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# Parliaments as Human Rights Actors: The Potential for International Principles on Parliamentary Human Rights Committees

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## ABSTRACT

Parliaments have long been overlooked as national human rights actors. Yet given their powers to oversee the executive, and functions that can ensure laws, policy and practice are in compliance with the state's international human rights commitments, they have significant potential in supporting the international human rights system and improving the implementation of international standards at the domestic level. Building on previous UN Human Rights Council and General Assembly resolutions encouraging human rights engagement by parliaments, in June 2018 the Office of the High Commissioner for Human Rights (OHCHR) published a set of draft principles aimed at strengthening the interaction of parliaments with the national and international systems, and placing them as an active part of the national human rights system through the establishment of dedicated parliamentary human rights committees. In the context of these ongoing efforts, this article considers the potential for the new (soft) standards for parliamentary human rights mechanisms, critically assessing the UN initiative. It discusses the challenges inherent in formal parliamentary engagement on human rights through committees, particularly at the international level, argues for necessary safeguards, and makes proposals for further research and institutional initiatives to solidify parliaments' role as effective national human rights actors.

## KEYWORDS

Parliaments; human rights; Paris Principles; National Human Rights Institution; NHRI; parliamentary committee; UN Treaty Bodies

## Introduction

Parliaments are one of the domestic actors being promoted by the UN as a critical part of the national human rights system. Long overlooked as national human rights actors, the UN's push for greater parliamentary engagement has recently crystallised into promoting the creation of dedicated national parliamentary focal points in the form of human rights committees. This initiative raises important questions concerning the potential for and challenges to parliamentary engagement in bridging the implementation gap identified in the introduction to this special issue.

In order to encourage parliaments to participate systematically with human rights issues, a set of proposals have been drafted at the UN level. In June 2018, the UN

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Office of the High Commissioner for Human Rights (OHCHR) proposed draft principles on parliamentary engagement on human rights; the Draft Principles on Parliaments and Human Rights (hereinafter the 2018 draft principles).<sup>1</sup> This is a significant development representing the culmination of efforts that have been running at the UN level, including at the General Assembly and the Human Rights Council, for a number of years in an attempt to increase the engagement of parliaments with human rights both at the national level, and particularly with the international human rights system.

The 2018 OHCHR report accompanying the draft principles emphasises the rationale for their adoption, asserting that '[p]arliaments are cornerstones of national human rights protection systems'.<sup>2</sup> According to the report, the national protection system includes 'as a minimum' an independent judiciary, human rights-respecting law enforcement and corrections officers, an independent national human rights institution, '... systems for the protection of minorities and the most vulnerable groups' and '... freedom for human rights defenders and media professionals to undertake investigative work'.<sup>3</sup> Within this, parliaments play a central role. The report emphasises that the national system requires '... a parliament that contributes to the application of international human rights obligations and that has an oversight function with respect to human rights'.<sup>4</sup> The 2018 draft principles propose how parliaments can achieve this; through the establishment of a dedicated human rights mechanism, a human rights committee, which would carry out a range of functions and engage with national and international actors to oversee the implementation of international human rights standards.

The 2018 draft principles draw on and reflect certain key features of the UN Paris Principles<sup>5</sup> that govern the operation of National Human Rights Institutions (NHRIs), signalling that the draft principles are intended as another step in the UN's overall push to promote autonomous domestic actors to improve the implementation of international standards. These two components; the promotion of a dedicated mechanism and the reflection of the Paris Principles suggesting autonomous functioning and participation at the international level, raise questions about the potential and challenges in operationalising the 2018 draft principles in practice in order to bridge the implementation gap.

While parliaments can potentially play a vital role in overseeing the actions of the executive and promoting accountability, as well as ensuring that laws, policy and practice are in compliance<sup>6</sup> with international human rights standards,<sup>6</sup> around the world many parliaments are not actively engaged in human rights issues. This represents a gap in the national human rights protection framework. As highlighted by the Australian Human Rights Commission, particularly where there is a lack of comprehensive national human rights legislation '... human rights protection ... takes place primarily at the

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<sup>1</sup>Contribution of parliaments to the work of the Human Rights Council and its universal periodic review: Report of the Office of the United Nations High Commissioner for Human Rights, 17 May 2018, UN Doc A/HRC/38/25 (hereinafter the 2018 OHCHR report), annex.

<sup>2</sup>Ibid. para 18.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly Resolution 48/134 of 20 December 1993.

<sup>6</sup>K Roberts Lyer and P Webb, 'Effective Parliamentary Oversight of Human Rights' in M Saul, A Follesdal and G Ulfstein (eds), *The International Human Rights Judiciary and National Parliaments: Europe and Beyond* (Cambridge University Press 2017) 32.

policy level and in the legislative process' making parliament's role essential.<sup>7</sup> Further, as Saul found, at the national level, parliaments tend to underperform on human rights:

... there are indications that, even in high-quality democracies (defined, for example, by the Freedom House and Polity IV scales), parliaments are not performing well on human rights. They are not sufficiently engaging with human rights, in a way that makes full use of their democratic qualities, or the connections with the international human rights system.<sup>8</sup>

The 2018 draft principles propose the establishment of dedicated parliamentary human rights committees as a means of filling this gap at the national level.

A significant part of the UN's promotion of domestic actors to bridge the implementation gap centres on how these actors participate at the international level. The 2018 draft principles focus not only on the national level, but promote specific engagement between parliamentary human rights committees and the international human rights mechanisms. Yet, as will be seen below, parliaments have rarely participated directly in the international human rights system in any *formal* way, meaning that such engagement would be largely novel. Further, autonomous direct engagement by a parliamentary mechanism may pose considerable challenges, as will be discussed below.

There is also an assumption underlying the 2018 draft principles that parliamentary engagement is positive and that parliamentary committees can be effective. However, the study of parliaments and human rights is a still-emerging field, meaning that, with notable exceptions, their role and effectiveness in dealing with human rights is relatively under-researched.<sup>9</sup> There is thus a corresponding lack of evidence to support this assumption, meaning that a cautious approach is warranted and mitigating measures, such as those proposed in this article, should be considered.

Building on research in this area since 2013,<sup>10</sup> including on the issue of effectiveness, this article considers the prospects and challenges raised by the 2018 draft principles in

<sup>7</sup>Australian Human Rights Commission, Submission to the OHCHR on 'Parliaments as promoters of human rights, democracy and the rule of law' 4 May 2018, 1.

<sup>8</sup>Matthew Saul, 'Promoting the Human Rights Role of Parliaments' in M Saul, A Follesdal, and G Ulfstein (eds), *The International Human Rights Judiciary and National Parliaments: Europe and Beyond* (Cambridge University Press 2017), 140, referencing M Hunt, HJ Hooper and P Yowell (eds), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Hart 2015) 2. See also J Hiebert, 'Legislative Rights Review' in Hunt, Hooper and Yowell, *Parliaments and Human Rights*, 41; JH Hiebert and JB Kelly, *Parliamentary Bills of Rights: The Experiences of New Zealand and the United Kingdom* (Cambridge University Press 2015) 411; and I Schwarz, 'The Work of the Inter-Parliamentary Union' in Hunt, Hooper, and Yowell, *Parliaments and Human Rights*, 331.

<sup>9</sup>Notable exceptions include the body of work by Janet Hiebert, including Hiebert, 'Interpreting a Bill of Rights: The Importance of Legislative Rights Review' (2005) 35 *British Journal of Political Science* 235; Hiebert, 'Parliament and the Human Rights Act: Can the JCHR Help Facilitate a Culture of Rights?' (2006) 4 *International Journal of Constitutional Law* 1; Hiebert, 'Parliamentary Bills of Rights: Have They Altered the Norms for Legislative Decision-Making?' in Gary Jacobsohn and Miguel Schor (eds), *Comparative Constitutional Theory* (Edward Elgar 2018). As well as research by Hunt, Hooper and Yowell, such as Hunt, Hooper and Yowell, *Parliaments and Human Rights* (n 8). See also, Philip Alston (ed), *Promoting Human Rights Through Bills of Rights* (Oxford 1999); Lester, 'Parliamentary Scrutiny of Legislation Under the Human Rights Act 1998' (2002) 33 *Victoria University of Wellington Law Review* 1, 16–21; J Uhr, 'The Performance of Australian Legislatures in Protecting Rights' in Campbell and Goldsworthy (eds), *Protecting Rights Without a Bill of Rights* (Taylor & Francis 2017); Yonatan Lupu, 'Legislative Veto Players and the Effects of International Human Rights Agreements' (2015) 59(3) *American Journal of Political Science* 578. Also of relevance here are a number of studies aimed at evaluating parliamentary performance on human rights, such as Carolyn Evans and Simon Evans, 'Evaluating the Human Rights Performance of Legislatures' (2006) 6(3) *Human Rights Law Review* 545; David Monk, 'A Framework for Evaluating the Performance of Committees in Westminster Parliaments' (2010) 16(1) *The Journal of Legislative Studies* 1; J Krommendijk, 'National Parliaments: Obstacles or Aid to the Impact of International Human Rights Bodies?' in M Wind (ed), *International Courts and Domestic Politics* (2018), 227–61.

<sup>10</sup>See e.g. Roberts Lyer and Webb (n 6) 32; See also K Roberts and P Webb, 'Effective Parliamentary Oversight of Human Rights: Outcome Document' (King's College London, June 2014).

their application in practice. It first examines the origins of the UN's interest in parliaments, and the UN's rationale for promoting parliaments as human rights actors, as well as examining formal parliamentary engagement with the UN human rights mechanisms. It then considers the content of the principles, including when compared to the Paris Principles, and finally, identifies risks and challenges in promoting parliamentary engagement as well as making some proposals for next steps.

## UN Initiatives Promoting Parliaments as Human Rights Actors

The 2018 draft principles have their origins in UN initiatives on strengthening the role of parliaments as human rights actors over the past 20 years. The earliest resolutions primarily dealt with cooperation with the Inter-Parliamentary Union (IPU),<sup>11</sup> dating back to a 1996 cooperation agreement.<sup>12</sup> A series of General Assembly and Human Rights Council resolutions since 2010 expanded and clarified the potential for parliamentary engagement, emphasising the potential contribution of parliaments to domestic implementation, in particular, how parliaments can contribute to the application of international human rights obligations through their legislative role and the use of the parliamentary oversight function with respect to the executive, including in monitoring the implementation of national human rights action plans and follow-up to human rights recommendations coming from UN entities.<sup>13</sup>

The Human Rights Council has promoted parliamentary engagement with a specific focus on the potential for improved domestic human rights implementation, acknowledging the '... crucial role that parliaments play, inter alia, in translating international commitments into national policies and law'.<sup>14</sup> An important motivating factor in this UN push for enhanced involvement by parliaments is the perceived need for improvements in national implementation of international recommendations and their follow-up, including around the Universal Periodic Review (UPR) recommendations.<sup>15</sup> This is reflected in UN resolutions, for example, Human Rights Council Resolution 26/29 adopted in July 2014, acknowledged '... the leading role that parliaments could play in ensuring the implementation of recommendations' from the UPR and other human rights mechanisms,<sup>16</sup> and encouraged states '... to report on such involvement in their national report and voluntary mid-term reports or during the interactive dialogue session'.<sup>17</sup> Similarly, the quest for more proactive engagement between parliaments and the UN is reflected in the 2018 OHCHR report, which studied '... how to promote

<sup>11</sup>The IPU is an international union comprising 178 member parliaments. See [www.IPU.org](http://www.IPU.org).

<sup>12</sup>Cooperation Between the United Nations and the Inter-Parliamentary Union, Annex, UN Doc A/51/402, 25 September 1996.

<sup>13</sup>Since 2010, UN resolutions have encouraged direct engagement with national parliaments. A 2010 joint General Assembly and Security Council report on *Cooperation between the United Nations and regional and other organisations*, included a dedicated section on cooperation with national parliaments – as well as the IPU – and noted some joint activities and engagement by parliamentarians in UN events. Cooperation between the United Nations and regional and other organisations, Report of the Secretary-General, UN Doc A/65/382 – S/2010/490, 20 September 2010, 24–32.

<sup>14</sup>Contribution of parliaments to the work of the Human Rights Council and its universal periodic review, UN Doc A/HRC/22/L.21, 19 March 2013.

<sup>15</sup>Contribution of parliaments to the work of the Human Rights Council and its universal periodic review: Report of the Office of the United Nations High Commissioner for Human Rights, 17 May 2018, UN Doc A/HRC/38/25.

<sup>16</sup>Contribution of parliaments to the work of the Human Rights Council and its universal periodic review, UN Doc A/HRC/Res/26/29, 17 July 2014.

<sup>17</sup>Ibid. para 1. The Council's 2015 resolution 30/14 requested the holding of a panel and an OHCHR report. Contribution of parliaments to the work of the Human Rights Council and its universal periodic review, UN Doc A/HRC/Res/30/14, 9

and enhance synergies between parliaments and the work of the Human Rights Council and its universal periodic review'.<sup>18</sup> Although focused on the UPR, the OHCHR report notes that the engagement of parliaments should be more broadly drawn than just the UPR given that '[UPR] recommendations often reflect the contents of recommendations from treaty bodies and special procedure mandate holders' that '... represent a cross section of human rights gaps in implementation at the country level, both in law and in practice'.<sup>19</sup> The importance of parliamentary action was also emphasised, particularly, '... the importance of the active participation of parliaments in the follow-up process, as one of the key national stakeholders, also bearing in mind that more than 50 per cent of universal periodic review recommendations require or involve parliamentary action'.<sup>20</sup>

The UN resolutions have also seen application in practice through UN agencies, for example, UNDP seeks to reinforce parliaments in a variety of contexts. In Georgia, a joint initiative of the European Union, United Nations Development Programme (UNDP), United Nations Children Fund (UNICEF), OHCHR and International Labour Organization (ILO) aims to reinforce the national human rights system as a whole, and has one pillar of action devoted to the Parliament's human rights committee. The project aims at recognising the role of the Parliament as a fundamental part of a human rights system, for instance by giving political relevance to the annual human rights report of the NHRI (the Ombudsperson).<sup>21</sup>

The underlying rationale for increased parliamentary engagement with human rights issues is clear: the powers available to parliaments for the oversight of government, such as inquiries and parliamentary questions, as well as budgets and in shaping the content of legislation, puts them in a position to take decisive action nationally. Parliaments have a particularly important role in contextualising international standards through their legislative function. They are also in a strong position to work with other national human rights actors such as NGOs, civil society, the NHRI and other independent bodies such as equality bodies or ombudspersons. Finally, as the European Court of Human Rights has emphasised, national actors are critical to the regional and international systems because '... national authorities have direct democratic legitimation and are ... in principle better placed than an international court to evaluate local needs and conditions'.<sup>22</sup> These factors: relevant powers, ability to work with other national actors, and legitimacy, are central to why increased parliamentary engagement on human rights could be beneficial to the UN's goal of improving domestic implementation of international human rights standards through an institutionalised national human rights system.

### **Formal parliamentary engagement with UN mechanisms**

Given the emphasis in the 2018 draft principles on parliaments engaging with the international system, it is pertinent to look at what the engagement has been to

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October 2015. See also Contribution of parliaments to the work of the Human Rights Council and its universal periodic review, UN Doc A/HRC/Res/35/29, 13 July 2017.

<sup>18</sup>Contribution of parliaments to the work of the Human Rights Council (n 16).

<sup>19</sup>Ibid. para 7.

<sup>20</sup>Ibid. para 11.

<sup>21</sup>UNDP, Human Rights for All <[www.ge.undp.org/content/georgia/en/home/projects/human-rights-for-all.html](http://www.ge.undp.org/content/georgia/en/home/projects/human-rights-for-all.html)> accessed 29 October 2019.

<sup>22</sup>*Hatton and Others v United Kingdom*, App No 36022/97, Judgment (Grand Chamber), 8 July 2003, ECHR 2003-VIII, para 97.

date between the international human rights mechanisms and parliaments – whether through a parliamentary committee (or a similar mechanism) or plenary – in order to understand the basis on which the draft principles build. In particular, whether there has been direct participation by a parliamentary committee with the international human rights system – such as where there has been a submission made by a parliamentary committee.

A review of submissions to UN human rights mechanisms over the past 10 years, shows extremely limited examples of direct formal engagement by parliaments with the UN treaty body mechanisms and UPR process and vice versa.<sup>23</sup> Indicating that the proposal in the draft principles for such interaction is almost entirely a novel one.

One notable exception was a 2014 submission by the Public Consultation Committee of the upper house (*Seanad*) of the Irish parliament (*Oireachtas*) to the Human Rights Committee.<sup>24</sup> The Irish parliamentary committee wrote that it was ‘... partaking in the UN Treaty Body system as part of its ongoing work to participate in parliamentary oversight of Ireland’s constitutional, European and international human rights obligations’. It hoped ‘... the involvement of Irish parliamentarians in reviewing the implementation of treaty obligations will provide a model of good practice for others’.<sup>25</sup> The parliamentary committee had publicly invited written submissions and held a hearing on the International Covenant on Civil and Political Rights (ICCPR) in Ireland. It identified the following positive outcomes from its engagement; awareness raising of the ICCPR, hearing public testimony directly, and increasing lawmakers’ understanding ‘... of the importance of bringing a human rights analysis to law and policy on a wide range of issues’.<sup>26</sup> The submission made recommendations on a range of issues, from ensuring that the newly reconstituted NHRI was in compliance with the Paris Principles, to the establishment of a national implementation mechanism, to specific requests to the Human Rights Committee to address a particular issue with the government. While an interesting and novel innovation, this does seem to have been a one-off by the parliamentary committee, with no subsequent treaty body submissions found from the Irish parliament. Very few other examples of direct parliamentary submissions were found.<sup>27</sup> While this approach of identifying formal parliamentary engagement does have its limitations – in particular, it does not reflect informal or ad hoc interventions –

<sup>23</sup>A search was undertaken of submissions to treaty bodies from 1 January 2010 to 30 June 2018 on the OHCHR Treaty Bodies database <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx)> under the category ‘info [r]mation from other stakeholders’, which includes information from international organisations, research centres, individuals, and generally those not provided a specific category (which are NHRI, NPM, CSO, UN Agencies). Also checked was ‘follow up information from other sources’. Finally, a search was conducted for all documents referencing ‘parliament’ on the Treaty Body database site.

<sup>24</sup>Seanad Public Consultation Committee, Report on Ireland’s Compliance with the International Covenant on Civil and Political Rights with Observations and Recommendations to the United Nations Human Rights Committee and to the Irish Government, June 2014.

<sup>25</sup>Ibid. para 4.

<sup>26</sup>Ibid. Section B.

<sup>27</sup>Submissions were made to UN Treaty Bodies by the Swedish, Norwegian and Finnish Sami Parliaments. For example, Comments of the Swedish Sami Parliament regarding Sweden’s 22nd and 23rd Periodic report to the Committee on the Elimination of Racial Discrimination, 14 November 2017 <[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/SWE/INT\\_CERD\\_NGO\\_SWE\\_30951\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/SWE/INT_CERD_NGO_SWE_30951_E.pdf)> accessed 29 October 2019. And a German Parliamentary Group BÜNDNIS 90/DIE GRÜNEN (the Greens) made a submission to the Human Rights Committee in 2013, regarding US surveillance activities. Submission Authored by the German Parliamentary Group BÜNDNIS 90/DIE GRÜNEN (The Greens), 109th Session of the Human Rights Committee, Geneva, 14 October 2013–1 November 2013 <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT\\_CCPR\\_NGO\\_USA\\_15126\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_15126_E.pdf)> accessed 29 October 2019. Krommendijk notes a 2007 submission to CERD by the Maori party of New Zealand. Krommendijk (n 9) 251.

it underscores the novelty of the approach of the draft principles in encouraging formal parliamentary engagement.<sup>28</sup>

In addition to extremely limited examples of direct formal parliamentary committee engagement with treaty bodies, there is also a corresponding lack of formal engagement by treaty bodies with parliaments through recommendations addressed to parliaments in concluding observations. A review of two key treaty bodies' concluding observations over a period of 10 years (2010–2018); the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR), identified almost no examples of recommendations made directly *to* parliaments and only a few made explicitly *about* parliaments (excluding comments to government on the progress of legislation).<sup>29</sup> One example of this latter type of recommendation was from the Human Rights Committee to the United Kingdom, that an inquiry before a parliamentary committee be conducted in a manner compatible with the Covenant.<sup>30</sup> The most common parliament-focused recommendation of the Human Rights Committee is to improve the representation of women or minority groups in parliament.<sup>31</sup> Other examples include recommendations for improved parliamentary scrutiny on legislation with human rights standards.<sup>32</sup> In the case of Hungary, the Human Rights Committee expressed concern about the overall legislative process,<sup>33</sup> and reviewing Azerbaijan, it expressed concern at reports of constitutional change weakening the position of the parliament vis-à-vis the executive.<sup>34</sup> However, these recommendations were not explicitly addressed to the parliament.

Only one concluding observation was identified in the period 2008 to 2018, where a recommendation was made *directly* to a parliament by the CESCR. In its 2014 concluding observations on El Salvador, the CESCR recommended '... that parliament complete the process of ratification of the amendment to the Constitution giving legal and political recognition to the indigenous peoples'.<sup>35</sup> In the same observations, it also recommended '... that Parliament complete ratification of the constitutional amendments guaranteeing the right to food and access to water in the Constitution'.<sup>36</sup> Indirect recommendations regarding parliaments by the CESCR that the concluding observations be disseminated to parliament are frequent. The CESCR has also commented on women's representation in parliament,<sup>37</sup> and recommended that '... the State party make additional efforts to

<sup>28</sup>In this regard, the present analysis may also be distinguished from Krommendijk's study of the impact of concluding observations on parliaments and vice-versa. Krommendijk (n 9).

<sup>29</sup>Text-based searches of Concluding Observations of these two committees were undertaken for the period January 2008–December 2018. Searches were undertaken for 'parliament' 'parliamentary' 'legislature' 'legislative' 'assembly' 'congress' 'diet' 'senate' and all results reviewed for content.

<sup>30</sup>Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc CCPR/C/GBR/CO/7, 17 August 2015, para 9.

<sup>31</sup>For example, this appears in 19 recommendations from the Human Rights Committee.

<sup>32</sup>Concluding observations on the sixth periodic report of New Zealand, UN Doc CCPR/C/NZL/CO/6, 28 April 2016, 10. See also, Concluding observations on the sixth periodic report of Australia, UN Doc CCPR/C/AUS/CO/6, 1 December 2017, para 11.

<sup>33</sup>Concluding observations on the sixth periodic report of Hungary, UN Doc CCPR/C/HUN/CO/6, 9 May 2018.

<sup>34</sup>Concluding observations on the fourth periodic report of Azerbaijan, UN Doc CCPR/C/AZE/CO/4, 16 November 2016, para 6.

<sup>35</sup>Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador, UN Doc E/C.12/SLV/CO/3-5, 19 June 2014, para 7.

<sup>36</sup>*Ibid.* para 20.

<sup>37</sup>For example, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights – Afghanistan, UN Doc E/C.12/AFG/CO/2-4, 7 June 2010, para 19; Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights – Yemen, UN Doc E/C.12/YEM/CO/2, 22 June



raise awareness of economic, social and cultural rights among parliamentarians and policy-makers,<sup>38</sup> as well as raising awareness on the economic and social costs of corruption.<sup>39</sup> It has invited a State party ‘... to inform members of parliament about their role in the implementation of the Covenant’.<sup>40</sup>

The Committee Against Torture has made similarly few recommendations to or directly concerning parliaments in the same 10-year period. One notable example, although it overlaps with recommendations on NHRIs and particularly the National Prevention Mechanism under the optional protocol to the Convention, was to Albania to

[t]ake steps to improve dialogue and follow-up by the Parliament with a view to implementing the findings and recommendations by the People’s Advocate [NHRI] following the missions to the detention centres by its Unit for Prevention of Torture, as required by the law.<sup>41</sup>

Apart from this, few examples were found, particularly of recommendations addressed directly to parliament.

One of the treaty bodies, the Committee on the Elimination of Discrimination Against Women (CEDAW) has however put a significant focus on parliamentary engagement that may serve as a model for future treaty body/parliament interaction under the 2018 draft principles.<sup>42</sup> The following paragraph, or slight variation thereof, is contained in approximately one-third of the Committee’s concluding observations since 2010:

While reaffirming that the Government has the primary responsibility and is particularly accountable for the full implementation of the obligations of the State party under the Convention, the Committee stresses that the Convention is binding on all branches of the State apparatus and invites the State party to encourage the Parliament, in line with its procedures, where appropriate, to take the necessary steps with regard to the implementation of the present concluding observations between now and the State party’s next reporting process under the Convention.<sup>43</sup>

This statement is useful in underscoring the basis on which parliaments have their role as a fundamental actor within the national human rights system and therefore why there should be engagement with the treaty bodies. Further, in more than half of the Committee’s concluding observations since 2010, it has stressed ‘... the crucial role of the

2011, para 9; Concluding observations on the combined second to fourth periodic reports of Egypt, UN Doc E/C.12/EGY/CO/2-4, 13 December 2013, para 9.

<sup>38</sup>For example, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights – New Zealand, UN Doc E/C.12/NZL/CO/3, 31 May 2012, para 10; Concluding observations on the initial report of Mauritania, adopted by the Committee at its forty-ninth session (12–30 November 2012), UN Doc E/C.12/MRT/CO/1, 10 Dec 2012, para 9.

<sup>39</sup>For example, Concluding observations on the initial report of Togo, adopted by the Committee at its fiftieth session (29 April–17 May 2013), UN Doc E/C.12/TGO/CO/1, 3 June 2013, para 11; Concluding observations on the initial report of Gabon, UN Doc E/C.12/GAB/CO/1, 27 December 2013, para 10.

<sup>40</sup>Concluding observations on the initial report of Burkina Faso, UN Doc E/C.12/BFA/CO/1, 12 July 2016, para 7.

<sup>41</sup>Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture – Albania, UN Doc CAT/C/ALB/CO/2, 26 June 2012, para 12.

<sup>42</sup>To date, the most successful form of parliamentary oversight of international commitments has taken place in the context of [CEDAW]. IPU works with the parliaments of the countries under review so that they can take part in the review process, provide input to the national report, attend the session of the Committee and receive the Committee’s findings for consideration and action by parliament’. Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union Report of the Secretary-General, UN Doc A/66/770, 11 April 2012, paras 23–24.

<sup>43</sup>Concluding observations of the Committee on the Elimination of Discrimination against Women – Bahamas, UN Doc CEDAW/C/BHS/CO/1-5, 6 August 2012, para 10; Concluding observations of the Committee on the Elimination of Discrimination against Women – Panama, UN Doc CEDAW/C/PAN/CO/7, 5 February 2010, para 11.

legislative power in ensuring the full implementation of the Convention'.<sup>44</sup> The CEDAW Committee also regularly calls on the state to submit the concluding observations to the parliament (as well as ministries and government structures, and the judiciary).<sup>45</sup> This attention by the committee appears to have arisen as a result of the implementation of a 2010 Committee decision to enhance the role of parliaments in its work.<sup>46</sup> Finally, there is also evidence that the reports of treaty bodies make their way into the domestic parliamentary process. For example, in response to a questionnaire from the IPU, the parliament of Ukraine reported that the Committee's 2002 concluding observations had led to a new law on equal opportunities.<sup>47</sup>

As for the UPR, the OHCHR has noted that

[a]lthough the modalities for the universal periodic review did not foresee a formal role for parliamentarians, such a role does exist. Some 60 to 70 per cent of recommendations emanating from the review require parliaments to pass laws, ratify international instruments, or oversee government action.<sup>48</sup>

While parliamentarians are frequently included in national UPR delegations, and some parliamentary committees participate in the state report preparation including reviewing the UPR report as well as in monitoring follow-up, an example of a national parliamentary committee making a direct submission to the UPR process could not be found in research undertaken for this article.

The above illustrates that the increasing push for parliamentary engagement at the UN level has not yet translated into significant direct participation across UN human rights mechanisms either from parliaments or from the UN mechanisms. This suggests the treaty bodies do not currently view or engage with parliamentary human rights committees as autonomous actors that can be directly addressed in the bid to improve domestic implementation, and that parliaments are not currently undertaking this role themselves. The treaty bodies may need to find practical ways to encourage parliaments to get involved, for example, through directing recommendations or comments directly to parliaments, and explicitly referencing parliamentary human rights mechanisms in their concluding observations, if the 2018 draft principles are to be operationalised.

## The 2018 Draft Principles

As noted above, to formalise previous UN resolutions promoting parliaments as human rights actors, as well as initiatives undertaken by UN entities operating at the country level, the 2018 draft principles seek to create a focal point in the form of a parliamentary

<sup>44</sup>For example, Concluding observations on the fifth periodic report of Lithuania, UN Doc CEDAW/C/LTU/CO/5, 24 July 2014, para 7; Concluding observations on the combined third and fourth periodic report of Kazakhstan, UN Doc CEDAW/C/KAZ/CO/3-4, 10 March 2014, para 7; Concluding observations on the combined sixth and seventh periodic reports of Luxembourg, UN Doc CEDAW/C/LUX/CO/6-7, 14 March 2018, para 7. Exact wording differs in the observations.

<sup>45</sup>Fifty-two examples were found in the 2010–2018 period.

<sup>46</sup>Decision 45/VII National parliaments and the Convention on the Elimination of All Forms of Discrimination against Women Statement by the Committee on the Elimination of Discrimination against Women on its relationship with parliamentarians, Report of the Committee on the Elimination of Discrimination against Women, Forty-fourth session (20 July–7 August 2009) Forty-fifth session (18 January–5 February 2010), UN Doc A/65/38 Annex VI.

<sup>47</sup>For example, Report of the Inter-Parliamentary Union to the United Nations Committee on the Elimination of Discrimination against Women (45th session January–February 2010), 9. See also in this regard Krommendijk (n 9).

<sup>48</sup>Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union, UN Doc A/70/917, 9 June 2016, para 24.

human rights committee, identify its responsibility at the domestic level and specify its role at the international level. The promotion by the UN of parliamentary committees is not new; in 2013, the then-High Commissioner for Human Rights was already encouraging human rights engagement through a specific mechanism; a dedicated committee, stating that she would ‘... like to encourage parliaments that have not yet done so, to establish human rights committees that undertake the promotion and protection of human rights’.<sup>49</sup> The UN Secretary-General, in a 2017 report on strengthening human rights, included a specific section on parliaments, encouraging the establishment of a parliamentary committee with an ‘exclusive human rights mandate’ and encouraging ‘... more proactive engagement of parliamentarians in the work of international human rights mechanisms’.<sup>50</sup>

The 2018 draft principles are the formalisation of these statements, encouraging the establishment of a ‘permanent internal committee’<sup>51</sup> as an institutional focal point, with a mandate to specifically engage in human rights issues. One rationale for this push for an *institutional* focal point may be found in the UN Secretary-General’s 2016 report: ‘... given the national turnover of parliamentarians following elections, the United Nations needs to continue its advocacy and regular engagement with parliamentarians to help to maintain support for key agreements and principles.’<sup>52</sup> Engaging with individual parliamentarians thus has the drawback in a potential lack of continuity and does not fit the overall approach of the UN in the institutionalisation of its compliance strategies. The promotion of an institutional focal point also distinguishes parliaments that have an administrative human rights unit or secretariat, seeking rather to have a body comprised of members of parliament.

With explicit reference, and notable similarities to the Paris Principles, the 2018 draft principles cover the (1) mandate, (2) responsibilities and functions (both domestically and vis-à-vis the international human rights system), and (3) composition and working methods of a parliamentary human rights committee. The preamble to the draft principles specifically identifies the relevant functions of parliaments in promoting human rights implementation:

Ratifying human rights treaties, scrutinizing legislation and overseeing the work of the executive in fulfilling its human rights obligations, are crucial in order to support and ensure the Government’s own primary responsibility for the promotion and protection of human rights.<sup>53</sup>

The 2018 draft principles propose the creation (or strengthening) of a parliamentary human rights committee with a broad mandate to consider all human rights. The

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<sup>49</sup>N Pillay, ‘Opening Address to the Panel Discussion on the Contribution of Parliaments to the Work of the Human Rights Council and its UPR’ Geneva, 29 May 2013.

<sup>50</sup>Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity: Report of the Secretary-General, Section E, 21 August 2017, UN Doc A/72/351. See also National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms, United Nations, New York and Geneva 2016, UN Doc HR/PUB/16/1. Human Rights Council Resolution 35/29 (2017) encouraged the human rights mechanisms to ‘... consider the present resolution within the framework of their respective mandates’: Contribution of parliaments to the work of the Human Rights Council and its universal periodic review, UN Doc A/HRC/Res/35/29, 13 July 2017, para 6.

<sup>51</sup>2018 OHCHR draft Principles (n 1) preamble.

<sup>52</sup>Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union, UN Doc A/70/917, 9 June 2016, para 68.

<sup>53</sup>Contribution of parliaments to the work of the Human Rights Council and its universal periodic review: Report of the Office of the United Nations High Commissioner for Human Rights, 17 May 2018, UN Doc A/HRC/38/25, Annex I.

mandate given to parliamentary committees should also provide clarity in terms of its purpose and goals. This latter requirement may assist in ensuring the effectiveness of a mechanism, where it is established and run with reference to a clear goal, discussed further below.<sup>54</sup> The draft principles also deal with the composition and working methods of the committee, requiring that it be pluralistic, transparent and public in its operations, undertake consultations with the NHRI, civil society organisations and other relevant bodies, and receive sufficient resources, including secretarial support, from the parliament.

Emphasising the potential for improved domestic implementation through parliaments, the report notes that ‘... parliaments have a wide range of tools at their disposal to ensure that national laws, policies, regulations, programmes and budgets reflect the principles and obligations contained in all international agreements’.<sup>55</sup> The draft principles make clear the extent of the potential for parliament within the national human rights system. It sets out that committees should encourage ratification of international instruments, review bills for human rights compliance, provide human rights related information to the parliament, review draft national budgets, and elaborate and oversee national human rights action plans.

Importantly for ensuring the effectiveness of committees, their manner of operation is also set out in the responsibilities and functions section of the draft principles. The committee should ‘... lead parliamentary action in response to national human rights developments and issues’ through legislation, inquiries, public hearings, debates and issuing reports. Training and development of human rights awareness within parliament is also proposed as a function of the committee, suggesting that it would be a source of expertise within the parliament.

In keeping with the directional nature of the UN promotion of domestic actors, the 2018 OHCHR report promotes specific contributions by parliament in UN processes at the domestic level, including participation in national consultations on the preparation of national reports, consideration of draft reports, participation in delegations, review of recommendations and concluding observations,<sup>56</sup> engaging with reporting and follow-up, and calling for the development of a national action plan.<sup>57</sup> The principles suggest that parliaments should also meet with representatives of human rights mechanisms during in-country visits.<sup>58</sup>

The principles also promote interaction with NHRIs, referencing the 2012 Belgrade Principles,<sup>59</sup> which advocate that parliaments should support the effective functioning, financial and operational independence and accountability of the NHRI. The Belgrade Principles suggest cooperation through a ‘formal framework’, in particular through a parliamentary committee to act as the ‘main point of contact’ between the two bodies. NHRIs should be mandated to report directly to parliament, and parliament should review their reports and recommendations, meet regularly with NHRIs and consult with them on draft

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<sup>54</sup>Roberts Lyer and Webb (n 6) 44–46.

<sup>55</sup>Cooperation Between the United Nations and the Inter-Parliamentary Union, UN Doc A/51/402, 25 September 1996, Annex.

<sup>56</sup>OHCHR 2018 report (n 1) para 30.

<sup>57</sup>Ibid. para 31.

<sup>58</sup>Ibid. para 32.

<sup>59</sup>Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments, Belgrade, Serbia, 22–23 February 2013.

laws, and in the provision of evidence and expertise in the development of human rights compatible laws.<sup>60</sup> Parliaments and NHRIs should also ‘... cooperate to ensure that the international treaty bodies are provided with all relevant information about the State’s compliance with those obligations and to follow up recommendations of the treaty bodies’.<sup>61</sup>

In relation to the international human rights mechanisms, at the national level, the 2018 draft principles propose that the committee should participate in national consultations in the preparation of reports, and review draft state reports and comment on these. It should also participate at the UPR and with treaty bodies ‘... either as part of the Government delegation or on its own’, suggesting potential autonomous direct engagement. It should meet separately with treaty bodies, UPR and special procedure mandate holders when they conduct in-country visits. Further, it should participate in national mechanisms for reporting and follow up, ‘... and ensure that recommendations of international and regional human rights mechanisms that require legislative reform, the adoption of new laws, or budgetary adjustments are identified and given priority consideration’.

When compared directly with the Paris Principles, a number of differences can be identified, in particular, the draft principles focus more on the role of a parliamentary committee in dealing with the parliament, rather than a broader audience for NHRIs suggested by the Paris Principles. For example, the Paris Principles promote NHRI involvement in promoting human rights in educational institutions and raising awareness of the public, compared to the more parliamentary focus proposed for committees by the 2018 draft principles. Importantly, there are specific powers proposed for parliamentary committees, particularly legislative initiatives, inquiries, reporting and holding public hearings [sections 2(i), (j)], reviewing budgets from a human rights perspective [sections 2(e), (f)], and the draft Principles are more prescriptive regarding the roles the committee should fulfil regarding the international human rights system [section 3(a) to (f)].

## How Might the Draft Principles Operate in Practice? Potential, Challenges and Next Steps

The 2018 draft principles represent a potentially significant step forward in the UN’s promotion of parliamentary engagement in improving the implementation of international standards at the national level. They aim to form the basis for the establishment and operation of dedicated institutional mechanisms within national parliaments that would have the purpose of working on domestic human rights issues and engaging both at the national and international levels. For the UN and its mechanisms, such committees can provide a formal institutional focal point through which to engage directly with national parliaments, rather than relying on individual parliamentarians,<sup>62</sup> an administrative body, or engagement with parliament via the executive. However, at least regarding participation at the international level, the low level of direct formal parliamentary interaction to date with the international human rights mechanisms suggests that there is a need for more efforts to be made by parliaments, as well as by the UN and its mechanisms, if the draft principles are to be successfully operationalised.

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<sup>60</sup>Ibid. ss I–III.

<sup>61</sup>Ibid.

<sup>62</sup>Although engagement by individual parliamentarians is also encouraged by the UN and IPU.

It is clear that the UN hopes that parliaments will use their available powers and functions to promote human rights implementation, and that the specific form of institution the draft principles are promoting – dedicated committees – will improve national implementation processes. The draft principles thus represent a further step in the domestic institutionalisation of human rights. Yet, there are a number of risks and challenges that come with the UN's approach. In particular, how parliaments (particularly parliamentary human rights committees) could operate as autonomous actors along the lines of NHRIs – and indeed whether they should be expected to – how political volatility and rule of law problems could be taken into account, and, ultimately, how effectiveness of parliaments as human rights actors can be ensured.

### **Potential of the 2018 draft principles**

Generally, internationally adopted principles can be a useful basis on which to build consensus. They act as a reference point for national advocacy efforts, and as a focal point through which international support can be exercised. In 2014, Philippa Webb and I proposed the adoption of a set of principles for parliaments that mirrored the Paris Principles.<sup>63</sup> We promoted the idea of the Paris Principles as a basis for parliamentary principles because they provide a widely accepted format for the mandate and functioning of NHRIs, with 120 countries having some form of NHRI.<sup>64</sup> We argued that both the widespread acceptance of the Paris Principles, and some of their key features make them a valuable basis for the development of dedicated institutional parliamentary human rights bodies. With this in mind, there are some particularly positive aspects of the 2018 draft principles, such as the inclusion of reference to transparent functioning in the operation of the mechanism. A committee's operating principles should ensure a legitimate process for inputs, outputs, and 'throughputs' to promote effectiveness in its operations.<sup>65</sup> In addition, meaningful engagement with national human rights stakeholders is also critical to the legitimacy of the committee in its operations,<sup>66</sup> and thus it is welcome that NHRIs as well as NGOs are explicitly mentioned in the draft principles. However, the reflection of the Paris Principles in the 2018 draft principles does raise a challenging question for the development of these types of mechanisms within parliaments: whether they can or should be autonomous actors within the international system. Paris Principle-compliant NHRIs have a formal role in the UPR process, and actively engage with the treaty bodies, for example through providing parallel reports on the implementation of human rights instruments.<sup>67</sup> While the 2018 draft principles do not expressly *require* a parliamentary human rights committee to independently engage with the international human rights system directly, they clearly envisage a more

<sup>63</sup>Principles relating to the Status of National Institutions (the Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

<sup>64</sup>Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions; Accreditation status as of 26 January 2018. Accessed 1 March 2019. See further on the peer review process, Meg Brodie, 'Progressing Norm Socialisation: Why Membership Matters. The Impact of the Accreditation Process of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights' (2011) 80 *Nordic Journal of International Law* 143.

<sup>65</sup>Roberts Lyer and Webb (n 6) 47–48, citing V Schmidt 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"' (2013) 61(1) *Political Studies* 2

<sup>66</sup>Roberts Lyer and Webb, above n 6, 49–50.

<sup>67</sup>See K Roberts Lyer, 'National Human Rights Institutions' in Gerd Oberleitner and Steven Hoadley (eds), *Human Rights Institutions, Tribunals and Courts: Legacy and Promise* (Springer Major Reference Works handbook series 2018).

autonomous role for parliamentary committees – particularly in the reference to participating with the UPR and treaty bodies either as part of a government delegation or ‘on its own’.

The promotion of parliamentary committees has not been chosen by the UN by accident; they can have a range of powers and functions suitable to enhancing domestic implementation of international human rights standards.<sup>68</sup> In promoting committees, the UN is focusing on a widely used mechanism. IPU research has found that a committee system is the most common mechanism for parliamentary oversight.<sup>69</sup> At the time of writing, the IPU recorded parliamentary human rights committees in 107 countries across all continents.<sup>70</sup> It has recorded a range of common tools used by committees: committee hearings, plenary hearings, commissions of inquiry, parliamentary questions, use of question time, interpellations (submissions of formal questions to the government) and the ombudsperson.<sup>71</sup> So, for example, parliamentary committees can be specifically tasked with the responsibility to monitor legislation for compliance with international human rights standards. Under the Australian Human Rights (Parliamentary Scrutiny) Act 2011,<sup>72</sup> for example, statements of compliance with core human rights instruments must accompany proposed legislation. The Australian Parliamentary Joint Committee on Human Rights,<sup>73</sup> established in 2012, examines legislative proposals for their human rights compatibility against the country’s international obligations. Other examples of active parliamentary human rights committee with this type of mandate include the UK’s Joint Committee on Human Rights.<sup>74</sup> However, alternative models of parliamentary mechanisms also exist such as a rapporteur system, and a committee style is not universally adopted.<sup>75</sup> Further, some existing committees only consider human rights in the context of foreign affairs, rather than domestic. Thus, while proposing a committee format, the 2018 draft principles will need to be adapted to national contexts and traditions such as the Paris Principles have had to adapt to a wide range of national contexts in the creation and functioning of NHRIs.

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<sup>68</sup>Regionally, the Parliamentary Assembly of the Council of Europe has long recognised the potential of parliaments in domestic implementation, issuing a series of recommendations encouraging the establishment of parliamentary mechanisms to supervise the execution of judgements of the European Court of Human Rights: PACE Resolution 1516 (2006), ‘Implementation of Judgments of the European Court of Human Rights’, para 22.1; PACE Resolution 1787 (2011); ‘Implementation of Judgments of the European Court of Human Rights’; PACE Resolution 1823 (2011), ‘National Parliaments: Guarantors of Human Rights in Europe’; PACE Resolution 1856 (2012), ‘Guaranteeing the Authority and Effectiveness of the European Convention on Human Rights’; PACE Recommendation 1764 (2006) ‘Implementation of Judgments of the European Court of Human Rights’. See generally, Alice Donald and Philip Leach, *Parliaments and the European Court of Human Rights* (OUP 2016). The EU’s Fundamental Rights Agency also engages directly with parliaments, including parliamentary committees, through national focal points. European Union Agency for Fundamental Rights, ‘National Parliaments’ <<http://fra.europa.eu/en/cooperation/national-parliaments>> accessed 1 March 2019. The Commonwealth has also focused on parliamentary engagement on human rights, with three declarations: the Mahé Declaration, the Pipitea Declaration, and the Kotte Declaration. See The Commonwealth, *The Global Human Rights Implementation Agenda: the Role of National Parliaments*, policy brief (London November 2018), 36–38.

<sup>69</sup>Inter-parliamentary Union, *Tools for Parliamentary Oversight* (Geneva 2007). See also World Bank Institute, *Parliamentary Oversight for Government Accountability* (Washington DC, 2006).

<sup>70</sup>IPU Parline Database <<http://archive.ipu.org/parline-e/Instancelist.asp>> accessed 1 March 2019.

<sup>71</sup>Inter-parliamentary Union (n 69). See also, World Bank Institute above n 84.

<sup>72</sup>Human Rights (Parliamentary Scrutiny) Act 2011, No 186, 2011, <[www.legislation.gov.au/Details/C2011A00186](http://www.legislation.gov.au/Details/C2011A00186)> accessed 1 March 2019.

<sup>73</sup>Parliamentary Joint Committee on Human Rights <[www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights)> accessed 1 March 2019.

<sup>74</sup>UK Parliament Joint Committee on Human Rights <[www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/](http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/)> accessed 1 March 2019.

<sup>75</sup>Inter Parliamentary Union (n 69).

### ***Can parliamentary committees operate as autonomous human rights actors?***

The explicit connection between the 2018 draft principles and the Paris Principles suggests that parliamentary committees could engage with the international human rights system as autonomous actors. How might this work in practice? The roles of domestic actors in engaging with the international human rights system are relatively well defined: the executive leads engagement on behalf of the state, providing the official report on implementation and is the addressee of international-level recommendations. NGOs and independent domestic bodies such as NHRIs provide their own separate assessments.<sup>76</sup> The spaces for these three actors are demarcated.<sup>77</sup> Within the existing framework, parliaments currently lack a separate clearly defined role or 'space'.<sup>78</sup> While individual parliamentarians have formed part of state delegations to hearings before treaty bodies and the UPR, as noted above, as well as being involved in the development of national action plans and follow-up processes, there is little precedent for parliaments formally and independently engaging with the international human rights mechanisms for example, in a manner similar to the Irish parliamentary committee.

If we consider the existing forms of autonomous non-governmental engagement with the international system, particularly the UPR and treaty bodies, this generally involves separate reporting that challenges the government's position. Yet such critical reporting would likely be a rare occurrence given general parliamentary procedures. As Schwarz has argued, requirements of party discipline may prevent parliamentarians from criticising the government.<sup>79</sup> Should a parliamentary committee nonetheless engage in this way, it is particularly easy to imagine that there could be significant backlash from the government. Perhaps because of the sensitive political nature of parliamentary involvement, one of the UN reports on this topic underscores that while the UN '... is governed by the executive branches of the world's Governments, Member States have ... encouraged the growing involvement of parliamentarians ... in the work of the United Nations',<sup>80</sup> thus emphasising that the initiative for increased parliamentary engagement has come from member states in order to underscore its legitimacy.

Any parliamentary committee must operate within the strictures and processes of parliament as a whole. Whether it can or is willing to independently participate at the international level is therefore likely to be a question of national parliamentary procedures and traditions. The lack of examples to date discussed above, suggests that encouraging and enabling such engagement is likely to be a significant challenge to the implementation of the draft principles.

The draft principles also do not over-emphasise the role of parliaments in challenging governments. A notable omission in this regard is mention of the role of parliaments in holding the government *accountable* for human rights violations or abuses, although it

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<sup>76</sup>K Roberts Lyer (n 67).

<sup>77</sup>For example, see recent efforts to close civil society spaces in Russia, Hungary and elsewhere.

<sup>78</sup>K Roberts, 'National Human Rights Institutions as Diplomacy Actors' in M O'Flaherty and others (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff 2011), discussing NHRIs as the '4th space' within the national human rights system.

<sup>79</sup>Ingeborg Schwarz, 'The Work of the Inter-Parliamentary Union' in Hunt, Hooper, and Yowell (n 8) 331.

<sup>80</sup>Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union, UN Doc A/70/917, 9 June 2016, para 75.



had been referenced in previous UN resolutions.<sup>81</sup> The lack of reference to accountability may make the draft principles more palatable and less potentially ‘threatening’ to governments. On the contrary, its omission may also place parliamentary committees established under the draft principles in a weaker position to challenge non-human rights respecting actions of the government, including at the international level.

### ***Are parliaments reliable human rights interlocutors for the UN?***

The level of human rights compliance by the state as a whole will likely impact on the ability and willingness of parliament to take positive action for human rights.<sup>82</sup> This highlights a risk in the UN’s overall approach to domestic implementation. The international human rights system is highly dependent on information from the national level to analyse the situation of domestic implementation of international standards. Where there is little or no independent civil society, and a weak, ineffective or absent NHRI, information on the realities on the ground will be insufficient to enable a proper determination of compliance at the international level. Adding a parliamentary human rights committee to an already weak system is unlikely to improve matters and could make them worse by increasing the number of domestic actors feeding the UN mechanisms with inaccurate information.

Nevertheless, this presumes perhaps a ‘best case scenario’; where a parliamentary committee directly engages with the international system to provide it with its own input on the extent of implementation of international human rights norms, that reflects a fact-based assessment of the situation and seeks to hold the government accountable for any human rights failures. The Irish example above shows that such an approach may be possible. But it would require both a willingness on the part of parliamentarians to undertake fact-based assessments, and sufficient expertise and resources.

Even where a parliamentary committee is able and willing to take positive action for the improvement of human rights, it will struggle with this goal when the parliament itself is not promoting and protecting human rights in the country. The extent to which rule of law and trust in institutions appears to have been eroded in recent years in many countries, and the high level of government control over some parliaments, must be understood as impacting on the ability of parliaments to engage as human rights actors. The approach of the 2018 draft principles presumes that a parliamentary committee will act for the improvement of human rights. Yet where a parliament is dominated by the government party or parties, plus it is the government that is undertaking anti-human rights measures, this is unlikely to be the case. In non-democratic contexts, the role of the parliament may be nothing more than a ‘rubber stamp’ for anti-human rights actions. For example, in Hungary a significant amount of the human rights and rule of law backsliding in recent years has been through legislative measures (such as repressive anti-NGO, anti-migrant, anti-homelessness and anti-university autonomy legislation) that have gone unchallenged by the parliament.

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<sup>81</sup>For example, Cooperation between the United Nations, national parliaments and the Inter-Parliamentary Union. UN Doc A/RES/65/123, 15 February 2011, 2; Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union. UN Doc A/RES/70/298, 9 August 2016, 3.

<sup>82</sup>Roberts Lyer and Webb (n 6) 43.

Related to these rule of law challenges, there is a broader risk that by engaging parliament in international human rights commitments, it opens rights up to negative politicisation<sup>83</sup> that would see a rolling back of human rights for political reasons. For example, the Human Rights Committee in its 2012 review of Yemen expressed concern that repealing discriminatory provisions against women was encountering ‘great resistance’ in the parliament, as were efforts to improve representation for women.<sup>84</sup> Krommendijk similarly identified the potential for parliaments to act as a barrier to human rights.<sup>85</sup> However, this must be an accepted risk with parliamentary engagement and is not in itself a reason not to encourage parliaments to deal with human rights. Politicisation already takes place in parliaments around the world and is not *per se* negative, particularly if committees are viewed as a unique domestic political forum for the consideration of human rights. The UN itself has recognised the potential challenges and proposed how to tackle them:

... there will inevitably be situations in which parliamentarians and their executive branches do not share the same views as the United Nations ... In the area of human rights and women’s rights, divergent views will remain a recurring challenge in some cases. In others, political interests, for example following the party line irrespective of draft legislation going against international standards, may be prioritized, in spite of the efforts of the United Nations. Here, instead of retreat, increased engagement offers the way forward.<sup>86</sup>

Thus, the UN has suggested that increased parliamentary involvement, even where the parliament is problematic in terms of its human rights approach, is beneficial. While this may be the case, it requires both monitoring and research to identify if it is in fact what is happening in practice. It should not simply be presumed that parliamentary engagement on human rights is positive and will improve the implementation of international standards.

### ***Will ‘one size fits all’ principles work in practice?***

The type of constitutional and political system within the country will be particularly relevant to a parliamentary committee’s ability to improve domestic implementation. As Saul notes, ‘[c]auses for the underperformance of parliaments on rights issues might vary in states with different types of constitutional arrangements’.<sup>87</sup> Writing about the role of the international human rights judiciary (IHRJ), he argues:

Practical concerns stem from the level of variation in the nature of the legislative and accountability roles of parliaments. There can be variation from state to state and within states from issue to issue. Given that just one IHRJ institution can have jurisdiction over more than 100 states, it is possible that attempts to promote the human rights role of parliaments might encourage practices that do not suit the domestic context.<sup>88</sup>

<sup>83</sup>Ibid. 42.

<sup>84</sup>Consideration of reports submitted by States parties under art 40 of the Covenant: Concluding observations of the Human Rights Committee – Yemen, UN Doc CCPR/C/YEM/CO/5 23 April 2012, paras 10–11.

<sup>85</sup>Krommendijk (n 9), noting that this occurred in the countries studied (The Netherlands and New Zealand) because ‘... MPs can be self-righteous and critical about the legitimacy and quality of UN human rights treaty bodies and the COs and consequently argue against the implementation of COs’: *ibid.* 242.

<sup>86</sup>Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union, UN Doc A/70/917, 9 June 2016, para 68.

<sup>87</sup>Saul, ‘Promoting the Human Rights Role’ (n 8) 147, citing Evans and Evans (n 9) 553 and Y Lupu, ‘Legislative Veto Players and the Effects of International Human Rights Agreements’ (2015) 59(3) *American Journal of Political Science*, 578.

<sup>88</sup>Saul, ‘Promoting the Human Rights Role’ (n 8) 147.

Similar concerns regarding compatibility with the domestic context arise in relation to the 2018 draft principles. A set of draft principles focusing only on the operational aspects of a parliamentary committee necessarily means that the complexity and variation among parliamentary processes are not taken into account.<sup>89</sup> The 2018 draft principles avoid going into such details, taking an approach similar to that of the Paris Principles; a ‘universal’ set of guidelines expected to apply irrespective of the national system. Concerning NHRIs, this approach has arguably generally been successful; states establish the type of NHRI that best suits their national system, while following (generally) the requirements of the Paris Principles. The accompanying peer review mechanism, the Sub-Committee on Accreditation, assesses NHRIs on their merits, not preferring one type of NHRI (e.g. human rights commission, ombudsperson) over another once the requirements are met.<sup>90</sup> This illustrates the use of a set of international standards for the establishment of a national body does not in and of itself eliminate the possibility that such a body can be contextualised to the national context in a way that suits the system within the country. It does, however, suggest the need for some form of monitoring of parliamentary human rights committees that may be set up under, or aim to adhere to, the 2018 draft principles, to ensure that in ‘domesticating’ the institution it has not taken on negative characteristics, as will be discussed further below.

### ***How to ensure effective mechanisms?***

In establishing parliamentary committees, or bringing existing committees into line with the 2018 draft principles, there should be a focus on effectiveness. Philippa Webb and I have argued that ‘[w]ithout a focus on effectiveness, parliamentary engagement risks being a tick-box exercise or being undermined by a partisan political process’.<sup>91</sup> We have previously proposed that effectiveness for parliamentary committees requires three elements; a clear goal that answers the question ‘effective at what’, a focus on operational legitimacy, and stakeholder engagement. A well-defined, publicly stated goal for the committee is essential in order to provide a baseline for its work, parliamentary and stakeholder expectations, and motivation for those working in the mechanism.<sup>92</sup> The 2018 draft principles do include certain elements of this, proposing that ‘[t]he mandate of the parliamentary human rights committee shall also provide clear terms of reference setting out its purpose and goals’. This is a welcome inclusion and the development of a strong statement of purpose should be established by committees to guide their work. The draft principles also reference factors relevant to operational legitimacy, such as transparency, as well as stakeholder consultation.

Scholars have identified a number of problematic features of parliamentary committees, which should also be considered in the context of effectiveness. Hiebert has suggested four conditions are required to ensure efficacy: committee reports must be motivated by

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<sup>89</sup>Evans and Evans (n 9) argue that ‘A legislature should not be analysed as an undifferentiated ‘black box’ that takes policy preferences or legislative texts as inputs and produces legislation as its output. Any methodology that aims to produce rich information about legislative performance has to acknowledge the diversity of internal legislative processes and actors that are capable of affecting human rights’.

<sup>90</sup>See generally Roberts Lyer (n 67).

<sup>91</sup>Roberts Lyer and Webb (n 6) 35.

<sup>92</sup>Ibid. 44–46.

principled deliberations, committees must review and report back to parliament within a timeframe that is useful for the parliament, they must be generally independent of the government and they must command the respect of other parliamentarians, and have their reports taken seriously.<sup>93</sup> Pegan and Vermeulen found that in the context of foreign affairs committees, scrutiny was improved where there were ‘developed and strong’ committees.<sup>94</sup>

The IPU’s research has identified a number of risks for ineffective parliamentary committees including a weak mandate subject to political whims, lack of sufficient expertise, partisanship, compartmentalisation of human rights and reduced political influence where human rights are not prioritised by the parliament.<sup>95</sup> This last element is an important one, as even when a committee is effective in its own operations, it will need to have the ability to influence the parliament. In a 2018 submission on ‘Parliaments as promoters of human rights, democracy and the rule of law’, the Australian Human Rights Commission (the NHRI) highlighted how this issue impacted the Australian Parliamentary Joint Committee on Human Rights (PJCHR):

- Parliamentarians do not always consider the PJCHR’s views.
- It is possible for a bill to pass into law prior to the PJCHR releasing its concluded view in relation to the human rights compliance of the bill.
- There is variable quality in the drafting of statements of compatibility within and across Government departments.
- It is not the usual practice for the views of the PJCHR to be referred to in the course of parliamentary debate.<sup>96</sup>

Indeed, the UN Human Rights Committee noted this in its 2017 review of Australia, expressing concern that ‘bills are sometimes passed into law before the conclusion of review by the Parliamentary Joint Committee’.<sup>97</sup> This example underscores Hiebert’s finding that the parliament itself must be committed to supporting its human rights committee. Without this, the ability of a committee to be effective at the national level will be limited. A complicating factor for parliamentary commitment to its human rights committee is the changing political balance over time in parliaments, which will likely see commitment levels fluctuate. Nonetheless, evidence suggests that where there is a strong parliamentary committee, it can exercise significant influence on government policy.<sup>98</sup>

<sup>93</sup>J Hiebert, ‘Parliament and the Human Rights Act: Can the JCHR Help Facilitate a Culture of Rights?’ (2006) 4(1) *International Journal of Constitutional Law* 1, 15.

<sup>94</sup>A Pegan and WN Vermeulen, ‘Parliament in Gross Human Rights Violations: The Case of Darfur’ (2018) 53(3) *Acta Politica* 448.

<sup>95</sup>IPU, *Human Rights Handbook for Parliamentarians*, 2005 Available online at <https://www.ipu.org/resources/publications/handbooks/2016-07/human-rightshandbook-parliamentarians> accessed 29 October 2019.

<sup>96</sup>Australian Human Rights Commission, Submission to the OHCHR on ‘Parliaments as promoters of human rights, democracy and the rule of law’ 4 May 2018, 3 [footnotes omitted].

<sup>97</sup>Concluding observations on the sixth periodic report of Australia, UN Doc CCPR/C/AUS/CO/6, 1 December 2017, para 11. This was also raised by the Committee on Economic, Social and Cultural Rights in 2017; Concluding observations on the fifth periodic report of Australia, UN Doc E/C.12/AUS/CO/5, 11 July 2017, para 6; Committee Against Torture, Concluding observations on the combined fourth and fifth periodic reports of Australia, UN Doc CAT/C/AUS/CO/4-5, 23 December 2014, para 21.

<sup>98</sup>David Fortunato, Lanny W Martin and Georg Vanberg, ‘Committee Chairs and Legislative Review in Parliamentary Democracies’ (2017) 49(2) *British Journal of Political Science*, 1, citing a number of scholars writing on parliamentary committees.

Finally, while structural and operational criteria are important to the ability of the committee to function effectively, and commitment from within parliament is required, there also must be capacity among parliaments and parliamentarians. This is an issue that has been referenced in a number of the UN resolutions,<sup>99</sup> and which may impact the ability of the mechanism to function effectively.<sup>100</sup> Whether this capacity should be directly with parliamentarians (that is, an ‘expert committee’) or brought in through expert advisors also must be considered.

Effectiveness, efficacy, legitimacy within the parliamentary structure, and human rights capacity are central to a parliamentary committee’s ability to act for the promotion and protection of human rights. This leads finally to a concept that Philippa Webb and I have previously proposed as a means of reducing the risk of an ineffective or non-human rights respecting mechanism; the need for oversight of the overseers.<sup>101</sup> One of the reasons for the relative success of the Paris Principles is that they are accompanied by a peer review process that was set up to assess the compliance of NHRIs with the Principles.<sup>102</sup> This internationally recognised peer review ‘grades’ the institution on its level of compliance with the Principles, giving those with the top ‘grade’ (‘A-Status’) greater formal access to the UN human rights mechanisms such as having the first section of the UPR stakeholder report dedicated to their input, and speaking first after the State Under Review at the adoption of UPR country reports. Such a review system should be considered by the OHCHR, perhaps in conjunction with the IPU, to help ensure that parliamentary human rights committees are meeting the terms of the principles, and – critically – working to further human rights implementation, so that the international community can identify and mitigate potential problems. More attention will need to be given to these crucial considerations than is currently present either in the UN reports and resolutions or in the 2018 draft principles if this institutionalisation of domestic implementation through parliamentary committees is to be successful. It will also require monitoring and increased research by scholars to understand the impact of increased parliamentary engagement<sup>103</sup> and identify good practices.

This article has found that while the 2018 draft principles aim to create an institutional focal point within parliaments that can formally engage with the UN human rights mechanisms, to date, there has been little formal engagement of this type by parliaments. A few examples point to how such engagement might take place, such as the Irish parliamentary example and the approach of CEDAW. Yet the 2018 draft principles presuppose a positivity that may not exist. Optimistically, a parliamentary human rights committee could improve national-level understanding of international human rights standards and their

<sup>99</sup>Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union. UN Doc A/RES/70/298, 9 August 2016, para 15.

<sup>100</sup>Also relevant here is the quality of the parliamentary process. The European Court of Human Rights has placed considerable importance on the quality of the process by which relevant legislation is adopted. See M Saul, ‘The European Court of Human Rights’ Margin of Appreciation and the Processes of National Parliaments’ (2015) 15 *Human Rights Law Review* 745.

<sup>101</sup>Roberts Lyer and Webb (n 6) 55–57.

<sup>102</sup>Roberts Lyer (n 67).

<sup>103</sup>Some efforts have been made to evaluate the human rights performance of parliaments, with Evans and Evans particularly focusing on the process itself, and these could prove useful also in discussing the quality of the evaluation, as could the body of scholarship on the operation of parliamentary committees generally. For example, Evans and Evans (n 9) 545–69. See also David Monk, ‘A Framework for Evaluating the Performance of Committees in Westminster Parliaments’ (2010) 16(1) *The Journal of Legislative Studies* 1.

implementation. Conversely, their involvement could easily result in negative contextualisation of rights or even increase the backlash against human rights by opening rights-based initiatives to increased partisan scrutiny.

The 2018 draft principles are a welcome development, and have the potential to encourage parliaments in their role as human rights actors nationally and internationally. However, political realities and the risks of negative political cooption of human rights issues, committees acting as ‘rubber stamps’ and ineffectiveness need to be addressed, and more attention is needed to opening clear and appropriate paths for parliamentary engagement with the international human rights mechanisms.

Any future push from the UN to implement these principles should come with a clear sense that they are not an end in and of themselves, but a starting point that will be closely monitored to ensure that parliamentary human rights committees are indeed bridging the implementation gap as a positive part of the national human rights system and promoting and protecting human rights.