme poverty. There are also significant pockets of poverty in the richer states like the UK, Canada, Australia and New Zealand. As many people, including [Amartya Sen](#), have pointed out, [poverty](#) is much more than just lack of income.

It is significant to note that the state of impoverishment is a condition brought about by people and policies – it is not a natural and normal condition, and can and must be changed as a matter of priority. The state of poverty itself, and not to act to eliminate it, is a violation of human rights. Development sees human beings as having needs that should be fulfilled where possible. Human rights ensures that these become legal obligations of the duty holder - namely the State - against which claims can be made.

[South Africa](#) and [Uganda](#) have recognised the human rights to food, housing, health care, education and a clean and safe environment by writing them into their constitutions as fundamental rights that the State is legally obligated to provide for all citizens. In other countries like [India](#) and [Bangladesh](#) where non-binding constitutional directives to achieve similar goals exist, the judiciary has expanded the scope of the fundamental right to life to include some of these basic entitlements indispensable for the enjoyment of a life of dignity.

Despite this, poverty reduction efforts have traditionally been guided by the paternalist 'welfare' approach where the State becomes the benefactor of the poor who must wait upon the generosity and goodwill of the giver. In some countries with high incidence of poverty this approach has degenerated to distribution of patronage for buying support and approval for those wielding State power. The accent is also placed on 'reduction' rather than 'eradication' of poverty. A charitable approach to development also allows richer nations to keep development assistance at the level of grace and favour, reinforcing dependencies and sharpening misleading perceptions of the alleged inadequacies of the developing world.

In contrast, the rights based approach is by definition pro-poor in nature as it requires developmental planning to target the weakest and the most vulnerable first and foremost. Human rights standards provide the benchmarks against which

success of development policies must be measured. Setting targets based on human rights allows policy makers to create realistic frameworks for achieving rights and making informed evaluations of the effectiveness of their policies and programmes. Situating development and poverty alleviation within a human rights framework gives primacy to the participation and empowerment of the poor, insists on democratic practices, and ensures that the rationale of poverty reduction no longer derives only from the fact that the poor have needs, but is based on the rights of all – entitlements that give rise to obligations on the part of international community, nation-states, the commercial sector and local communities and associations as enshrined in law.

### **Role of Parliamentarians**

Most Commonwealth parliamentarians, whether indirectly as donors or directly as representatives, are closely associated with designing policies that are aimed at rapid economic development and poverty eradication. They face complicated tasks and difficult choices in delivering development, which is more than optimising economic growth but aims at equitable distribution of wealth coupled with social justice. The human rights regime provides a matrix from which to make this happen. The onus for furthering good governance, which requires effective, honest, just, equitable and accountable exercise of power by the State agencies lies within the mandate of parliamentarians.

As elected representatives, parliamentarians have the fundamental responsibility to voice the aspirations of the people in parliament and to always act in their interests. The human rights lens equips parliamentarians to set, examine and evaluate the policies and actions of the executive to see they meet the criteria of good governance and that the outcomes stand the test of equity and justice.

Not only should human rights be realised for their own sake, these rights offer parliamentarians a framework to entrench democracy in its fullest form. Significantly, this is the key to moving from paper promises to making genuine pro-poor development and good governance a reality within all Commonwealth nations.

### **Study Questions**

1. How can a human rights framework deepen democracy?
2. How is human rights linked to good governance?
3. What is a right-based approach to development?
4. How can a rights-based approach make development a reality for the people?

### **Recommended Reading**

[\*Human Rights and Poverty Eradication: A Talisman for the Commonwealth\*](#), 2001 CHRI, New Delhi.

David Beetham, "[\*Democracy and Human Rights: Contrast and Convergence\*](#)", paper presented at the Seminar on the Interdependence between Democracy and Human Rights, OHCHR, Geneva, November 2002

# **UNIT 3: UNIVERSAL HUMAN RIGHTS STANDARDS**

## **Overview**

This unit covers the international human rights treaties and the rights they protect. It emphasises that there is international consensus and agreement on the meaning and scope of human rights. This has been distilled into an international human rights legal framework that sets standards, which are the minimum for all nations to follow. The unit traces the development of these standards in the United Nations, from the Universal Declaration of Human Rights in 1948 to the present.

The unit illustrates the various rights that make up the contemporary definition of human rights - based on a shared international understanding. It indicates how the State is mandated to protect the human rights of all, from violations by State and non-State actors. It outlines the international legal framework of human rights comprising the Universal Declaration of Human Rights and the seven core international human rights treaties; as well as the workings of the treaty system, including the responsibilities that come with ratification and the committees that provide the mechanism to invoke State responsibility to uphold human rights standards. In addition, this unit also provides links to other United Nations documents – conventions, guidelines and rules – that protect human rights.

## **Learning Objectives**

After you have completed this section, you should understand:

- key principles at the heart of human rights
- international human rights standards
- core human rights treaties and what it means to ratify them
- the working of committees set up to monitor States' compliance with their responsibilities under the treaties

## **Commentary**

### **International Legal Framework for Human Rights**

Inherent to membership of the international community - whether it be the United Nations or regional groupings such as the African Union, the European Union, the Pacific Islands Forum, the Organization of American States, and the Commonwealth - is the recognition that the State has a central role in the protection, promotion and fulfillment of human rights. The principal duty to put in place, the necessary institutions and mechanisms to make human rights a reality lies with the State, which has a responsibility not only to ensure that its agents – whether they are the police, the army or civil administration - abide by internationally recognised standards but also to ensure that others – whether they are private companies, religious or ethnic groups or individuals - do not infringe the human rights of any person or community of persons. The idea that such private bodies have duties too is a recent one. While the international human rights regime is structured around the

concept of the State, which has the primary responsibility to protect human rights, [norms](#) have been developed for transnational corporations and other businesses.

The international human rights obligations committed to by States parties impose a duty on in-country law making bodies – whether national or provincial to formulate policy, draft laws, put in place institutions that actively promote and protect the human rights of individuals and communities. This is part of a country's obligation to the international community.

## **Universal Human Rights Standards**

The main international framework for human rights has been developed through the United Nations (UN). From its inception in 1945, the UN has affirmed its commitment to human rights, and this is apparent most significantly through the drafting of the Universal Declaration of Human Rights.

**Universal Declaration of Human Rights** (UDHR): The UDHR is a ground-breaking document adopted by the UN General Assembly in 1948. It is actually a statement of principles on which to base a new world order, designed to prevent the atrocities that took place in the two world wars from being repeated. The UDHR states that “recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. It is the well spring from which all international treaties and declarations on human rights have emanated. The UDHR outlines minimum standards of human rights that each State must protect of all people - no matter who they are, what they do or where they come from.

With time, the standards laid down in the UDHR have been refined and included in separate documents that guarantee civil and political rights, economic social and cultural rights, rights against racial discrimination, women's rights, children's rights, rights against torture, rights of migrant workers and more. These documents (also called instruments) give human rights prominence and international legitimacy. Some, like the early International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights are broad in content, while others more recently focus on one particular theme. Together, they lay out the international community's agreement on particular issues.

U.N instruments can be [classified](#) in different ways, including as:

- Covenants, statutes, protocols and conventions – these are legally-binding for States that have ratified or acceded to them.
- Declarations, principles, guidelines, standard rules and recommendations – these have a strong moral force and provide practical guidance to States, although they may not have binding legal effect under international law.

## **Signing, Ratifying and Acceding to Treaties**

Membership of the United Nations automatically means that a country accepts and subscribes to the principles of the Universal Declaration of Human Rights. However, specific obligations arise when treaties and covenants are signed,

accessed to, or ratified by countries. State involvement in treaties signifies a country's acceptance to abide by the international human rights regime, its commitment to the international community and to protecting the human rights of people living at home in-country in accordance with its principles

- **Signature:** By signing a treaty, a State pledges its support for the treaty and indicates intent to become bound by the provisions of the treaty, once it comes into force. Having signed the treaty, the State should not act in a way that defeats the object and purpose of the treaty, but is not actually legally bound by the treaty until it takes the further step of "ratification" or "accession". Sometimes a state will sign a treaty but then never ratify or accede to it.
- **Ratification:** Both "ratifying" and "acceding" to a treaty mean that the State is willing to be legally bound by the obligations in that treaty. Countries that have previously signed the treaty can ratify it at the point that it comes into force. The process leading to ratification varies between countries- sometimes the Head of State can directly ratify a treaty, however quite often ratification needs to be approved by Parliament. The treaty then becomes binding, a set period (usually 30 days) after the instrument of ratification has been received by the Secretary-General of the U.N. Commonwealth countries require the substance of international treaties to be incorporated in national law through specific legislation.
- **Accession:** This is very similar to ratification in that it legally binds the State. The difference is just in the process - countries that had not signed the treaty prior to the point it comes into force but then decide to become party to it, accede rather than ratify the treaty. As with ratification, the treaty becomes binding, a set period after the instrument of ratification has been received by the Secretary-General of the UN.

**Reservations:** A State may, when signing, ratifying or acceding to a treaty, formulate a reservation. This means that the State, while accepting the standards laid down in the treaty expresses its desire not to adhere to a particular article, section or clause in the treaty, on the grounds that they do not conform with customary laws or with the constitutional provisions of that country. [Bangladesh](#), for instance, made reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which calls upon States to embody the principle of equality between men and women in their national constitutions and laws among other things on the grounds that it conflicts with Sharia' law. Reservations are only allowed if not expressly prohibited under the treaty and if not incompatible with the object and purpose of the treaty. When a reservation is considered to be so broad that it negates the purpose of the treaty other countries may call it into question and object.

Another example of a reservation is [The Gambia](#) which has entered reservations to section 14 (3) (d) of the International Covenant on Civil and Political Rights which guarantees free legal aid to accused persons with insufficient means to defend themselves, on the grounds that the Constitution of the Gambia limits free legal assistance to only persons charged with capital offences, even though this arguably contravenes due process and the fundamental right to a fair trial, guaranteed in the Universal Declaration of Human Rights.

*The cause of human rights is greatly strengthened if countries whole-heartedly ratify international treaties without recording reservations, which go against the spirit of universality, inalienability and indivisibility of human rights. The [World Conference on Human Rights](#) has in fact called upon States to “consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them”.*

## Core Treaties

### ***The International Bill of Rights***

The International Bill of Rights comprises the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights with its two optional protocols. Membership of the international community implies a corresponding duty to abide by the rights guaranteed in the Bill of Rights.

The rights outlined in the International Bill of Rights may be limited in specific circumstances, in the interest of morality, public order and the general welfare in a democratic society. However, there are certain rights that can never be suspended or limited, even in emergency situations. These [non-derogable rights](#) are: the right to life, freedom from torture, freedom from enslavement or servitude, protection from imprisonment for debt, freedom from retroactive penal laws, right to recognition as a person before the law, and the right to freedom of thought, conscience and religion.

At present, in addition to the Universal Declaration of Human Rights – which is the seminal international human rights document – there are seven core human rights treaties. These were first adopted by the General Assembly of the United Nations, but, like all treaties, did not come into force until [ratification](#) by a certain number of States (usually between 20 and 35, depending on the treaty).

These treaties articulate not only the human rights standards but also the obligations on States; and additionally provide for a committee to be set up to monitor how that treaty is being implemented. These committees are referred to as treaty-monitoring bodies and are summarised below, along with each treaty:

**[International Convention on the Elimination of all Forms of Racial Discrimination](#)** (ICERD): This treaty came into force in 1969. It is intended to prevent any kind of discrimination and racism. It states that any doctrine of racial differentiation or superiority is false, morally condemnable, socially unjust and dangerous and cannot be justified in theory or in practice. It requires countries to condemn all forms of racial discrimination, whether based on race, colour, descent, or national or ethnic origin, and to work towards eliminating racial discrimination. States must guarantee everyone's right to equality before the law, and to various political, civil, economic, social and cultural rights. The ICERD recognises that affirmative action measures may be necessary to achieve these ends.

The [Committee on the Elimination of Racial Discrimination](#) (CERD) monitors how States fulfil their human rights obligations under the treaty and requires reports



every two years. The Committee hears individual complaints of violations (if these are related to a country that has agreed to individual complaints being taken up) and also accepts complaints from one State about racial discrimination in another State. It also has an early-warning procedure to be able to quickly respond to serious, urgent incidents.

**[International Covenant on Civil and Political Rights](#)** (ICCPR): This treaty was adopted by the UN General Assembly in 1966 and came into force in 1976. It guarantees civil and political rights, which include: the right to life and to be free from torture, the right to equality and to be treated equally under the law, the right to self-determination and the rights of minorities, the right to privacy, the right to vote and to be part of governance, and the freedom of expression, religion and association. The ICCPR also has two optional protocols: one relating to **[individual complaints](#)** (if a country agrees to this Optional Protocol, then individuals can send complaints of violation in that country to the committee, explained below) and one relating to abolition of the **[death penalty](#)**.

The treaty also explains the obligations of States and provides for a committee – the **[Human Rights Committee](#)** – to monitor how states comply with the treaty. All countries that are party to the ICCPR must report to the Human Rights Committee every five years on what they have done to promote these human rights and about the progress made. The Committee reviews these reports in public meetings, including representatives of the state whose report is being reviewed.

**[International Covenant on Economic, Social and Cultural Rights](#)** (ICESCR): This treaty was adopted at the same time as the ICCPR, and also came into force in 1976. The economic, social and cultural rights in this document include: the right to work with fair conditions and to form trade unions, the right to an adequate standard of living including food, clothing and housing, the right to education, and the right to marry and to participate in cultural life.

The **[Committee on Economic, Social and Cultural Rights](#)** monitors the implementation of this treaty and requires countries to submit reports to the Committee every five years outlining the legislative, judicial, policy and other measures taken towards fulfilling their obligations. This Committee does not take up individual complaints, as ECOSOC – to which the Committee reports – considers economic, social and cultural rights to be progressively realised. However, increasing advocacy around this may lead to an Optional Protocol which would create an international complaint mechanism against violations of economic, social and cultural rights, similar to that which exists for the ICCPR.

**[Convention on the Elimination of All Forms of Discrimination against Women](#)** (CEDAW): This came into force in 1981 and defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which impairs or stops the recognition, enjoyment or exercise by women of any human right or fundamental freedom”. Under the treaty, States must adopt legislation prohibiting all forms of discrimination against women, and must not act in a way that is discriminatory to women. However, CEDAW has the maximum reservations of any treaty - while there are no non-derogable rights and there is no specific article to which reservations are prohibited, incompatible reservations are not permitted. Some States have declared that they will not be bound by any provision that compels a change of law or that domestic law will prevail in case of conflict.

The [Committee on the Elimination of Discrimination against Women](#) is the monitoring body for this treaty and all countries must submit reports every four years. The Committee can make suggestions and general recommendations on the implementation of the Convention; but cannot pronounce a State to be a violator of the Convention and as such does not pressure individual States to change their policies and legislation. An [Optional Protocol](#) came into force in 2000, which means that the Committee can now investigate individual cases, along as they relate to a country that has agreed to the Optional Protocol.

**[Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)** (CAT): This treaty came into force in 1987. It describes torture as “any act which causes severe pain (physical or mental) to a person as a way of obtaining information or a confession, or to punish her/him for an act s/he or a third person has or is suspected of having committed”. Torture could be aimed at intimidating the victim or a third party and is committed with the consent of a public official, but does not include suffering that comes about as a result of legal penalty. States that are party to the Convention are required to take action to prevent torture in their territory. Of note, is that exceptional or emergency circumstances such as war or an order from a superior officer cannot be used to justify torture.

The [Committee Against Torture](#) reviews States' reports, which are submitted every four years. It considers individual complaints, as well as complaints from one State about another. An [Optional Protocol](#) to the Convention allows on-site visits to places of detention in countries that have agreed to the Optional Protocol.

**[Convention on the Rights of the Child](#)** (CRC): This treaty came into force in 1990 and has more ratifications than any other convention as all but two members of the UN (USA and Somalia) have ratified it. The four guiding principles of the treaty are: non-discrimination (no child should suffer discrimination under any circumstances); best interest of the child (in any decision by State authorities that affects a child, the best interest of the child must be the first consideration); right to life, survival and development (as well as basic survival this includes the child's positive mental, emotional, cognitive, social and cultural development; and the views of the child (the views of the child on all matters affecting them should be considered, taking into account the age and maturity of the child). The CRC has two Optional Protocols: one on preventing the [involvement of children in armed conflict](#); and one on the [sale of children, child prostitution and child pornography](#).

States must submit reports every five years to the [Committee on the Rights of the Child](#) on steps taken to put the Convention into practice and details of progress in their territories. The Committee operates under the guideline of the four principles laid down by the Convention and does not accept individual cases.

**[International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#)** (ICMW): The newest of the core treaties, this came into force in 2003. It aims to prevent and end the exploitation of migrant workers (which includes both documented and undocumented migrants) throughout the entire migration process and lays out the obligations and responsibilities of both the sending and receiving States. In particular, it seeks to put an end to illegal or clandestine recruitment and trafficking of migrant workers and discourages the employment of migrant workers in an irregular or undocumented situation.

The [Committee on Migrant Workers](#) monitors this treaty and requires reports from States every five years, and will in certain circumstances consider communications from individuals claiming that their rights under the Convention have been violated.

### **Other Treaties**

In addition to the International Bill of Rights and the core human rights treaties, the United Nations has stressed greater protection of human rights through conventions and declarations on specific issues. The U.N has also prescribed standard basic minimum rules and principles to guide States in dealing with particular situations. There are many such [instruments](#), of which some of the most relevant are listed [here](#).

### ***Study Questions***

1. What is the International Bill of Rights?
2. If a state has signed a treaty are its obligations different from if it had ratified or acceded to the treaty?
3. What are the core international human rights treaties?
4. What is the role of the committees associated with each core treaty?

### ***Recommended Reading***

Human Rights Resources:

[University of Minnesota Human Rights Library](#)

[Human Rights Education Associates](#)

[Project DIANA](#)

[International Council on Human Rights Policy](#)

United Nations and Human Rights:

[Office for the High Commissioner of Human Rights](#)

[International Service for Human Rights](#)

[United Nations](#)

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### **Other treaties (link) – tidy hyperlinks**

Some significant conventions are: [Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#); [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#); [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#); [Convention on the Prevention and Punishment of the Crime of Genocide](#) and [Convention relating to the Status of Refugees](#).

Some significant declarations are: [Declaration on the Rights of Mentally Retarded People](#); [Declaration on the Rights of Disabled Persons](#); [Universal Declaration on the Eradication of Hunger and Malnutrition](#); [Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind](#); [Declaration of Commitment on HIV/AIDS](#); [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#); and [Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live](#).

Some significant basic principles and rules are: [Code of Conduct for Law Enforcement Officials](#); [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#); [Standard Minimum Rules for the Treatment of Prisoners](#); [Basic Principles for the Treatment of Prisoners](#); [Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#); [Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#); [Safeguards guaranteeing protection of the rights of those facing the death penalty](#); [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#); [Basic Principles on the Independence of the Judiciary](#); [Basic Principles on the Role of Lawyers](#); [Guidelines on the Role of Prosecutors](#); [Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions](#); [Declaration on the Protection of All Persons from Enforced Disappearance](#); and [Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity](#).

In addition to human rights law, there is a body of humanitarian law commonly known as the Geneva Conventions that prescribe the conduct of a country in times of war. These are: [Geneva Convention relative to the Treatment of Prisoners of War](#); [Geneva Convention relative to the Protection of Civilian Persons in Time of War](#); [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts \(Protocol I\)](#); [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts \(Protocol II\)](#).

# UNIT 4: INTERNATIONAL AND REGIONAL HUMAN RIGHTS REGIMES

## Overview

While there are standards, as explained in Unit 3, these cannot exist alone. There are committees to keep an eye on whether countries are fulfilling the obligations they have committed themselves to, but more is needed at both an international and regional level. Therefore, as explained in this Unit, the United Nations has other human rights bodies and mechanisms to complement the treaties and treaty-bodies. The Commonwealth also has a commitment to human rights although few structures to ensure this. Regional organisations in Africa, Europe and the Americas have charters and conventions, and mechanisms to ensure that they are followed.

## Learning Objectives

After you have completed this section, you should understand:

- UN human rights bodies that complement the treaties
- Commonwealth statements and activities related to human rights
- Regional (African, Inter-American and European) human rights standards and mechanisms

## Commentary

### UN Institutional Mechanisms to Protect Human Rights

In principle, human rights have been accorded preeminence in the UN system. The U.N Charter, at its outset declares: "We the peoples of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small... and to promote social progress and better standards of life in larger freedom". However, despite this proclamation, real politick has often determined the direction of human rights in U.N corridors and sometimes obstructed their cause. Nevertheless, the United Nations has been instrumental in developing legally-binding universal standards in the form of treaties and associated treaty-monitoring bodies. These mechanisms are constantly evolving to better respond to violations.

The [Charter of the United Nations](#) permits it to establish bodies to take note of emerging human rights issues, discuss and debate them, and evolve new standards around them. These are known as charter-based bodies.

The most important of these specifically for human rights, is the [Commission on Human Rights](#). The Commission is made up of representatives of member-States and meets once a year. It provides policy guidelines; studies human rights problems and investigates violations; develops new international norms; and monitors the observance of human rights around the world. It has the power to criticise a State that violates human rights whether or not they have ratified any of the human rights treaties. Individuals and groups can send information to the Commission on violations of human rights, which they will investigate if it fits into their criteria for complaints.

There are a number of proposals for reform of the Commission in the recommendation of the UN's recent [High-level Panel on Threats, Challenges and Change](#) - including the publication of an annual global human rights report as well as changes to membership. The March 2005 report of the U.N Secretary General, titled [In Larger Freedom: towards development, security and human rights for all](#) contains proposals to replace the Commission on Human Rights with a smaller standing Human Rights Council.

After much negotiation over issues such as composition and mandate of the new Council, in March 2006 the UN General Assembly adopted a resolution to create this Human Rights Council. Its first session is expected in June 2006 and it will replace the Commission for Human Rights. Some important features of the new Council are that: members must have a good human rights record and can be suspended, and that the Council will meet more regularly (a minimum of three sessions annually for no less than 10 weeks in all). Some features such as the 'special procedures' mentioned below and input by NGOs are expected to continue. Further details will be revealed over the following months – visit [www.ohchr.org](http://www.ohchr.org) for updates.

The Commission can set up '[special procedures](#)', which refers to working groups or individuals (Special Rapporteurs or Independent Experts) mandated to address specific [country](#) situations (currently no Commonwealth countries) or [thematic](#) issues. Thematic mandates include: Special Rapporteurs on housing, right to food, freedom of religion, freedom of opinion and expression, independence of judges, and indigenous peoples; Working Groups on arbitrary detention, and disappearances; and many more. There are currently over 30 special procedure mechanisms and all serve in their personal capacity. Their mandates vary, but they usually examine, advise, and publicly report on their specific area, and regularly conduct studies, respond to individual complaints, and promote their area of concern. From time to time they will also conduct [country visits](#) – this occurs either following a request from the relevant special procedure or at the invitation of the country concerned - and report back to the Commission. Some countries have extended [standing invitations](#) to all thematic special procedures of the Commission.

The [Sub-Commission on Human Rights](#) is a subsidiary body to the Commission on Human Rights. Whereas the members of the Commission itself represent their countries, members of the Sub-commission are elected by the Commission and are independent experts who act in their personal capacity. They undertake studies on human rights topics and make recommendations to the Commission on Human Rights. There are currently six [working groups](#) of the Sub-Commission.

### ***Creating Global Standards***

Transnational corporations, in common with national businesses and International Financial Institutions such as the International Monetary Fund, have long resisted submitting to the global human rights regime. Yet in a globalising world their activities play a critical role in development and impact on millions of lives. While these entities may bring money, technology, market access and outward linkages they can also create dependencies and weaken emerging in-country enterprise, bringing little benefit to local people. Their power, the complexity of their ownership, and breadth of their operations also creates difficulties in making them accountable.

Recent work of the sub-commission's [Working Group on Transnational Corporations](#) has looked at bringing them into the human rights regime. Four years expert work, including consultations with trade unions, employers, governments, non-governmental organisations and other specialised agencies has culminated in the unanimous adoption by the Sub-Commission of the [UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights](#). The UN Norms set out in a single succinct statement, a coherent and comprehensive list of the human rights obligations of companies - they do not create new legal obligations, but show how existing obligations under international law are relevant to companies. The Norms have been submitted to the Commission for consideration and adoption.

[Office of the High Commissioner for Human Rights](#) (OHCHR): The Office of the High Commissioner for Human Rights is focal point for all human rights activities in the UN; and serves as the Secretariat for the Human Rights Commission and related bodies. The High Commissioner her/himself is the UN Secretary-General's personal representative on human rights, authorised to provide constant encouragement to the international community and States to uphold the universally agreed standards. The website of the OHCHR is a key resource for parliamentarians on the latest in standards and trends.

Some other charter-based bodies relevant to human rights are:

- [General Assembly](#) (GA): this is the equivalent of a parliament for the UN and is important to human rights as it can discuss violations, pass resolutions and establish bodies such as the Office of the High Commissioner for Human Rights. The General Assembly also adopts documents that become the human rights standards described in Unit 4. The [Third Committee](#) of the GA particularly deals with human rights issues.
- [Security Council](#): a key UN body, which has passed resolutions (which are binding on States) related to human rights, such as the establishment of the International Criminal Court, and the establishment of special tribunals to deal with heinous violations. The [International Criminal Tribunal for the Former Yugoslavia](#), for instance, was set up following a Security Council resolution of 1993 to prosecute certain types of crime committed in the former Yugoslavia since 1991: grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crime against humanity. The [International Criminal Tribunal for Rwanda](#) was similarly set up of 1994, and aims to prosecute the people responsible for genocide and other serious violations of international humanitarian law committed in Rwanda during 1994.
- The [International Court of Justice](#) (ICJ): set up in 1945 under the UN Charter as a world court. It settles disputes submitted by States in accordance with international law and also gives legal advice to authorised agencies.
- [Economic and Social Council](#) (ECOSOC): coordinates the work of UN specialised agencies and other bodies, and makes policy recommendations. Part of ECOSOC's area of responsibility is to encourage universal respect for human rights, particularly through its subsidiary bodies, which as well as the Commission on Human Rights, includes the [Commission on the Status of Women](#) to make recommendations on promoting women's rights in political, economic, civil, social and educational fields.

**UN Specialised Agencies** are bodies set up by the UN to work on specific areas – human rights is a cross-cutting issue across all Specialised Agencies. They include:

- The [International Labour Organization](#) (ILO) focusing on labour issues and has adopted over 150 labour [conventions](#) – these are the basis of international labour standards and can be ratified by ILO member states.
- [United Nations Educational, Scientific and Cultural Organization](#) (UNESCO) promotes collaboration among nations through [education, science and culture](#), which includes some work aimed at the [promotion of human rights](#). Its [Committee on Conventions and Recommendations](#) receives complaints from groups or individuals about human rights violations in the educational, scientific, cultural or information fields committed in member states.
- The [United Nations Development Programme](#) (UNDP) works to help develop the capacities required to achieve the [Millennium Development Goals](#), which includes the integration of [human rights](#) with sustainable human development.
- [United Nations Children's Fund](#) (UNICEF) is mandated by the UN General Assembly to advocate for the [rights of children](#). It is guided by the Convention of the Rights of the Child, and is also involved in monitoring the Convention.
- The [UN High Commissioner for Refugees](#) (UNHCR) is the agency mandated to assist refugees as per the requirements of the [1951 Refugee Convention](#).
- The [World Health Organization](#) (WHO) aims to help all people attain the highest possible level of health, and includes work on [human rights](#).
- The [Food and Agriculture Organization](#) (FAO) works on nutrition and standards of living, agricultural productivity, and conditions for rural people; including [rights](#) issues.

One of the most exciting, recent examples of international desire to engender greater protection of human rights is the [International Criminal Court](#) (ICC) - a permanent international criminal court set up to promote the rule of law and ensure that the gravest international crimes do not go unpunished. The ICC was set up under the [Rome Statute](#), which was adopted in 1998 and came into force in 2002. It is designed to be complementary to national criminal jurisdictions and anyone who commits a crime under the Statute after 2002 can be prosecuted by the Court. The establishment of the ICC shows huge progress in global human rights at a conceptual and practical level as regimes and groups, guilty of committing genocide and crimes against humanity will now be liable in an international court. Though the ICC has been established by a process, independent of the United Nations, the Rome Statute contains provisions that allow cases to be referred to the Court by the U.N Security Council.

## **The Commonwealth and Human Rights**

As a voluntary association of states that had been earlier linked administratively to the United Kingdom, members of the Commonwealth have many commonalities in their legal and parliamentary systems. They also have a common stated commitment to human rights. The Commonwealth Heads of Government Meeting (CHOGM) is a Commonwealth summit held every two years where broad policy direction is agreed, and the statements that have come out of these meetings partly relate to human rights. Some of these include:



- [Declaration of Commonwealth Principles](#) (1971): this outlines the set of principles that bring together Commonwealth member States. These include the liberty of the individual and equal rights for all citizens, a recognition of the need to act to bring about a more equitable society and a commitment “to foster human equality and dignity everywhere, and to further the principles of self-determination and non-racialism”.
- [Lusaka Declaration on Racism](#) (1979): this is the main Commonwealth statement against all forms of racism, including the right to live freely in dignity and equality, the right to equality before the law, the right to remedies and protection against discrimination, and freedom of cultural diversity.
- [Harare Commonwealth Declaration](#) (1991): is the most significant of the statements in that to be a member of the Commonwealth at all, countries must abide by the Harare Declaration. The Commonwealth Ministerial Action Group was established in 1995 by the [Millbrook Commonwealth Action Programme](#) to ensure this.
- [Fancourt Declaration on Globalisation and People-Centred Development](#) (1999): this expresses concern that while globalisation can offer benefits for wealth creation and human development, the benefits are not shared equally.
- [Coolum Declaration: The Commonwealth in the 21<sup>st</sup> Century: Continuity and Renewal](#) (2002): this includes a “commitment to democracy, the rule of law, good governance, freedom of expression and the protection of human rights”, as well as respect for diversity, and to work to eliminate poverty.
- [Aso Rock Commonwealth Declaration on Development and Democracy: Partnerships for Peace and Prosperity](#) (2003): As well as a more general commitment to human rights, this includes a list of specific objectives that should be promoted, including machinery to protect human rights and the right to information.

The [Commonwealth Ministerial Action Group](#) (CMAG) is made up of a rotating group of Foreign Ministers who look into “serious or persistent violations of the principles” contained in the Harare Commonwealth Declaration. While the Harare Declaration refers to a broader concept of human rights, CMAG has to date taken a narrow interpretation of its remit, mostly reviewing political values with a focus on the unconstitutional overthrow of a democratically elected government. CMAG looks into the problem and recommends action, which is usually negotiations with the government, and if changes do not occur, the Group can recommend to the Heads of Government that the country should be suspended or expelled from the Commonwealth. Currently, no country is suspended from the councils of the Commonwealth, although Pakistan - which had been suspended until 2004 - is still on the agenda of CMAG. Other countries that have previously been suspended include Zimbabwe, before it withdrew from the Commonwealth in 2003; Fiji Islands and Nigeria.

These declarations provide the policy direction for the association and its member countries, which as well as being implemented in-country, also form the basis for work by the [Commonwealth Secretariat](#), the main intergovernmental agency of the Commonwealth. Sections of the Commonwealth Secretariat particularly relevant to human rights include: the [Human Rights Unit](#), the [Political Affairs Division](#), and the [Legal and Constitutional Affairs Division](#).

The CHOGM declarations also contain significant promises relating to furthering human rights in-country and exhortations to countries to commit to international

treaties. However, there is no peer review mechanism and the biennial meetings do not at present review implementation of human rights commitments.

The Foreign Minister of a country, as well as the Head of Government, usually attend CHOGMs. Commonwealth Foreign Ministers also meet separately once a year. Other parliamentarians are involved in other [Commonwealth Ministerial Meetings](#), which occur on a regular basis. These include: Law, Finance, Women's Affairs, Youth, Education and Health Ministers; and human rights issues are often covered in their deliberations and final statements. While their statements are not in themselves binding on the Commonwealth, they do provide useful guidelines to Commonwealth states on the topic discussed and are sent to CHOGM for endorsement.

Parliamentarians are also involved in the Commonwealth through the [Commonwealth Parliamentary Association](#), which conducts a number of activities aimed primarily at Members of Parliaments and Legislatures and parliamentary officials. The Association, with a total membership nearing 15000 parliamentarians promotes democracy, good governance and human rights. It pays special attention to gender sensitisation and women's empowerment, in addition to capacity building for the achievement of Millennium Development Goals.

## **Regional Structures for Human Rights**

The universal concepts of human rights have been furthered expanded and expressed in a way that is owned by a specific region. Africa, Europe and the Americas each have a human rights charter for their region, along with associated mechanisms to ensure compliance with the rights to which the States have agreed. Asia and Pacific both have draft regional charters developed by civil society as part of their advocacy designed to trigger a State-sponsored regional mechanism, however this is yet to come to fruition. In this section, therefore, we will briefly explore the human rights structures available specific to the African, European and Inter-American regions.

### **African Human Rights Mechanisms**

The [African Union](#) (AU) comes out of a previous regional body – the Organisation of African Unity (OAU) – which was established in 1963. The OAU evolved into the AU in 1999, which aims to take a stronger role both on the continent and internationally, focusing on economic integration and social development as a means to political unity. The most important body of the AU is the [Assembly](#), which is made up of the Heads of Government of all member states. A [Pan-African Parliament](#) was established in 2004 – at this stage it has consultative and advisory powers only, although it is hoped it will develop into an institution with full legislative powers. The human rights mandate and activities of the AU, which are carried out by a variety of bodies, come from the African Charter on Human and People's Rights.

Adopted by the member States of the OAS in 1981 and in force in 1984, [African Charter on Human and People's Rights](#), also known as the Banjul Charter, is the youngest of the regional mechanisms. It is also the most widely accepted of the regional charters, with [53 ratifications](#) or accessions.

The African Charter is particularly note-worthy for specifically recognising and guaranteeing the rights of individuals and groups, the first human rights instrument to do so. In its provisions, it covers a variety of civil, political, economic, cultural and social rights, as well as the right to self-determination, development and the environment.

The role of the [\*African Commission on Human and People's Rights\*](#) is to promote and protect human and people's rights on the African continent and to interpret the Banjul Charter when required by States or AU institutions. It is made up of eleven independent experts who usually meet twice a year. While it is part of the AU Secretariat, it is not based in Addis Ababa like the rest of the AU, but to prevent political interference, is based in Banjul, the Gambia.

In its role to promote human rights, the Commission researches and publishes on the topic, organises seminars and conferences, and supports human rights institutions in-country. It also develops guidelines related to specific rights issues to be used as a basis for national legislation.

The Commission also has a role in protecting human rights and towards that aim, the Charter requires States to [report on progress](#), and has set up procedures for [complaints from states and individuals](#).

In terms of reporting, countries are required every two years to submit a report on steps taken to implement the Charter. The Commission has a working relationship not only with States but also [NGOs](#) and [National Human Rights Institutions](#). [NGOs with observer status](#) can prepare 'shadow' reports on the human rights situation in their countries to provide an alternative view.

Inter-State complaints - that is, if one State believes another is violating its obligation under the Charter - can be referred to the Commission. The aim is to secure a friendly settlement and complaining States are in fact encouraged to approach the other one directly to try to settle the matter without involving the Commission, but the Commission is there to investigate and reach an amicable solution if needed.

Complaints of violations are also accepted from individuals. The country concerned is notified of the complaint and an investigation process is put in place. In some cases, if there is a suggestion that it is part of a series of violations, the Commission must draw the Assembly's attention to it and an in-depth study may be undertaken.

The final recommendations of the Commission are not in themselves legally binding on States. However, these are included in the annual reports of the Commission, which are submitted to the Assembly and, if adopted, they become binding. Unfortunately there is no way for the Commission to supervise implementation of its recommendations, and although the Secretariat does send reminder letters to countries, much is left to goodwill.

The [\*Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights\*](#) came into force in 2004, however the Court is yet to be established. Once operational, it will complement the work of the Commission to ensure protection of the rights in the Charter. However, unlike the Commission, the Court will be able to issue binding and enforceable decisions. Under the Protocol, cases taken to the Court can relate to any

instrument that has been ratified by that State, such as CEDAW or ICCPR or other international treaties, and therefore, in theory, the Court provides an important judicial mechanism to ensure human rights compliance. Cases will be able to be submitted to the Court by the Commission, States, and African intergovernmental organisations; and the Court will also be able to allow cases by individuals or NGOs with observer status before the Commission. Details of the establishment of the Court are yet to be decided, although there is a possibility that it will be integrated with a Court of Justice of the African Union, to be established to resolve disputes (not necessarily on human rights) between member countries.

In 2003, the African Union adopted the [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#). As well as calling for an end to violence, endorsing affirmative action and including a range of economic and social rights, the Protocol explicitly sets forth the reproductive right of women to medical abortion in certain circumstances and explicitly calls for the legal prohibition of female genital mutilation – two firsts in international law. States' periodic reports to the Commission on their implementation of the African Charter should also include measures taken towards realising the rights in this Protocol.

The [African Charter on the Rights and Welfare of the Child](#) was prepared in recognition of the special need to protect the human rights of the child. As well as articulating these rights, it also sets up a committee – the [African Committee of Experts on the Rights and Welfare of the Child](#) – to monitor compliance with the Charter and lay down rules and principles on protecting child rights. The Committee accepts complaints of violations of the Charter. States must report to the Committee every three years.

The [African Peer Review Mechanism](#) (APRM) is an instrument that can be acceded to by members of the African Union and is designed as an African self-monitoring mechanism. On accession, a State prepares a time-bound Programme of Action for implementing the [Declaration on Democracy, Political, Economic and Corporate Governance](#). Under the APRM, the State also commits itself to be inspected by a team of governance experts to determine whether it conforms to the agreed policies, standards and practices, which include observing the rule of law, and respecting human rights. This process of peer review promotes mutual accountability and compliance with best practice.

## **Inter-American Human Rights Mechanisms**

The [Organization of American States](#) (OAS) was established in 1948 by the [Charter of the Organization of American States](#) as the main regional body including North, South and Central America. The OAS is responsible for the overall development and oversight of regional human rights standards and mechanisms and it has established bodies for this specific purpose. This human rights system provides recourse to people in the region who have suffered violations by the State and who have been unable to find justice in their own country. As well as the Charter of the OAS, the mandate for regional human rights work comes primarily from the American Declaration of the Rights and Duties of Man and the more recent American Convention on Human Rights.

The [\*American Declaration of the Rights and Duties of Man\*](#) adopted in 1948 lays out not just the human rights of individuals but also their corresponding duties to participate respectfully in society. While originally adopted as a declaration and not as a legally binding treaty, the American Declaration is now considered a source of international obligations for OAS member states. Over time, however, States decided that this system needed to be strengthened and in 1960 agreed to prepare an American Convention on Human Rights, and an Inter-American Commission on Human Rights.

While the [\*Inter-American Commission on Human Rights\*](#) was established in 1960, the current [statute](#) under which it works was adopted in 1979. The Commission is based in Washington DC, USA, and investigates themes of human rights concern as well as individuals' complaints of violation, which can involve visits to the country concerned. In investigations, the Commission uses the American Convention if the State has ratified it, or otherwise uses the American Declaration. It also promotes human rights in the region, and makes recommendations to member countries. The Commission also submits cases to the Inter-American Court on Human Rights.

The [\*American Convention on Human Rights\*](#) was adopted in 1969 and entered into force in 1978. It strengthens the regional human rights system by making the Commission more effective, creating a Court, and changing the legal nature of the instruments that the system is based upon. While many countries have [ratified](#) the Convention, fewer have accepted the Inter-American Court on Human Rights examining communications from one State about alleged violations by another State.

There have also been protocols to the Convention, available for ratification. These are: the [\*Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights\*](#) adopted in 1988, to provide a balance to the Convention's focus on civil and political rights; and the [\*Protocol to the American Convention on Human Rights to Abolish the Death Penalty\*](#), adopted in 1990.

The [\*Inter-American Court on Human Rights\*](#) is a crucial organ of the regional human rights system as it is an independent judicial institution that applies and interprets the Convention. It was established in 1969 by the adoption of the Convention (although the statute it works under was adopted in 1979 and more recent [rules of procedure](#) were adopted in 2003) and is based in San Jose, Costa Rica. Hearings of the Court are public, along with the decisions, although deliberations remain secret. In its advisory role in interpreting the Convention, the Court is available to all States, although in adjudicating cases, the Court has jurisdiction only when the particular State involved has accepted the Court's binding jurisdiction.

Over time, other instruments have been adopted in the Inter-American region to better protect specific areas of human rights concern. These are the: [\*Inter-American Convention to Prevent and Punish Torture\*](#), which entered into force in 1987; the [\*Inter-American Convention on Forced Disappearance of Persons\*](#), which entered into force in 1996; and the [\*Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women\*](#), which entered into force in 1995.

## European Human Rights Mechanisms

The [European Union](#) (EU) is the main regional body for Europe and is made up of five main institutions: the [European Parliament](#) (elected by the people of the member States); the [Council of the European Union](#) (representing the governments of the member States); the [European Commission](#) (the general Secretariat of the EU); the [Court of Justice](#) (which ensures compliance with the law); and the Court of Auditors (which oversees the EU budget). These are supported by other bodies, including those with a specific mandate related to human rights.

The most important human rights document in the region is the [Convention for the Protection of Human Rights and Fundamental Freedoms](#), which was developed by the Council of Europe, entered into force in 1953 and has 45 [ratifications](#). The Convention focused on civil and political rights, but the more recent [European Social Charter](#), which focuses on socio-economic rights, complements it. As well as listing rights, the Convention also sets up a mechanism for ensuring that States fulfill their obligations under the Convention. The original three bodies (the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe) has since 1998 been simplified and amalgamated into a single European Court of Human Rights. As well as shortening the length of proceedings, this strengthened the judicial character of the system by making it fully compulsory and abolishing the Committee of Ministers' adjudicative role.

The [European Court of Human Rights](#) has been working under its current format since 1998 and has amassed considerable human rights jurisprudence. Any State that has ratified the Convention, or any individual who believes their rights under the Convention have been violated can lodge a complaint directly with the Court. Final judgments are binding on the country concerned and the Committee of Ministers of the Council of Europe is responsible for supervising whether the State takes adequate measures in line with the judgment.

To further strengthen the human rights regime in the region, in 2000 the European Union adopted the [Charter of Fundamental Rights of the European Union](#). The Charter – unlike the Convention – is an EU document and the EU itself is bound by the provisions as well as member countries. It also covers some additional areas, not covered in the Convention, although it states that any rights in the Charter that correspond with those in the Convention should have the same meaning and scope, to [avoid discrepancies](#) between the two documents. Although the Charter relates just to members of the European Union rather than to any State within the broader geographic region that has ratified it, it is still an important document – particularly as it, for the first time in the European Union's history, sets out in one text the whole range of civil, political, economic and social rights of European citizens and all people resident in the EU. It covers six areas: dignity, freedoms, equality, solidarity, citizens' rights, and justice.

## Study Questions

1. Which charter-based bodies of the United Nations promote and protect human rights?
2. Is the Commonwealth active on human rights?

3. Which regions have human rights mechanisms and how do they work?

## **Recommended Reading**

United Nations and Human Rights:

[Office for the High Commissioner of Human Rights](#)

[International Service for Human Rights](#)

[United Nations](#)

Commonwealth:

[Commonwealth Secretariat](#)

[Commonwealth Parliamentary Association](#)

[Commonwealth Human Rights Initiative](#)

Regional Bodies:

[African Union](#)

[African Commission for Human and People's Rights](#)

[Organization for American States](#)

[Inter-American Commission for Human Rights](#)

[European Union](#)

[European Court for Human Rights](#)

# UNIT 5: PARLIAMENTARIANS AS HUMAN RIGHTS PROTECTORS

## Overview

Entrenchment of a human rights culture in a country requires parliamentarians to actively push for human rights. This unit explains how parliamentarians can support the embedding of international standards at all levels of governance through their special position that makes them both policy and law makers, as well as mobilisers of public support for greater allegiance to a human rights agenda.

This Unit explores the multiple roles of parliamentarians as members of the executive; members of the opposition; and as members of political parties. It emphasises the point that parliamentarians are trustees of people's aspirations and as such, they must ensure that law and policy supports human rights. It also illustrates strategies that some parliamentarians have used to focus greater attention on human rights issues, like having a human rights supportive foreign policy and the appointment of human rights advocates to key positions.

## Learning Objectives

At the end of this unit you will be aware of:

1. Practical ways that parliamentarians have used their positions to carry forward the human rights agenda

## Commentary

### Parliamentarians as Human Rights Protectors

The challenge before parliamentarians is to change the rhetoric of human rights theory into practical realities that benefit populations at home. While States have endorsed countless commitments at the international level, many support human rights only in theory – the ground reality shows a distressing failure by many governments to convert the rhetoric into practical pro-human rights outcomes for their constituencies back home.

Embedding a human rights culture greatly depends on the willingness of law-makers to weave the human rights agenda into all they do. Through its central function as a law-making body, parliament can naturally reaffirm the human rights values and principles that it stands for by incorporating these values into all laws it passes. While parliamentarians are sometimes constrained by party dictates and real politick, the essential importance of human rights makes it imperative that each member of the house sees their role first as protectors and promoters of human rights and second as members of parties. In constrained environments, devices like the Private Members Bill offer an opportunity to act on individual principle – even if the Bill is defeated, the associated debates draw attention to otherwise difficult and controversial issues.



### ***Parliamentary Immunity***

Essential to parliamentary procedures is the assurance that all members are privileged with the liberty to freely express their views in the House. It is therefore imperative that parliamentarians are assured freedom from criminal prosecution, civil suits or unwarranted disciplinary action – either by their own party whips or from the disciplinary committee - for free and frank expression of their views in parliament. This immunity should be assured through law and as a matter of public policy. Any derogation can seriously impair the quality and candidness of parliamentary debates and prevent members from taking principled stands particularly on human rights issues. [Article 9](#) of the United Kingdom's Bill of Rights, 1689 expressly provides that "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament".

However, the existence of parliamentary immunity does not mean that Members of Parliament can abrogate constitutional values and accepted international standards. Parliamentarians are bound by parliamentary codes of conduct and are liable to held to the standard required by these codes.

In addition to guaranteeing immunity to Members of Parliament, individuals who appear before parliamentary committees during inquiries can also be assured that their testimony – oral or written – is not be used in prosecutions against them. In the Australian state of Victoria, [Section 50](#) of the Parliamentary Committees Act, 2003 lays down that proceedings of a Joint Investigatory Committee shall not give rise to any cause of action in law or be the subject of any court proceedings. This protects witnesses from legal action about anything they say before the Committee.

A parliamentarian's role as a representative of their constituency involves representing the concerns of that community – including human rights concerns – within the parliament and lobbying on behalf of those who fear violations. Making time in busy schedules for those in the community who engage in rights work is another way of showing commitment to this area. As leaders in the community, parliamentarians can also use their speaking engagements to inform and educate the community at large about human rights.

Entrenchment of a human rights culture in a country requires due focus on human rights education - not just in schools, colleges and academic institutions but also amongst those who are charged with the responsibility of upholding and enforcing human rights such as police officers, civil servants, judges and prison officials. In this, governments can enroll the assistance of expert civil society practitioners and academics to help design and deliver human rights modules to select groups (for instance corporate managers) and to people at large.

The importance of human rights education was recognised at the World Conference on Human Rights in the Vienna Declaration which states that human rights education, training and public information are essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. In fact the decade from 1<sup>st</sup> January 1995 to 31<sup>st</sup> December 2004 was declared as the [Decade for Human Rights Education](#). As a follow up to the Decade, the United Nations is in the process of initiating a [World Programme for Human Rights Education](#). During the period from 2005- 2007, the focus will be on human rights in primary and secondary education.

MPs - as members of Cabinet, as Ministers, backbenchers or even as members of the Opposition – wear a number of different hats, and in these different capacities have multiple opportunities to push forward the human rights agenda. These are explored below.

### **The Special Role of the Executive/Cabinet**

In the parliamentary democracies, which predominate in the Commonwealth, Cabinet plays a critical role. Cabinet comprises the most influential ministers, who as a collective take the lead on the issues that shape the destiny of the nation, and as such acts like an Executive. Alternatively, in some Commonwealth countries, the President and her/his advisors act in this executive capacity. Regardless of the form the Executive takes, it has a special – and crucial – human rights role to play.

The “executive” in the majority of Commonwealth countries is specifically empowered to negotiate and [enter into treaties](#). Considering that the development of human rights law over the last 50 years has been heavily influenced by international treaty developments, cabinet members have a significant role to play on the international stage: for example by guiding their bureaucracies in the contributions they make in the lead up to the making of international human rights principles and law. More information on national roles and responsibilities in relation to treaties is explored in the next unit.

#### ***Appointing Human Rights Advocates to Key Positions***

The - Members of the [Commission on Human Rights](#), for instance, are national representatives. Likewise, staff in human rights sections in the UN, Commonwealth and regional organisations are often reliant on the endorsement or recommendation of their governments. While special rapporteurs, independent experts and members of working groups in the UN human rights system serve in their personal capacity, they are [appointed](#) by the Chair of the Human Rights Commission after consultation with member states’ representatives.

It is crucial that appointments to key positions are based on expertise and demonstrated commitment to take forward human rights. Too often, however the unfettered right of sovereign States to appoint their nominees to multilateral bodies means that in reality seniority or politics dictate nominations, to the detriment of the credibility of these organisations.

As the body that in most Commonwealth countries sets national priorities and policy directions, as well as largely dictates the legislative programme, the role of the Cabinet as a human rights guardian is crucial. When Cabinet keeps the human rights frame to the fore, it can ensure that all Bills promote human rights and do not infringe upon committed human rights standards – both when they first give instructions to the bureaucracy to prepare Bills and when they vet these Bills themselves. Therefore, it is important to have a process that scrutinises all legislation to ensure compliance with national human rights laws and international commitments. For instance, in Canada when the [Charter of Rights and Freedoms](#) was introduced, a process was put in place to ensure that all laws adhere to the principles of the Charter – no minister could bring forward legislation without filing a certificate that the legislation complied with the Charter of Rights and Freedoms. Such a consideration on the rights implications of proposed legislation or executive action

can in fact be specifically required when this is included in the Cabinet handbook or other instructions to Cabinet members. Guidelines for legislative drafts can also consciously include a minimum requirement that all Bills are consonant with the country's international human rights obligations.

Where there is a Constitutional Bill of Rights in-country, laws will nearly always be required to conform to these standards and, if not, will be in danger of being *ultra vires* (or outside the authority allowed by law). More directly, Cabinet members can also be active in making specific laws and national action plans that further the realisation of human rights of target groups who need special attention or protection because they have long been discriminated against or are particularly open to exploitation. Affirmative action laws that grant privileges to women and indigenous and tribal populations, for instance, have been passed in many countries. In New Zealand, for instance preferential access to university courses and scholarships is provided to Maoris. In India, Part XVI of the [Constitution](#) includes "Special Provisions Relating to Certain Classes" - affirmative action measures for disadvantaged groups, including seat reservations in the Lok Sabha (House of the People) and in state legislative bodies for members of Scheduled Castes and Scheduled Tribes.

#### ***A Human Rights Supportive Foreign Policy***

Cabinet can help establish a country's credentials as a conscientious member of the international community by taking up human rights concerns at international fora by: (i) actively drafting and signing on to declarations that call for greater protection of human rights; (ii) establishing itself as a champion of human rights by being open and transparent in allowing its human rights track record to be scrutinised by international agencies; (iii) using human rights diplomacy to encourage countries with a poor human rights record to adhere to international standards such as through bi-lateral talks; (iv) publishing annual reports on the status of human rights in other countries, such as those produced by several countries including the UK's [Foreign and Commonwealth office](#); and (iv) by providing financial and moral support to human rights projects, programmes and initiatives in other countries.

#### **The Special Role of Ministers**

In a parliamentary democracy, ministers exercise direct supervision over government departments. The personal inclination of a minister towards a particular cause can shape the attitude of the bureaucracy under her or him, which is responsible at the coal-face for implementing laws and policies. Human rights are therefore better protected when civil servants are made aware that 'their minister' understands human rights standards and is committed to their furtherance and will take a serious view of any breaches. In their supervisory capacity, ministers can strengthen internal disciplinary mechanisms to deal with failure or negligence to protect human rights. One positive initiative in this area comes from the Australian Capital Territory that requires annual departmental reports to include the ways in which the department has promoted and protected rights during that year. A human rights culture in public sector departments can also be assisted by setting up human rights units, and committees to review complaints of sexual harassment or racial discrimination. Performance reviews at appropriation time are also moments for reviewing the functioning of departments in terms of how well they have progressed in promoting human rights.

### ***Protecting Human Rights: The Need for Rights Friendly Rule-Making***

Progressive laws are sometimes undermined because the rules that are needed have not been framed - or have been framed in a manner that dilutes the true import. This means that even where parliament is supportive of human rights, if resistant, bureaucrats can still use their rule-making power to stifle change. A salient example of this can be seen in the Indian state of Tamil Nadu, where the Government has designated certain courts specifically as "human rights courts" under the [Protection of Human Rights Act 1993](#) but no rules have yet been put in place to make these courts effective in practice.

### **The Special Role of the Opposition**

Members of the Opposition are quick to call the government to account for perceived lapses and can do this specifically for human rights violations as well. They often spearhead calls for greater adherence to human rights standards by the police, army and paramilitary forces and frequently pick up on international criticism as a basis for citing the government for bringing the country into disrepute. Just as valuable as opposing government action that is contrary to rights, is taking a bi-partisan approach to positive human rights proposals – the Opposition can help to promote the concept of universal human rights by not opposing important human rights initiatives for political purposes.

As responsible Members of Parliament, opposition members sitting on various committees – and frequently as their powerful chairs – also have a considerable responsibility for promoting human rights. Apart from the rich opportunities offered to draw attention to shortfall in standards at question time through oral and written questions, members who seriously attend to the findings of international scrutiny bodies, the reports of foreign governments and civil society as well as to the reports of national human rights institutions and commissions of inquiry can keep the government's performance under constant scrutiny. The Parliamentary Opposition in Guyana, for instance, highlighted this when a Presidential Commission of Inquiry was appointed to look into alleged government sponsorship of death squads made up of serving and former police officers. The Opposition issued a [press statement](#) demanding that the inquiry be conducted by highly-regarded and respected persons of unblemished integrity, acceptable to major stakeholders in the country; be accompanied by a credible and secure witness protection program; allow a role for the Caribbean Community (CARICOM) and other international organisations; have the power to take evidence in camera as well as in public; and have the authority and resources to take evidence both inside and outside of Guyana.

Research on patterns of violence, violation and impunity can impress upon the government the need to review offending policies from a human rights perspective. Urgent calling attention motions when serious human rights violations have occurred also ensure that human rights concerns are kept to the fore. Principled refusal to countenance impunity for rights violation, whether in opposition or in government, also furthers human rights compliance at home. Outside parliament, Opposition members can also lead fact-finding delegations to examine and report State violations of human rights.

## Promoting Human Rights within Political Parties

Most parliamentarians belong to one or other political party. No matter their persuasion or ideology there are few except those on the extreme fringes that do not abjure violence, avow equality and appreciate the values of social justice and equity. However, the key lies in how the public gauges levels of commitment – and actions speak louder than words. While rhetoric makes good press for political parties in public fora, inner party processes show a political grouping's commitment to good governance and human rights. The existence of human rights caucuses and units, women's units, minority and child protection units or even general complaint units within party structures point towards the commitment of a party to human rights principles. Internalising the human rights agenda is evidenced by diversity in membership and can be seen through the participation of women, tribal, ethnic, linguistic and religious minorities, and traditionally unrepresented groups; as well as their pre-selection to safe seats. Some countries have in fact legislated to ensure this happens, particularly relating to women – in [Guyana](#), political parties must include a quota of 33% women candidates on their electoral lists. In other countries the decision has been made by parties themselves – in [Malta](#), the Labour Party has a 20% quota for women on party lists; and in [Mozambique](#) one party has adopted a quota system of 30% for women on election nomination lists and in leadership positions.

In some instances, individual support of parliamentarians to causes outside a party's set agenda can be constrained by demands for party discipline. Nonetheless, in their capacity as influential members of their own political parties, parliamentarians can lobby to ensure that commitment to human rights issues figure prominently on their party's electoral manifestos. The initiative for releasing white papers and setting up special commissions to probe human rights abuses has often come from their inclusion in an election manifesto based on public aspirations. In addition, human rights can be promoted through specific domestic rights issues. For example, the reform of colonial legislation particularly police acts, official secrets acts, and press freedom acts; a human rights friendly approach to refugee issues or anti-terror strategies; or the establishment of [National Human Rights Institutions](#). Recently in [Bangladesh](#) for instance, the election manifestoes of both the Bangladesh Nationalist Party and the Awami League included establishing a national human rights commission. A party manifesto can also include big-ticket foreign policy items like signing up to the [International Criminal Court](#) or lobbying for reform of the UN Human Rights Commission to ensure that only people with a demonstrated commitment to human rights sit on the Commission.

### ***Election Manifestos Resulting In Practical Reforms***

In South Africa, when the first elections were being held in 1994, the [African National Congress' manifesto](#) promised to the people of South Africa the following:

- a democratic society based on equality, non-racialism and non-sexism;
- a nation built by developing different cultures, beliefs and languages as a source of common strength
- an economy which grows through providing jobs, housing and education
- a peaceful and secure environment in which people can live

These promises encapsulate the combined values of economic social and cultural rights and civil and political rights.

### **Study Questions**

1. What are some key ways a country's foreign policy can influence human rights abroad?
2. How are human rights positions in international and regional bodies appointed?
3. What opportunities are there for ministers to take a leadership role in realising human rights?

### **Recommended Reading**

A Concept Paper on [Legislatures and Good Governance](#), (Based on a Paper prepared by John K. Johnson and Robert T. Nakamura), UNDP

[Primer on Parliaments and Human Rights](#)

["Human Rights And Good Governance – Conjoined Twins Or Incompatible Strangers?"](#) The Hon Justice Michael Kirby, The University Of Melbourne, Chancellor's Human Rights Lecture 2004

["The Federal Parliament and the Protection of Human Rights"](#), Research Paper by George Williams, Consultant, Law & Bills Digest Group, 1999

UNDP Practice Note: [Parliamentary Development](#)

Unit 6: [Privileges and Immunities of Members](#), Module on Parliamentary Democracy, Commonwealth Parliamentary Association and Athabasca University, 2001.

# UNIT 6: PARLIAMENTARIANS AND PARTICIPATION

## Overview

Participation is one of the guiding principles of democratic governance and has been recognised as such nationally and internationally. It is important that such participation – both with those external to parliament such as the public, and internally in the composition of the parliament – includes the diverse voices in our societies. This unit provides background and examples for ways that such participation can be facilitated.

## Learning Objectives

At the end of this Unit, you will understand:

1. The value of participation of and consultation with diverse populations in matters of governance through concrete examples
2. Other opportunities for participation open to parliamentarians, such as through networks.

## Commentary

### Consultation and Participation

At home and abroad, governments have consistently made commitments to work with civil society. In the Commonwealth for instance, among many other recent commitments, Heads of Government at [CHOGM 2002](#) expressed: “the need for stronger links and better two-way communication and coordination between the official and non-governmental Commonwealth”. In the UN as well, the majority of documents state their support for the role of NGOs and other civil society.

However, the uneven power relationships between government and civil society mean that the association is often [uneasy and uncertain](#). Governments may not have honed habits of consultation, and civil society groups are often torn between engagement on the one hand and confrontation on the other. Nevertheless, parliamentarians as representatives of the people who have an ear to their constituencies and who also depend for reelection on their popularity at the grassroots, are often more accustomed and amenable to listening, learning and responding, than commanding bureaucracies may be.

Experience indicates that there is often greater willingness to involve civil society groups at the delivery stages of development projects than at policy-making stages or in evaluating outcomes and performance. NGOs often focus specifically on human rights issues – generally and also sectorally – and have in fact developed considerable expertise which parliamentarians can usefully draw on when undertaking their own human rights work. NGOs’ direct connections with the public – often including people who have had their human rights violated - can be invaluable in linking MPs and citizens who have suffered at the hands of the State and may therefore be reluctant to approach parliamentarians themselves.

## International

Civil society has played a strong role in promoting human rights at the international level. Their hand in developing international standards can be seen in the sustained campaigns for – to name just a few examples - women’s rights, child rights, protection of indigenous peoples’ rights, corruption, the Anti Land Mine Convention and the International Court of Justice. Civil society has been particularly valuable when southern and northern groups have worked in solidarity to voice the difficulties and concerns of less developed countries – as in the campaigns around debt forgiveness – and to assist in bringing alternate views to international negotiations.

Many organisations have set up structures to facilitate such involvement. In the United Nations this is largely facilitated through the Economic and Social Council (ECOSOC), and is generally limited to NGOs that have [consultative status](#) with ECOSOC, or have that status for the particular meeting or event in which they are participating. This enables active, albeit limited, involvement at the Commission on Human Rights, [treaty-monitoring bodies](#) and other important meetings. NGOs are in fact the [primary vehicle](#) through which the broader society has gained access to UN bodies and in the process have opened up an essentially intergovernmental body to a larger audience.

In the Commonwealth context, some civil society groups are accredited with the Commonwealth, which enables a little more access to official Commonwealth meetings and processes, although genuine participation and partnership remains an issue. [Commonwealth Ministerial Meetings](#) in particular have recently become more open in their dealings with civil society, which increasingly means that the on-the-ground experiences from NGOs can assist Ministers in their discussions. Of the Commonwealth associations, a number have conducted sustained advocacy designed to input into the Commonwealth governmental processes on human rights issues. The [Commonwealth Human Rights Initiative](#), for instance, has engaged consistently, particularly on the work of the Human Rights Unit of the Commonwealth Secretariat; and the value of the people’s right to information – an issue that is itself intrinsically linked to participation.

Regionally, the Organization for American States (OAS) provides opportunities for involvement of civil society groups that are [registered](#) with the OAS in their summits and meetings, including roundtables with government representatives. The African Union is preceded by a [civil society meeting](#) and affiliate bodies such as the African Commission for Human and People’s Rights have mechanisms for [working relationships](#) with NGOs and National Human Rights Institutions. In the Pacific region there is not yet a formal process but civil society meetings are held prior to the annual meeting of the [Pacific Islands Forum](#) leading to a statement submitted to the meeting; and the Forum has committed itself to [develop consultative arrangements](#) with such organisations.

## National

At a domestic level, in some countries such participation is facilitated by the inclusiveness of Parliament in its own working – by embracing openness in its functioning and welcoming constant engagement with the myriad actors that make up society and are often ignored once an election is over. As elected representatives, parliamentarians represent the collective aspirations of the people. From this high



position of public trust, MPs engage in their official and unofficial capacities with a host of systems and actors within the structures of governance and outside. The bureaucracy, military, police and security agencies, judicial fraternity, business, unions, chambers of commerce, professional associations, media, charities, non-governmental organisations and the individual citizen, are all influenced by members of parliament. In democracies, these actors also influence their representatives in turn. By encouraging and welcoming constant interactions and setting up systems that will provide easy access, members also demonstrate their commitment to the human rights values of inclusiveness and participation.

Some governments benefit from having formal policies and procedures for consultations with civil society organisations that provide them the opportunity to add their views and voice to policy formulation. [Section 59 \(1\) a](#) of the South African Constitution in fact lays down that the National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committees. New Zealand also makes participation and consultation a legal requirement through what's called a '[sunshine law](#)', which legally requires government meetings to be open except in certain specified cases.

Countries are increasingly espousing open governance norms and some have or are in the process of formulating access to information laws. Such a law enables the public to access all government information – and even information held by private bodies where that is necessary for the exercise or protection of a right – unless disclosure would actually cause harm to legitimate national interests. Such transparency related to parliamentary information and proactive disclosure is a practical measure that so far [10 Commonwealth countries](#) have taken toward enabling their constituents the opportunity to participate in their own governance.

The [parliamentary committee](#) system offers an effective structure for making such participation possible. The [Scottish Parliament](#) is just one example of a committee system which facilitates involvement of the public by providing detailed [information online](#) on each committee, related documents and dates for submissions. A nascent initiative in Nigeria is also poised to assist in strengthening parliament-civil society relations by setting up a body within Parliament House to institutionalise closer relations. This group is a non-governmental legislative advocacy and research organisation, which will be based in the legislature to bridge the gap between legislators and the civil society.

### **Civil Society Space**

The extent to which civil society can engage depends greatly on government openness, the room available for civil society to blossom and grow and the respect accorded to civil society to make serious and informed interventions. International and national commitments have been made to this. For instance, in the [Vienna Declaration](#) that “Special emphasis should be given to measures to assist in the ... strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable”. The importance of civil society and providing protection for individuals and groups active in human rights has been recognised globally with the expanding legal protection and support networks for human rights defenders, to the extent that a UN [Special Representative of the Secretary General on Human Rights Defenders](#) was appointed in 2000. A [1998 Declaration](#) has outlined human rights defenders' rights (“Everyone has the right, individually and in association with

others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and the State’s primary duty and responsibility to protect this.

In reality, though, this is not always the case. In [Zimbabwe](#) for example, the Parliament recently passed a law specifically seeking to ban foreign funding and support to NGOs engaged in governance and human rights related activities. Other countries regulate the registration of clubs and other private associations and discourage the formation of political parties and non-government organisations, in flagrant violation of people’s right to associate. It is positive to note though that in Bangladesh, while the Government had recently considered enacting restrictive legislation that would have limited the work of NGOs, this Bill has now been scrapped.

### **Working with the Media**

The media can also be a key partner in promoting respect for human rights. Its broad reach into the community and its ability to target diverse issues makes it an invaluable tool in spreading awareness as well as pressuring key stakeholders to either take action to promote rights or refrain from acting in a way which violates rights. Cultivating the media deliberately in support of particular human rights campaigns, or at the very least, keeping the media apprised of key initiatives via press releases and briefings, can thus be a canny strategy.

Unfortunately, while the media has a crucial role to play in promoting human rights, the relationship between the media and parliamentarians is not always an easy one. In some countries, this manifests as a reluctance by the government to see the media as allies in human rights promotion. In others, the resistance becomes more sinister, as governments try to pass restrictive media laws to prevent the media from reporting on human rights violations. This has been most worryingly demonstrated in stubbornly resistant countries of which sadly there are still too many in the Commonwealth. Fortunately parliamentarians who see their role as human rights protectors would reject legislation which seeks to curb the right to freedom of expression and freedom of the media.

### **Importance of Diversity**

Good governance increasingly requires parliament as an institution to attend to the diverse voices of society. There is a clear link between exclusion from governance and underdevelopment, as well as an associated link with instability. Lack of participation is in fact itself an indicator of bad governance, as well as regularly leading to other problems in society. Despite a recognition of its importance, the challenge of including the weakest and most vulnerable in the processes of governance remains.

Diversity is relevant to participation and consultation – in the sense that such participation can not be limited to certain sub-groups of society, but must be facilitated for a diverse range of society, particularly the traditionally marginalised. A practical commitment to diversity is also intrinsic to a human rights ethos in parliament. Communities are made up of people with varied backgrounds and identities, and associated needs and priorities. A democracy based on human rights provides the framework for the recognition and representation of such divergent

groups and needs, in a non-discriminatory fashion. In particular, this includes special efforts for the segments of society that have been marginalised and face discrimination – whether within a particular cultural context or people living with disabilities or HIV, women, children, the gay, lesbian and transsexual communities, indigenous peoples, or an ethnic or religious minority.

As well as special efforts to include their views in parliamentary discussions, some countries have procedures to encourage their direct involvement. This includes within political parties, mechanisms to preference the under-represented for election. [Reservations for women](#) in politics have been included in a number of countries to ensure this. In [Uganda](#) for instance, a constitutional provision states that there will be one woman representative for each district. Uganda also has quotas for persons with disabilities and youth representatives. [Bangladesh](#) and [Kenya](#) also have constitutional quotas for women in national parliament. Once within parliament, efforts can also be made to ensure diversity within committees and in the choice of individual for positions that are appointed by parliament. The selection of parliamentary staff and advisers is another opportunity to ensure an inclusive and diverse team.

### **Collaborating with Other Parliamentarians**

Within parliament, there are also opportunities for collaboration. Non-partisan human rights groups within parliament include the All-Party Parliamentary Human Rights Group in the United Kingdom, which investigates and publicises human rights abuses, in addition to raising the profile of human rights more generally. It organises fact-finding missions and communicates to governments its concern about violations – recently this has included highlighting violations in Zimbabwe among other countries and the detention of prisoners in Guantanamo Bay.

Amnesty International, an international human rights NGO, has also facilitated such collaboration - the first Amnesty International Parliamentary Group (AIPG) was formed in Australia in 1974, and has now been replicated elsewhere. The AIPG draws its members from all political parties, is non-partisan in its operation and is open to anyone working in Parliament, including parliamentary staff. A representative from the Human Rights Section of the Department of Foreign Affairs and Trade also attends meetings. The AIPG engages with incoming overseas delegations. Human rights parliamentary delegations of Australian MPs traveling overseas are usually provided with a human rights briefing from Amnesty International. The AIPG was instrumental in the 1989 ratification of the Convention Against Torture. Amnesty also produces a [Human Rights Parliamentary Bulletin](#), which is sent to all parliamentarians four times a year to update them on key research, issues and campaigns.

International associations also exist for parliamentarians. The [Inter-Parliamentary Union](#) (IPU), for instance, is active in the area of human rights – debating issues at its statutory conferences and during specialised meetings and making recommendations for change. The IPU has in fact established its own mechanism for taking up individual cases of parliamentarians whose rights have been violated. It recognises that parliamentarians across the world frequently fall victim to human rights violations when exercising their functions as elected representatives, including State harassment, arbitrary arrest, detention, and unfair trial. In response to this trend, in 1976 the Inter-Parliamentary Council adopted procedures to look into

violations of human rights of parliamentarians. The [IPU Committee on the Human Rights of Parliamentarians](#) is mandated to look into such complaints - it can hold hearings, undertake on-site missions and can submit reports and recommendations to the IPC and make these public.

The [Commonwealth Parliamentary Association](#) (CPA) is another international collective which could usefully become a forum for the organised promotion of human rights standards across the Commonwealth by parliamentarians. CPA has already done some work on human rights promotion, most notably in the area of the [right to information](#). The sub-groups of parliamentarians which gather, such as women parliamentarians or parliamentarians from small States, also provide an excellent forum for work on areas such as gender, poverty or other key human rights issues.

### **Study Questions**

1. Why is public participation in parliamentary activities important?
2. What factors can enhance or inhibit this participation?
3. What strategies have some countries introduced to promote diversity in parliament?

### **Recommended Reading**

[Enhancing Access to Human Rights](#), by the International Council on Human Rights Policy

# UNIT 7: BRINGING TREATIES HOME

## Overview

There is great significance in ratifying international human rights treaties and in taking up certain responsibilities that come with it. This unit begins with a call to endorse national commitment to human rights by becoming party to international treaties. It examines the status of treaty ratification, and highlights treaties being ratified in toto, without recording reservations that dilute a country's commitment to protect the human rights of its inhabitants. This Unit also explains the process by which a country submits its reports to treaty monitoring bodies or committees and how national plans of action may be drawn up.

## Learning Objectives

At the end of this unit you will understand:

2. How ratification of international treaties supports the level of human rights protection in a country
3. The process of reporting to treaty bodies
4. How a National Plan of Action on Human Rights can be drawn up

## Commentary

### Promoting ratification of treaties

In many cases the attitude of the regime in power and its key members becomes obvious when, though a country has committed to the general principles on an issue, it steadfastly refuses to sign on to the substantive documents that will create obligations back home. Parliamentarians as much as bureaucrats may be reluctant to sign on the dotted line because it would mean displacing well-entrenched power structures or undertaking radical changes at political risk. Illustratively, as many as [24 countries](#) of the Commonwealth have not yet signed on to the Convention Against Torture, and 51 out of 53 nations haven't agreed to the Optional Protocol which allows visits to places of detention. To ratify means the regime would be subject to regular international reporting about the progress the country has made in abolishing the possibility of torture. Ratification would also require that specific systems have been put in place to ensure that the possibility of torture by State agencies is minimised. In many cases, this would require completely overhauling old and infirm criminal justice systems or at a minimum, prioritising police reform – sometimes too hard a political decision to take.

In still other cases, countries ratify international treaties and take the credit of bringing others on board but neglect to put in place laws and procedures that will make the substance of the treaty, a living reality at home. Parliament therefore has a significant role to play in ensuring that executive intent to become a party to a treaty is backed by substantive national legislation that gives effect to the treaty. In many parts of the Commonwealth, courts are beginning to take notice of moral obligations under international law. The Supreme Court of Canada recognised the obligations of the State under the Convention on the Rights of the Child (CRC) in the

[Baker case](#) even though it was argued that there was no enabling legislation to make the international treaty principles binding in domestic law.

Early and wholehearted ratification of human rights treaties establishes a country's credentials as a responsible member of the community of nations and builds public trust in law-makers as it assures voters that their representatives are genuinely committed to people-oriented governance. As well as the legal obligations that come with ratifying a treaty, doing so can also be the spur to put in place effective systems to further human rights compliance. It also sends a strong signal down the line that there is assured political will to effectuate human rights at home.

### ***Bringing violators to account: Supporting the International Criminal Court***

In July 1998, 120 Member States of the United Nations adopted a treaty to establish - for the first time in the history of the world - a permanent [International Criminal Court](#). This treaty came into force on 1 July 2002, sixty days after sixty States [ratified](#) the ICC Statute. The ICC is a major breakthrough for human rights promotion and protection. A permanent court with a mandate to bring to justice, individuals responsible for the world's most serious crimes, atrocities and mass murders will be able to take action quickly, possibly limit the extent or duration of human rights violations, and by its very existence, act as a deterrent. The Court has a mandate to try individuals rather than States and to hold them accountable for the most serious crimes - genocide, war crimes and crimes against humanity, and eventually, the crime of aggression.

Unfortunately, despite the incredible importance of the ICC in protecting the public and punishing violators, only [27 members](#) of the Commonwealth have ratified the ICC Statute.

Unfortunately, the [status of ratifications](#) of international human rights treaties is mixed and a number of countries have still not signed up to key ones. Nor is it only ratification that is important but also ensuring that the commitment to human rights is not watered down through [reservations](#). Reservations allow States to avoid certain provisions in a treaty – but this goes against the spirit of international cooperation, which is premised on the principle of the universality and indivisibility of human rights and does violence to the ability to bring human rights home.

In order to gear up for international compliance, parliamentarians can ensure programs are in place well *in advance* of signing up to international obligations to prepare the administration for compliance. This was done in the UK prior to its operationalising its new human rights law in 2000. It is not, however, just at the time that the final document is open for signing and ratification that parliamentarians can be involved. Parliamentarians can also actively engage in the development process, encouraging national representatives, relevant United Nations representatives and drafters to include the highest standards of human rights protection and promotion.

### ***From international to national: the case of the UK***

The UK enacted its first ever [Human Rights Act](#) in October 1998 in order to bring the law and practice in line with the European Convention on Human Rights. It was feared that bringing in an Act at home that conformed to the European Convention would affect parliamentary sovereignty and hand supremacy over to the judges. But the Act clearly says that judges cannot overrule parliament. Fears that the Human Rights Act would create interpretive chaos where the Convention's provisions did not conform to the practice and precedent at home have also been allayed by well-crafted decisions, which balance competing interests. This has shown that - in Lord Bingham's [words](#): "*human rights defined in the Convention is not a substitute for the processes of democratic government but a complement to them*".

All this could come about because of [careful preparation](#) that allowed the smooth harmonisation of the Convention and national law. For two years, prior to the Act coming into force, the government supported the largest ever programme of judges training. All judges, tribunal chairs and some 30,000 lay magistrates - for most of whom human rights was hitherto unknown territory - were trained in the Convention and the new Act.

### **Reporting to Treaty Bodies**

Every core treaty has a special human rights committee [Treaty Monitoring Bodies](#), composed of experts nominated by States, to which each country that has ratified the treaty must report on a regular basis, outlining progress made in implementing treaty obligations. The committee reviews the report and dialogues with the official representative of the State to clarify issues. The committee then prepares its 'Concluding Observations', which contain a list of issues and recommendations for the State to consider in realising the rights guaranteed by the treaty.

In reality however, the work of these treaty monitoring bodies is hampered by delays in submitting reports and a hesitancy to share full and complete details about substantive issues. This, coupled with a tentativeness to implement the recommendations of the treaty monitoring body, is a major impediment to making the rights a reality.

In too many countries, reports are prepared solely by bureaucrats with little reference to elected representatives or effective consultation with the public. Parliamentarians must press upon the executive to make the process more participative and transparent and therefore ensure the reports contain a variety of views, including those of civil society. Parliaments can for instance hold debates and public hearings, call in ministers and request documents and report from varied departments and citizens. Members of Parliament can also be included in the national delegation to the monitoring mechanisms so that they better understand any recommendations that are made. A notable example of parliamentary oversight of country reports to treaty bodies is the UK's [Joint Committee on Human Rights](#) which has a responsibility to make sure all key issues are covered and an honest assessment has been captured in the reports.

Several other devices offer themselves in order to ensure more effective compliance with reporting requirements, including simple measures such as an annual list of reports that are due, a timetable for completion and details of how the report will be compiled to ensure inclusion of views from the public and other stakeholders. Involvement of the National Human Rights Institution, one of the countries best-informed sources on the state of human rights protection and any violations, for instance, enables detailed, up-to-date reporting. In Fiji for instance, the [Fiji Human Rights Commission](#) advises the government on its reporting obligation and, without derogating from the primacy of the government's responsibility for preparing those reports, advises on their content. If not satisfied with the report submitted by the state, the Commission prepares a shadow report.

### ***National Support for other UN Mechanisms***

Apart from treaty monitoring bodies or committees, the United Nations also appoints Special Rapporteurs or Special Representatives through the [Office of the High Commissioner for Human Rights](#) to report on the condition of human rights in a country. For instance, the United Nations appointed a Special Rapporteur on the situation of human rights in [Nigeria](#) from 1997 to 1999. The United Nations also appoints Special Rapporteurs, Independent Experts or Special Working Groups on [specific themes](#) such as violence against women, freedom of religion and belief, human rights and extreme poverty, human rights defenders, sale of children, child prostitution and child pornography.

Despite the work of U.N representatives being ultimately beneficial to the people living in the country, they often face resistance and sometimes even open hostility from governments. Human rights can be supported by: facilitating UN representatives' free movement within the country; transparency and ready willingness to share information; and paying heed to U.N reports.

### **Preparing Plans of Action**

Incorporating a suggestion by a Commonwealth member state - Australia - the Vienna Declaration and Programme of Action specifically recommended that "each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights". While relating to a declaration rather than a treaty, this is another example of how documents agreed to internationally, can be the impetus for practical change at a national level.

[National Action Plans on Human Rights](#) aim to identify the series of steps necessary to improve a country's promotion and protection of human rights. Countries all over the world have produced National Action Plans - in the Commonwealth, [Malawi](#), [South Africa](#) and [Australia](#). [New Zealand](#) is also finalising its Plan. Developing a national action plan requires a comprehensive look at the current situation, a realistic recognition of priorities and the setting of practical goals for the future. A plan also identifies key challenges and strategies for addressing these. The Office of the High Commissioner on Human Rights has produced a [Handbook](#) to guide policy-makers.



## Study Questions

1. After a country has ratified an international treaty, what is required to be done a domestic level?
2. What is a reservation to a treaty and why should it be avoided?
3. Who should be consulted in preparing a report to treaty-monitoring bodies?

## Recommended Reading

[\*Treaty Handbook\*](#), United Nations Office of Legal Affairs

[\*Strategy for an Era of Application of International Law – Action Plan\*](#), United Nations Office of Legal Affairs

# UNIT 8: PASSING LEGISLATION FOR HUMAN RIGHTS

## Overview

As the law-making bodies, it is parliaments that ensure international human rights standards are met through domestic legislation. Bringing domestic laws in line with the standards required by treaty commitments usually requires, in the Commonwealth context, parliament to pass legislation that specifically incorporates treaty provisions into domestic law. This Unit also discusses a constitutional Bill of Rights with key human rights protections, and explains that all laws should accord with international law. The importance of prioritising key human rights issues - poverty alleviation, justice sector reform - in budget allocations, providing substantial funds to support the work of national human rights institutions, and guaranteeing a transparent, participatory budget process is also discussed. It concludes by highlighting ways the legislature can support the judiciary to protect human rights, as well as the responsibility of the judiciary to consistently maintain a human rights approach in its decision-making.

## Learning Objectives

1. How international human rights standards can be imbibed into domestic law
2. Focusing budgets to key human rights concerns
3. Identifying ways to support the judiciary in protecting human rights

## Commentary

### ***Bill of Rights: Enshrining Human Rights in the Constitution***

Subject-specific domestic legislation is one way to protect and promote rights. One of the most effective national efforts is through a constitutional Bill of Rights. The national Constitution is the highest law of a country and overrides all other laws. Enshrining human rights in the Constitution therefore gives them enormous legal weight – all other laws must be in consonance with the standards set out in the Constitution.

Most Commonwealth countries have a constitutional Bill of Rights. New Zealand and the UK are examples of countries that have relied upon common law traditions for safeguarding rights but in the modern context have legislated for specific protection of rights. Most Bills of Rights enshrine core values such as respect for human dignity; equality and non-discrimination; and the opportunity to realise one's potential through the exercise of fundamental freedoms. While many focus on civil and political rights, some notable examples, like the Bill of Rights in the [South African Constitution](#) also include economic and social rights. Constitutions should ideally also enshrine the establishment of an independent National Human Rights Institution.

## Passing Complementary Legislation

Ratification of treaties requires that all domestic laws be brought up to the standards of the international commitment made and be in harmony with it. In some countries, such as the United States, this is a simple matter because when a treaty is ratified, it is "self-executing" - the provisions in the treaty automatically become part of domestic law, such that the public can take the State to court if the State has failed to implement the treaty.

In Commonwealth countries though, even where a treaty has been ratified, this does not necessarily mean that the commitments in it can be automatically enforced in domestic courts. This is because while the executive might have the constitutional power to bind the State at international law, only the parliament has the power to change domestic law. As such, parliament must pass legislation to specifically 'incorporate' the treaty provisions into domestic law. One recent example of this was the United Kingdom's enactment of the [Human Rights Act 1998](#), which was specifically enacted to make the rights contained in the [European Convention on Human Rights](#) enforceable in UK courts. Likewise, [Fiji's Human Rights Commission Act, 1999](#) for the purposes of the [Fiji Human Rights Commission](#) describes human rights as rights embodied in the United Nations Covenants and Conventions on Human Rights and includes the rights and freedoms set out in the Bill of Rights.

Despite the obligation to pass laws that are consonant with treaty obligations many domestic considerations prevent or slow their passing. The conflict between personal laws, customary law and prevailing culture has been cited by some countries in explanation as to why they haven't passed laws that conform to treaty standards, although other countries have managed to do so.

## Ensuring All Other Legislation meets Human Rights Standards

In addition to legislation that specifically domesticates international treaties, all laws which parliament passes should be in accordance with international human rights standards. This requirement also applies to the constitutional Bill of Rights, if one exists.

Specific [human rights oversight committees](#) set up to review legislation ensure it conforms to human rights standards. These committees are bolstered by legislation that specifically requires that all legislation meet minimum human rights standards. In the State of Queensland, in Australia, for example, the [Legislative Standards Act 1992](#) enshrines fundamental legislative principles that "must be considered when legislation is drafted so that it does not infringe individual liberties". These principles include whether the legislation is consistent with the principles of natural justice and if it has sufficient regard for aboriginal traditions and customs, or provides for protection against self-incrimination.

In the United Kingdom, the [Human Rights Act 1998](#) specifically requires that all UK legislation should, if possible, fit with the European Convention on Human Rights. Because the UK does not permit judicial review of legislation, the courts cannot strike down inconsistent legislation, but if a court finds that a law is incompatible with the Convention, it can make a "declaration of incompatibility" and Parliament must decide what action to take. An example is when Section 23 of the Anti-Terrorism Crime and Security Act 2001, was [ruled incompatible](#) with the Human Rights Act 1998 and the European Convention on Human Rights, by the highest court in the

country. This section allowed indefinite detention without trial, of foreign nationals suspected of involvement in international terrorism. The Act makes it clear that parliamentarians have a key role to play in ensuring that all legislation is in line with universal standards. The Act also makes it unlawful for a public authority to violate Convention rights, unless it had no choice due to an Act of Parliament. This explicit extension of the duty to respect human rights on to the bureaucracy is a major step forward in creating a domestic environment genuinely respectful of and committed to human rights.

### ***When The Going Gets Tough***

In times of conflict and strife, special laws are sometimes enacted in the name of protecting the life and property of the nation. This has been witnessed in some Commonwealth countries in relation to dealing with insurgents, asylum-seekers or refugees. It has also particularly been seen in the context of the global anti-terror campaign. While living in a low-crime environment or protecting the sovereignty and the integrity of the nation may be a priority, existence of irregular circumstances should not be an excuse to undermine human rights and the rule of law. Granting of carte blanche to the military or police – especially through laws that allow special powers of arrest and detention backed with immunity - to deal with particular situations, often perpetuates cycles of violence and undermines the roots of democracy in a nation.

Care must be taken to ensure that measures to deal with internal conflict or national emergencies do not violate basic human rights standards. One evil cannot be replaced with another. Laws that violate the presumption of innocence; right against self-incrimination; provide for long or indefinite periods of detention; contain harsh bail provisions; and restrict or deny free access to a lawyer of choice fall in this category.

### **Promoting Pro-Human Rights Budgets**

Allocations made in budgets show where a country's priorities lie. Optimum budget allocations towards poverty alleviation, human rights education, justice sector reforms, and socio-economic areas reflect the State's commitment to these areas – and determine whether human rights can be truly upheld and protected. Budget allocations also indicate the relative importance given to institutions such as human rights commissions, minority commissions, women's commissions, police complaints commissions, human rights courts and ombudsmen – both to be established and to be maintained with sufficient resources to properly discharge their duties. Despite a strong mandate and excellent networks, human rights institutions are often unable to function to their true potential due to lack of funds. The difference between tokenism and true commitment of a government to human rights can often be seen through the funds available to these institutions.

These priorities will be brought to the fore through genuine consultation and participation of the people. By providing space for such participation and making sure that these views are incorporated into the budget, governments show their commitment to ensuring that both the process and final document are human-rights friendly. NGOs are increasingly engaging with the process through submissions, as well as analysing the final budget for adherence to human rights and social justice norms. One example is an initiative in [Tanzania](#) that has led to budget guidelines for

government departments now requiring that budget submissions be prepared with a gender focus. Since 1996, the Commonwealth Secretariat has also supported [gender budget initiatives](#) – in the pilot phase of their project, technical assistance was provided to Barbados, Fiji, St Kitts and Nevis, South Africa and Sri Lanka, for projects with the joint support of the Ministry for Finance and Ministry for Women's Affairs.

It must be recognised though that it is not just the community within the country that will influence the budget process, but also international bodies. Donors, for instance, whether through bi-lateral or multi-lateral agreements wield increasing leverage in setting the budgetary agenda in beneficiary countries. The process of developing [Poverty Reduction Strategy Papers](#) (PRSPs), for instance, involves not just national stakeholders, but external development partners as well, particularly the IMF and World Bank. PRSPs aim to bring about a comprehensive national strategy for poverty reduction and describe the macroeconomic, structural and social policies and programs that a country will pursue over several years, as well as external financing needs and the associated sources of financing. These provide an opportunity for all stakeholders to ensure that poverty reduction is designed and implemented through a [Human Rights Framework](#) and that explicit human rights activities are prioritised.

A country's commitment to human rights is also gauged by willingness to contribute to international development agencies that promote human rights, democracy and good governance. Countries quite often make statements committing funds to international agencies but delay in releasing the money. Many crucial bodies such as the Office for the High Commissioner on Human Rights receive some general UN money but require voluntary contributions to function as designed. Financial contributions included in the budget reflect a State's commitment to international human rights.

### **Supporting the Judiciary to Promote and Protect Human Rights**

Judiciaries have often been active promoters of human rights by strategically maximising their position in interpreting legislation and developing common law. As pillars of governance, the legislature and the judiciary share a common goal to promote public welfare through the realisation of human rights. Upholding and protecting rights often involves working in tandem, supporting each other and respecting each other's spheres of competence. As law making bodies, parliaments can create the right conditions to buttress the judiciary's efforts to promote human rights. Examples include voting in adequate budgets that support the setting up of free legal aid systems for the indigent or the setting up of special commissions to review the working of laws or courts. [The Fiji Law Reform Commission](#) has a mandate to develop law that is just, principled, and accessible, and which reflects the aspirations of the peoples of the Republic of the Fiji Islands. Open and transparent appointment procedures for judges also offer opportunities to examine the candidates' demonstrable commitment to progressing the cause of human rights.

It has been affirmed in the [Commonwealth \(Latimer House\) Principles of Three Branches of Government](#) that an independent and merit based appointment procedure that guarantees security of office; sustainable and sufficient funding including appropriate salaries and benefits for judges; and organised, systematic and ongoing training are integral to maintaining judicial integrity and independence, which in addition to being fundamental values of the Commonwealth, propel human rights protection.

Strategic interpretation and development of common law by the judiciary helps international human rights standards seep into domestic law, and public psyche. Judicial decisions that call upon the Executive to fulfill its obligations under international law, and decisions which set the standard to view future policy options must be supported wholeheartedly by elected representatives. The Indian Supreme Court, for instance, scored a considerable victory for human rights in the [Nilabati Behera case](#), when it struck down a reservation by the Indian Government to the International Covenant on Civil and Political Rights to the provision requiring that a victim of unlawful arrest/detention have an enforceable right of compensation. The Court, relying on this international law provision, upheld the right of citizens to monetary compensation for wrongful acts of the State. It is positive that the Executive and the Legislature have supported this decision.

## Study Questions

1. What are the two ways that treaties can be incorporated at a national level after they have been ratified?
2. What is a Bill of Rights?
3. How can parliaments ensure that all legislation meets human rights standards?
4. What action can parliament take to support the work done by the judiciary to protect human rights?

## Recommended Reading

OHCHR [draft guidelines](#) on a human rights approach to poverty reduction strategies

# UNIT 9: USING THE PARLIAMENTARY COMMITTEE SYSTEM

## Overview

Parliamentary committees can enhance levels of human rights protection in-country. This unit describes how committee systems in various Commonwealth countries have broadened their remit to ensure adherence to international human rights standards and treaty commitments. In showing how a range of Commonwealth Parliaments have established committees to promote and protect human rights - several with exclusive human rights mandates – it lists the different types of committees and the impact they can have. As such, this unit is an easy reference for collecting various replicable examples of good practice.

## Learning Objectives

At the end of this unit you will:

1. Understand how to use parliamentary committees to promote human rights friendly law-making
2. Reflect on initiatives taken in different countries to develop parliamentary committees vested with mandates to bring laws and policies in line with international human rights standards

## Commentary

Parliamentary committees are the workhorses of Parliament. Recognising that it is not practical for parliament as a whole to undertake detailed oversight tasks, much of the close examination and careful work of parliament is done in committees: reviewing legislative proposals, scrutinising budgets, examining the policies and programmes of departments, and keeping an effective surveillance over government. Additionally, parliamentary committees are usually empowered to recommend amendments to legislation as appropriate - including improvements to make laws more human rights friendly. Committees with human rights mandates may be set up as long-term 'standing' committees, as sub-committees of standing committees or on an ad hoc basis, sessionally or for a specific purpose like fact finding or investigation. Standing committees or permanent committees are usually set up from one term of parliament to the next and operate on a continuing basis. Sub-committees also operate from one parliament term to another and assist the standing committees. Other types of committees have limited duration and cease to exist on the completion of their objective or on presentation of their final recommendations or report.

Committees provide an opportunity for parliamentarians to really engage with a specific subject in detail in an environment conducive to a deeper consideration of the implications of the proposed legislation. They address a diverse range of human rights issues such as existence of cruel and inhuman punishments in penal laws, lack of adherence to human rights standards in custodial institutions; incidence of human trafficking; child rights issues; outlawing of the death penalty; and domestic violence among other things. Committees play an important role in ensuring international

treaties that are entered into, are effectively drafted and in examining legislation for compliance with human rights principles.

The composition of the committee itself is important and there are usually rules to ensure that a variety of political perspectives are equitably represented on the committee. In [Canada](#), for instance, certain committees, such as the Standing Committee on Access to Information, Privacy and Ethics, even must be chaired by a member of the official Opposition, while one vice chair must be from the ruling party, the other vice chair must be a member of an opposition party other than the official Opposition. More than diversity of just political views, the composition of committees provides an opportunity for parliament to demonstrate its commitment to human rights principles by, where possible, ensuring a membership that is gender-balanced and includes diverse backgrounds.

Committees offer a practical means to incorporate the aspirations of the people into parliamentary processes. At the same time, committees can enable individual parliamentarians to make a contribution to human rights, with less pressure of party politics. Members of the public can usually make submissions and sometimes even presentations to the committee and draw their attention to key human rights issues that may have been overlooked or underestimated. In this context, committees can provide a useful mechanism for taking into account the interests of special groups, like minorities or indigenous peoples. Routinely making final committee reports provides transparency and heightens their impact.

An effective committee is one that will take care to encourage effective public participation, by publicising reviews, holding public hearings, and inviting members of the public to give evidence or to make written submissions. After all, it is not just *what* law is made, but also *how* it is made – and this includes participation of the people. Committees are becoming increasingly open – [New Zealand's](#) system is an example of this as soon after the first reading of a bill, it is publicised in the media. Committee members travel throughout the country and public hearings are held. Respondents are invited to give evidence, and the public is invited to make written submissions. In [Zambia](#) as well, reforms to the Committee system in 1999 have enabled increased public participation. The public and the media can now attend committee sittings and the public can make submissions. This is made more accessible by the Parliament's website giving information on committee sittings, items to be discussed and guidelines for submissions.

### **Committees which Scrutinise Treaties**

As noted above, there is an increasing tendency by domestic courts to take international obligations into account even if they have not been incorporated into national law via specific legislation. Consequently, in some jurisdictions parliaments have responded by trying to implement procedures to enable parliamentary engagement in the treaty-making process, in recognition of the fact that it is increasingly untenable for treaty-making to take place in the absence of greater legislative oversight.

In Jamaica, for instance the [Internal and External Affairs Committee](#) is charged with examining treaties and other international agreements and advising Parliament on their likely impact on the country. The Australian Parliament has established a



[Treaties Committee](#), which is mandated to review and report on all treaty actions proposed by the Government before action is taken. All treaty actions proposed by the Government are tabled in Parliament for a period of at least 15 sitting days (although if a treaty is urgent or sensitive this process can be moderated). When tabled, the proposed treaty is accompanied by a National Interest Analysis (NIA) that explains why the Government considers it appropriate to enter into the treaty. The Committee advertises its reviews, inviting comments, and routinely holds public hearings. At the completion of its inquiries, the Committee presents a report to Parliament with advice to be taken. In New Zealand, the new [Parliamentary Treaty Examination process](#) is incorporated in Standing Orders of Parliament which now require the Government to present and refer key treaties to the House of Representatives prior to ratification, together with an NIA. It also provides for consideration of such treaties by the Foreign Affairs Committee, which is required to report back to the House.

It is not just committee members who play a crucial role, but also ordinary MPs who can make recommendations for consideration. They can usefully encourage parliament and the executive to ensure that all human rights treaties are ratified promptly and comprehensively, and that other international agreements are drafted in accordance with universal standards.

### **General Committees which Scrutinise Legislation**

Standing Committees dedicated to reviewing legislation before it is passed by parliament, include within their mandate the power to examine whether proposed legislation conforms with human rights standards. It is preferable for such scrutiny to take place as early in the process as possible and not to be overlooked in the desire to quickly pass legislation. With legislation in response to 'emergencies' such as terrorist threats there can be a concerning tendency to rush legislation through and either avoid the committees altogether or to give them so little time that they cannot operate effectively. When time is tight, experts with a background in human rights can be very useful to over-burdened politicians.

One example from Australia of these committees is the [Scrutiny of Acts and Regulations Committee](#) of the State of Victoria, which is specifically charged with reporting on whether any Bill directly or indirectly trespasses unduly upon rights or freedoms. This Committee has used this mandate to actively promote and enforce international human rights standards. In 1993, the Committee's adverse findings in respect of the Crimes Amendment Bill 1993 – based primarily on conflicts with the International Covenant on Civil and Political Rights and Convention on the Rights of the Child – led to the withdrawal and redrafting of the legislation.

The mandate of Canada's Standing Joint Committee for the Scrutiny of Regulations (established under the [Rules of the Senate](#) and the [Standing Orders of the House of Commons](#)) specifically includes examining whether all government regulations conform with the Canadian [Charter of Rights and Freedoms](#). This is particularly significant because it recognises that Committees (a) should have a role in reviewing subordinate legislation and (b) such reviews should be alert to ensuring that regulations do not undermine pro-human rights provisions in primary legislation. The value of such a committee can be seen by a report tabled by the Committee in November 1991 which proposed the disallowance of provisions of the *Indian Health Regulations* as the Committee argued this infringed on constitutionally protected

rights and freedoms. The House of Commons agreed without debate, and the Government complied by revoking the provisions.

Parliamentarians are encouraged to ensure that the mandates of existing parliamentary review committees include a specific requirement to examine whether Bills and Regulations conform to human rights standards. MPs who sit as members of review committees can in any case encourage their committee to recognise an implied duty to ensure all proposed laws comply with human rights standards. This should be a relatively straightforward matter for committees operating in jurisdictions with a constitutional Bill of Rights. As the constitution is the supreme law of the land, parliamentarians have a clear duty to make sure that any laws that parliament enacts are in accordance with the constitution.

### **Specific Human Rights Committees**

A number of parliaments in the Commonwealth have created specific committees to deal with human rights issues. The creation of a dedicated parliamentary human rights committee - or at the very least, the expansion of the mandate of an existing committee – with a standing remit to review all legislation for compliance with universal human rights standards is a key means of institutionalising the role of parliamentarians as human rights protectors. These can be enhanced by preparing clear instructions on their remit, as vague terms of reference can undermine the workings of committees.

Such committees reduce the likelihood of legislation inadvertently breaching standards and can work to ensure that the government discharges all of its obligations to international treaty monitoring bodies. The [UK Joint Committee on Human Rights](#) performs this role, scrutinising all Bills with a human rights lens and overseeing the government's treaty obligations. It has also used its power to prepare reports on key issues such as how the gaps in the enforcement of economic, social and cultural rights can be filled by domestic protective legislation and the value of a rights based approach to poverty. By putting all its meetings and documents on the web it expands knowledge of human rights and demonstrates its own commitment to openness.

#### ***Protecting the Rights of the Detained***

The report of the United Kingdom's Joint Committee on deaths in custody, for example, examines the causes of deaths in custody, considers what steps could be taken to prevent such deaths, and how better to protect the human rights of vulnerable people held in State custody. The report also considers the standards that apply, the extent of the problem and the number of people who die in detention. It places duties on the State to conduct independent investigations into such deaths and undertake steps to prevent deaths in custody. The report also considers the wider issues of overcrowding in prisons due to sentencing practices, the availability of satisfactory health care for vulnerable detainees and the alternative measures available to prison sentences. The comprehensive report recommends adequate training for prison staffers, developing good practice and guidelines as envisaged by the human rights norms applicable under the European Convention of Human Rights.

Mindful of the fact that the Canadian Senate is responsible for national interest, regional interest and minority interest, the [Canadian Senate Standing Committee on](#)

[Human Rights](#) has a general mandate to study human rights issues. Though the committee at present does not look at specific violations, it may do so in future if the members so wish. Its report titled: [Promises to Keep: Implementing Canada's Human Rights obligations](#) which was tabled on December 31, 2001 documented Canada's achievements but also the shortcomings of Canada's practices, procedures, and legislation in the field of international human rights. Particularly noted, was the lack of enabling legislation for international treaties and the lack of parliamentary input. Also noted was the fact that while Canada is a member of the Organization of American States, it has yet to ratify the OAS Convention on Human Rights. Canada also has a Standing Committee on Justice and Human Rights in the House of Commons, which in 2003, recommended an [amendment](#) to the Criminal Code providing for the punishment of incitement to hatred, which was then passed by the House of Commons.

Dedicated human rights committees can also oversee government activities to ensure that departments are implementing their programs in a rights-friendly manner. This includes Sierra Leone's Parliamentary Oversight Committee on Human Rights; as well as the [Zambia Committee on Legal Affairs, Governance, Human Rights and Gender](#), which is mandated to oversee the activities of key ministries, the Permanent Human Rights Commission and other government departments and agencies directly related to the operations of the Committee. The Committee carries out detailed scrutiny of their activities and makes appropriate recommendations. It also recommends review of government policy or existing legislation and may consider draft bills when referred by the House. Of note is that the Committee will follow up on its recommendations - in 2002 for instance, it toured prisons and gave recommendations; and then in 2003 assessed the response to these. In line with the recommendations, sanitation improvements had begun, and disciplinary action had been taken against a corrupt court marshal. Cameroon also has a committee on constitutional affairs, human rights and liberties, justice, legislation and administration.

Establishing a dedicated human rights committee sends a strong message to the public that parliament is serious about this critical issue and can focus public and parliamentary attention on human rights issues, in addition to providing a key mechanism for facilitating civil society engagement. However, sometimes the work of parliamentary committees can be severely restricted if they are not vested with the powers to enforce attendance of witnesses, especially if they are aligned with the government. In South Africa, the significance of committees as vehicles of democratic governance has been duly recognised as committees are empowered to summon any person to give evidence under oath or produce a document, receive petitions or submissions from any interested parties, conduct public hearings, decide their own procedures, and meet on any day or at any time whether the House is in session or not.

In addition, it is important that committees are vested with powers to carry out on-site visits to detention centers or correctional institutions to gauge the true extent of the government's compliance with human rights standards.

### ***Sri Lanka Committee on Public Petitions***

Other committees, while not specific human rights committees, can also support human rights, such as Sri Lanka's [Committee on Public Petitions](#). It looks into public petitions presented to Parliament by MPs on rights violations or other injustices by an official of a public institution. The Committee can call for oral evidence from officials and relevant documents, request the petitioner to give evidence, organise on-site inquiries and refer a case to the Ombudsman. The authority concerned is directed to follow the recommendations of the Committee and these are included in its reports to Parliament, which are then published.

Parliamentary committees can prove useful in building specific human rights knowledge among legislators, in addition to providing a mechanism for parliamentary oversight of national human rights institutions or other oversight bodies. Namibia's Parliament has a standing committee not only to oversee the working of the Ombudsman - which acts as a watchdog for the protection of the rights of the individual against abuses by the administration - but also to gauge the response of government offices, ministries and agencies to the Ombudsman's office. In addition to considering the annual and other reports of the Ombudsman that are laid before the National Assembly, the Committee also examines the policies and methodologies that are followed during investigation of complaints and can even recommend to the Assembly whether specific cases need to be referred back to the Ombudsman for reinvestigation.

Such committees function most effectively if they work in close co-operation with other parliamentary committees, such as those dealing with constitutional affairs, justice, foreign or social affairs. Such collaborations mainstream human rights into parliament's work, and ensure that human rights issues receive the concentrated attention they merit.

Follow-up to the reports of committees is important. Usually the government is obliged to respond to the recommendations of a committee - which may be to alter or disallow a bill because it does not conform to human rights standards; provide for certain safeguards to protect those lodged in custodial institutions; or be as generic as promoting human rights education. In Canada for example, a response is required from the government within [150 days](#) under the Standing Orders of the House of Representatives. In the UK, departments must reply within 60 days, unless a longer period has been agreed by the committee. The government's response also requires follow-up, which can involve parliamentary debate or the committee can ask the minister concerned to give further evidence.

### **Study Questions**

1. What are the activities of parliamentary committees dedicated to human rights?
2. What are some examples of how human rights protection has improved through the work of parliamentary committees?

### **Recommended Reading**

[Parliamentary Human Rights Mechanisms](#)

# UNIT 10: ESTABLISHING NATIONAL HUMAN RIGHTS BODIES

## Overview

This Unit examines the significance of national human rights bodies in protecting and promoting human rights. Through diverse examples it illustrates the various bodies that can be set up by parliament or government to safeguard individual and group rights. It explains National Human Rights Institutions and the internationally recognised set of principles used as the basis for their establishment. It also talks about other special commissions including commissions of inquiry that may be set up to address specific human rights violations.

## Learning Objectives

At the end of this unit you will:

1. Understand the types of bodies outside of parliament that can be set up by the parliament to protect and promote human rights.
2. Be aware of examples of these bodies in other jurisdictions that could be replicated.

## Commentary

Parliament has the power to create agencies outside of parliament that are tasked with promoting and protecting human rights. These include National Human Rights Institutions, Ombudsman and specific sectoral commissions and law commissions that constantly review and recommend legislative changes.

Regrettably, once established many are under-resourced financially and in terms of staff. Often their reports and recommendations are not tabled, or disregarded and their [independence from political power](#) curbed. Nevertheless ensuring strong, autonomous, well-resourced bodies with 'teeth', mandated to promote and protect human rights and monitor compliance is another means by which parliamentarians can bring human rights home and ensure a culture of human rights becomes embedded in governance and society.

## National Human Rights Institutions

[Commonwealth Jurisdictions](#) have established National Human Rights Institutions (NHRI). These vary in name, role, structure and effectiveness, but what they have in common is their power as a statutory body, mandated to not only promote human rights, but also notably to investigate alleged violations of human rights. An effective NHRI is the chief body a state can provide to its citizens for seeking recourse, should their rights be violated.

A basic set of internationally recognised standards, known as the [Paris Principles](#), provides the bare minimum for the establishment and operation of NHRIs. The key criteria of the Paris Principles are that the NHRI:

- is independent, and that this is guaranteed by statute or constitution;
- is autonomous from government;
- is plural and diverse, including in membership;
- has a broad mandate which is based on universal human rights standards;
- has adequate powers of investigation; and
- has sufficient resources to carry out their functions.

The Commonwealth has also developed a set of [Best Practice Principles](#); and the [Abuja Guidelines on the Relationship Between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions](#) outlines the important relationship between these bodies and suggestions for further developing this relationship in a Commonwealth context.

Some constitutions specifically provide for the creation of the NHRI - South Africa for instance. Elsewhere, Parliament has the power to create an NHRI through legislation. NHRI mandates go beyond examining individual cases to looking at conditions that create human rights violations, to research and training, and importantly to public education on human rights. NHRIs can usually only make recommendations on cases, rather than enforce its own orders or force the government into action this means that Parliament has a particular responsibility to closely monitor the NHRI's reports to Parliament and take action to prevent further such abuses.

Importantly, broad mandates allow NHRIs to examine not just narrow areas such as equality and discrimination but the whole gamut of rights. However, sometimes specific situations or themes require special attention. Australia, for instance, appointed an [Aboriginal and Torres Strait Islander Social Justice Commissioner](#) in response to the findings of the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into Racist Violence, and in response to the social and economic disadvantage faced by Indigenous Australians. The Commissioner who is a member of Australia's NHRI, the [Human Rights and Equal Opportunity Commission](#), puts indigenous issues before the Federal Government and the Australian community to promote understanding and respect for the rights of Indigenous Australians.

Parliamentary responsibility includes ensuring that the NHRIs' reports are received promptly, debated and discussed at length and that recommendations are acted upon including enacting policies and laws to ensure their implementation. In some countries, this is done through a specific committee. In Sri Lanka a [Select Committee on Human Rights](#) reviews the functioning of the Human Rights Commission.

### **Subject Specific Commissions**

The work of National Human Rights Institutions can be supported by additional subject-specific commissions that give prominence to a particularly important human rights issue. They are also a practical way of drawing in quality expertise, and ensuring that sufficient funds are dedicated to dealing with human rights issues that may be particularly challenged in the national context.

Examples of these in the Commonwealth include Pakistan's [National Commission on the Status of Women](#) with the mandate to review all laws, rules and regulations affecting the rights of women and make recommendations towards ending discrimination and achieving gender equality. The South African [Commission on Gender Equality](#) is a constitutional body that monitors all sectors of society to ensure that they are promoting gender equality. The Commission carries out research into all existing legislation from a gender perspective and also scrutinizes all impending laws with the same purpose.

The mandate of the United Kingdom's [Commission for Racial Equality](#) extends beyond examining government human rights violations and includes the activities of private sector bodies too. The Commission gives advice to people who think they have suffered discrimination or harassment and promotes policies and practices to help ensure equal treatment for all in both private businesses and public organisations.

## **Ombudsman**

Historically, the Offices of the Ombudsman have dealt mainly with individual cases of maladministration. In recent years however, as human rights have increasingly been recognised as being central to effective democracy and good governance, the mandates have broadened to encompass the government's performance in protecting human rights. This is particularly significant because the Ombudsman is an independent and impartial body, and usually has powers to make recommendations directly to Parliament and/or to mediate disputes. A recognition of the importance of following up on these recommendations is seen in [Namibia](#) where the 1990 Ombudsman Act of 1990 set up a Standing Committee on the Reports of the Ombudsman to consider the reports.

Even where a human rights mandate is not explicitly mentioned in many of the Ombudsman Acts, human rights issues are often dealt, for example, when complaints are made against the police and/or prison authorities. Ombudsmen are also increasingly assuming responsibilities in the area of promoting human rights, through educational activities and information programmes. In [Lesotho](#), one of the objectives of the office of the Ombudsman is to develop and implement "a client driven public awareness programme on fundamental human rights".

In some countries in Eastern Europe, specific Human Rights Ombudsmen have been established. In the Commonwealth, while not specific to human rights, many countries have established Ombudsmen – some with a specific sectoral mandate, while others have more general oversight powers. In Fiji, the link between the Ombudsman and human rights protection is very clear – the Ombudsman is also the constitutionally mandated Chairperson of the [Fiji Human Rights Commission](#). Ghana's [Commission on Human Rights and Administration of Justice](#) is actually a combination of a national human rights institution and an ombudsman. It not only looks at violations of human rights by serving public officers but also examines complaints about unequal access to recruitment or services by State agencies, corruption and misappropriation of public money by officials, in addition to looking at practices and actions by private persons and enterprises that violate constitutional rights and freedoms.

In Papua New Guinea, the Ombudsman Commission has recently set up a specific Human Rights Unit to manage the increasing number of human rights cases the Office has been receiving. In Malawi, the Ombudsman is mandated to investigate and take legal action against government officials responsible for human rights violations and other abuses. In South Africa, the [National Public Protector](#), as the office of the Ombudsman is called, can among other things investigate 'improper prejudice suffered' as a result of 'the violation of a human right'.

Notably, Ombudsmen are particularly significant as human rights protectors in small states, where financial and human resources may militate against setting up both an NHRI and an Ombudsman. Where Ombudsman offices already exist, urgent consideration should be given to specifically including human rights in their mandate, along with additional financial resources to enable the Ombudsman to properly fulfil this. Their recommendations on human rights issues can be seriously considered by parliament and actioned as a priority.

### **Ad Hoc Commissions of Inquiry**

Ad hoc committees and commissions are sometimes set up outside parliament to examine issues of current or on going concern. They may sit in closed or open session and examine an issue in minutiae, call for evidence from government bodies and civil society and take expert and lay opinion. Illustratively, ad hoc commissions can examine particular cases or patterns of human rights violations, such as ethnic and race riots, regime violence or systematic government failure to protect the rights of citizens. For instance, the Ugandan Government established a [Commission of Inquiry](#) in 1986 to investigate the human rights abuses committed by past governments from independence till the date it seized power. This culminated in a 720 page final report, including recommendations to incorporate human rights education in schools, universities, and army training. In the Maldives in 2003, a [Presidential Commission](#) was appointed to look into the death of Hassan Evan Naseem, which sparked off prison riots that later spilled into the streets.



### ***Openness and Transparency: Key to Human Rights and Good Governance***

Statutory commissions of inquiry are meant to examine, clarify and inform on matters of public concern. Their value rests on the confidence they enjoy with the public and their ability to provide well-founded recommendations that will be acted upon by the executive. However, in many countries, legislation and the terms of reference of a commission may require that its report be handed over to the executive and may not ever be laid before parliament. The National Human Rights Institution of one country, for instance, has been prevented from releasing its annual report on the state of human rights and the summary of its activities to the public, and was only permitted to submit the report to the Head of State. Such refusal to share findings may be because findings ostensibly affect national security or could significantly embarrass the government – whatever the reason, the refusal to share with elected representatives and the public at large inevitably casts a shadow over the credibility of the Commission and the government's functioning.

The tendency toward secrecy is diminishing in countries with [right to information laws](#). Access to inquiry documents highlights areas ripe for reform and correction and - after the initial general condemnation - leads to much greater public knowledge of government functioning, greater willingness to engage in their democracy and a better understanding of the challenges faced by ruling regimes.

## **Study Questions**

1. What is the role of a National Human Rights Institution?
2. What are the Paris Principles and what do they contain?
3. How can the establishment of an Ombudsman support human rights?
4. What should happen with the reports of commissions and other such bodies?

## **Recommended Reading**

The [Abuja Guidelines](#) on the Relationship Between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions

[Commonwealth NHRI Best Practice](#)

[International Ombudsmen Institute](#)

## **National Human Rights Institutions in Commonwealth countries**

While there are 20 National Human Rights Institutions in Commonwealth countries, not all of these fully abide by the Paris Principles. It should also be noted that some countries also have State-level Human Rights Commissions.

AUSTRALIA: <http://www.hreoc.gov.au>

BERMUDA: No website

CAMEROON: No website

CANADA: <http://www.chrc-ccdp.ca>

FIJI ISLANDS: <http://www.humanrights.org.fj>

GHANA: <http://www.chraighana.org>

INDIA: <http://www.nhrc.nic.in>

KENYA: <http://www.knchr.org/>

MALAWI: <http://www.malawihumanrightscommission.org>

MALAYSIA: <http://www.suhakam.org.my>

MALDIVES: <http://www.hrcm.org.mv>

MAURITIUS: <http://nhrc.gov.mu/english/index.htm>

NEW ZEALAND: <http://www.hrc.co.nz>

NIGERIA: <http://www.nigeriarights.org>

NORTHERN IRELAND: <http://www.nihrc.org>

SOUTH AFRICA: <http://www.sahrc.org.za>

SRI LANKA: <http://www.hrc-srilanka.org>

TANZANIA: No website

UGANDA: <http://www.uhrc.org>

ZAMBIA: No website

## CONCLUSION

As illustrated in the preceding units, there is much that parliamentarians can do to make human rights a practical reality, particularly for people living within their country, but also for those who live beyond its geographical borders. However, it is imperative to note that the active protection, promotion and realisation of human rights is a multi-pronged and ongoing process. Simply passing a law or ratifying a treaty, for instance, will not lead to greater permeation of human rights. These actions have to be accompanied by efforts to ensure that those who are given the responsibility of upholding and protecting the law are trained and fully aware of the import of the law; that they have access to means that will help in practical realisation of the human rights standards that the law seeks to uphold; that government policies and actions support the upholding of these principles; and that there is recourse for violation.

It is also significant to note that the concept of human rights is ever evolving. Contemporary standards that are accepted and respected today by the international community may not have been in vogue or considered accepted practice until very recently. The period since 1948 – when the Universal Declaration of Human Rights was adopted by the United Nations General Assembly – has seen extraordinary developments in human rights standards and the processes for upholding them. New international standards are constantly being developed such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1990 or the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2002. Equally, it is also relevant, given the ever-increasing linkages in trade, aid and development that previously laid down international standards in respect of economic, social and cultural rights be revisited and reinforced.

The period since 1993, when the Paris Principles were adopted by the General Assembly of the United Nations has seen a proliferation of national human rights institutions across the world and initiatives to make them more effective. Laws and constitutions are being amended or redrawn across the world to encapsulate human rights protections that have come to be entrenched in contemporary human consciousness. The recently drawn up constitutions of Fiji and South Africa are quite notable in this respect.

Parliamentarians in their role as human rights protectors therefore need to keep abreast of international developments in the field of human rights. A country's adherence to the international human rights regime not only fulfils the greater aspirations of its people but also significantly enhances its status as a conscientious and responsible member of the international community. As trustees of people's combined aspirations, parliaments have a responsibility to forge new tools, develop new mechanisms and espouse human rights causes. As emissaries of democracy, parliamentarians must also exercise oversight of both governmental and non-governmental spheres and ensure that both State and non-State actors do not waver from commitment to a human rights regime. In fact, levels of human rights protection and preservation of the sanctity of the human rights discourse within a country are largely determined by the interest taken by elected representatives in upholding and realising human rights.

## RATIFICATION OF INTERNATIONAL CONVENTIONS

	ICESCR		ICC PR - OP		ICCPR 1	ICCP R - OP 2	CRC	CER D	CAT	CAT -OP	CED AW	CED AW - OP	MWC
	ICESCR	ICCPR	PR - OP	ICCP R - OP 2									
<b>Antigua &amp; Barbuda</b>	N	N	N	N	Y	(d)	(a)	N	(a)	N	N	N	
<b>Australia</b>	Y	Y	(a)	(a)	Y	Y	Y	N	Y	N	N	N	
<b>The Bahamas</b>	N	N	N	N	Y	(d)	N	N	(a)	N	N	N	
<b>Bangladesh</b>	(a)	(a)	N	N	Y	(a)	(a)	N	(a)	Y	(s)	N	
<b>Barbados</b>	(a)	(a)	(a)	N	Y	(a)	N	N	Y	N	N	N	
<b>Belize</b>	(s)	(a)	N	N	Y	Y	(a)	N	Y	(a)	(a)	N	
<b>Botswana</b>	N	Y	N	N	(a)	(a)	Y	N	(a)	N	N	N	
<b>Brunei Darussalam</b>	N	N	N	N	(a)	N	N	N	N	N	N	N	
<b>Cameroon</b>	(a)	(a)	(a)	N	Y	Y	(a)	N	Y	Y	N	N	
<b>Canada</b>	(a)	(a)	(a)	(a)	Y	Y	Y	N	Y	(a)	N	N	
<b>Cyprus</b>	Y	Y	Y	(a)	Y	Y	Y	(s)	(a)	Y	N	N	
<b>Dominica</b>	(a)	(a)	N	N	Y	N	N	N	Y	N	N	N	
<b>Fiji Islands</b>	N	N	N	N	Y	(d)	N	N	Y	N	N	N	
<b>The Gambia</b>	(a)	(a)	(a)	N	Y	(a)	(s)	N	Y	N	N	N	
<b>Ghana</b>	Y	Y	Y	N	Y	Y	Y	N	Y	(s)	Y	N	
<b>Grenada</b>	(a)	(a)	N	N	Y	(s)	N	N	Y	N	N	N	
<b>Guyana</b>	Y	Y	(a)	N	Y	Y	Y	N	Y	N	(s)	N	
<b>India</b>	(a)	(a)	N	N	(a)	Y	(s)	N	Y	N	N	N	
<b>Jamaica</b>	Y	Y	*	N	Y	Y	N	N	Y	N	N	N	
<b>Kenya</b>	(a)	(a)	N	N	Y	(a)	(a)	N	(a)	N	N	N	
<b>Kiribati</b>	N	N	N	N	(a)	N	N	N	(a)	N	N	N	
<b>Lesotho</b>	(a)	(a)	(a)	N	Y	(a)	Y	N	(a)	Y	Y	N	
<b>Malawi</b>	(a)	(a)	Y	N	(a)	(a)	(a)	N	(a)	(s)	N	N	
<b>Malaysia</b>	N	N	N	N	(a)	N	N	N	Y	N	N	N	
<b>Maldives</b>	N	N	N	N	Y	(a)	(a)	(s)	(a)	N	N	N	
<b>Malta</b>	Y	(a)	(a)	(a)	Y	Y	(a)	Y	(a)	N	N	N	
<b>Mauritius</b>	(a)	(a)	(a)	N	(a)	(a)	(a)	(a)	Y	(s)	N	N	
<b>Mozambique</b>	N	(a)	N	(a)	Y	(a)	(a)	N	(a)	N	N	N	
<b>Namibia</b>	(a)	(a)	(a)	(a)	Y	(a)	(a)	N	(a)	Y	N	N	
<b>Nauru</b>	N	(s)	(s)	N	(a)	(s)	(s)	N	N	N	N	N	
<b>New Zealand</b>	Y	Y	(a)	Y	Y	Y	Y	(s)	Y	Y	N	N	
<b>Nigeria</b>	(a)	(a)	N	N	Y	(a)	Y	N	Y	Y	N	N	
<b>Pakistan</b>	N	N	N	N	Y	Y	N	N	(a)	N	N	N	
<b>Papua New Guinea</b>	N	N	N	N	Y	(a)	N	N	(a)	N	N	N	
<b>Samoa</b>	N	N	N	N	Y	N	N	N	(a)	N	N	N	
<b>Seychelles</b>	(a)	(a)	(a)	(a)	(a)	(a)	(a)	N	Y	(s)	(a)	N	
<b>Sierra Leone</b>	(a)	(a)	(a)	N	Y	Y	Y	(s)	Y	(s)	(s)	N	

<b>Singapore</b>	N	N	N	N	(a)	N	N	N	(a)	N	N
<b>Solomon Islands</b>	(d)	N	N	N	(a)	(d)	N	N	(a)	(a)	N
<b>South Africa</b>	(s)	Y	(a)	(a)	Y	Y	Y	N	Y	N	N
<b>Sri Lanka</b>	(a)	(a)	(a)	N	Y	(a)	(a)	N	Y	(a)	(a)
<b>St. Kitts &amp; Nevis</b>	N	N	N	N	Y	N	N	N	(a)	N	N
<b>St. Lucia</b>	N	N	N	N	Y	(d)	N	N	(a)	N	N
<b>St. Vincent &amp; The Grenadines</b>	(a)	(a)	(a)	N	Y	(a)	(a)	N	(a)	N	N
<b>Swaziland</b>	(a)	(a)	N	N	Y	(a)	(a)	N	(a)	N	N
<b>Tanzania</b>	(a)	(a)	N	N	Y	(a)	N	N	Y	N	N
<b>Tonga</b>	N	N	N	N	(a)	(a)	N	N	N	N	N
<b>Trinidad &amp; Tobago</b>	(a)	(a)	*	N	Y	Y	N	N	Y	N	N
<b>Tuvalu</b>	N	N	N	N	(a)	N	N	N	(a)	N	N
<b>Uganda</b>	(a)	(a)	Y	N	Y	(a)	(a)	N	Y	N	(a)
<b>United Kingdom</b>	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
<b>Vanuatu</b>	N	N	N	N	Y	N	N	N	Y	N	N
<b>Zambia</b>	(a)	(a)	(a)	N	Y	Y	(a)	N	Y	N	N

**Key:**

Y = signed and ratified

\* = signed but later denounced

N = not signed, not ratified, not acceded

(a) = acceded

(s) = signatory only

(d) = succession

(r) = ratified

ICESCR International Covenant on Economic, Social and Cultural Rights

ICCPR International Covenant on Civil and Political Rights

ICCPR-OP 1 First Optional Protocol to the ICCPR on the right of individual petition

ICCPR-OP 2 Second Optional Protocol to the ICCPR on the abolition of the death penalty

ICERD International Convention on the Elimination of All Forms of Racial Discrimination

CEDAW International Convention on the Elimination of All Forms of Discrimination Against Women\

CEDAW-OP Optional Protocol to CEDAW on the right of individual petition

CRC Convention on the Rights of the Child

CRC-OP 1 Optional Protocol to the CRC on the involvement of children in armed conflict

CRC-OP 2 Optional Protocol to the CRC on the sale of children, child prostitution and child pornography

CAT Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

MWC International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

*Information taken from website of the Office of the High Commissioner for Human Rights (March 2006)*