Effective Parliamentary Oversight of Human Rights

High-Level Workshop

13-14 November 2013
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While parliaments can play a crucial role in human rights protection, the effectiveness of parliaments as human rights actors is not being fully realised. At present, different methods are used by parliaments around the world to monitor human rights within their countries, with starkly varying degrees of success. Using the latest academic thinking on assessing the effectiveness of institutions, this Project, funded by the King’s Policy Institute, aims to encourage a fundamental shift in parliaments’ approach to human rights and thus to improve domestic human rights protections.

**The High-Level Workshop**

This 1.5 day Workshop will bring together leading academics, high-level policy makers and practitioners, including from NGOs and National Human Rights Institutions, from a range of jurisdictions to share ideas and experience and identify the best model(s) of parliamentary oversight of human rights. The Workshop will be followed by an Outcome Document designed for policymakers and will launch a network to enable the ongoing exchange of knowledge.

**Speakers**

Speakers include Professor Yuval Shany, Hebrew University and UN Human Rights Committee and Professor Murray Hunt, Legal Adviser to the UK Joint Committee on Human Rights. Panels include experts from the Philippines, Bosnia, Australia, Canada, Ireland and the Netherlands.

**Convenors**

Dr Philippa Webb (principal investigator) and Kirsten Roberts (co-investigator), Dickson Poon School of Law, King’s College London.

**Workshop Aims**

- To assess best practice in parliamentary oversight of human rights.
- To exchange ideas and experience on parliamentary human rights oversight and identify practical measures to enhance effectiveness.
- To develop policy proposals for enhancing parliaments’ role in human rights protection.
**Why should parliaments be human rights promoters and protectors?**

In parliamentary democracies, parliaments are crucial to balancing the use of power by the executive and overseeing the functioning of the state, in addition to promulgating laws. Parliaments can be leaders in ensuring that the state is not perpetrating human rights violations and that national law is not incompatible with human rights standards and, indeed, ensuring human rights protections. The state is both the main duty bearer in relation to the protection and promotion of international human rights standards and the main potential perpetrator of human rights violations. As a result, parliaments can act as an important oversight mechanism to manage the actions and omissions of the executive and to facilitate a culture of human rights. Hunt, Hooper and Yowell provide the following useful rationale:

As part of the state, Parliament shares with all the other organs of the state (including the executive and Judiciary) the obligations to respect, protect and fulfil the human rights to which the state has bound itself by international treaty to respect and protect. Parliament is therefore obliged to protect and promote human rights. It must respect human rights itself, by refraining from unjustifiably interfering with human rights, for example by passing legislation which itself violates human rights or which confers a power on others which is likely to be exercised in a way which violates human rights. But this does not discharge its obligations in relation to human rights. it must also protect human rights against unjustifiable interference by the executive and by third parties, and it must seek to fulfil human rights where there is an obligation on the state to take action to give effect to a human right and that action can be taken or initiated by the legislature. Parliament’s obligations and responsibilities in relation to human rights therefore have both negative and positive dimensions. Parliament’s unique responsibility for the state’s legal framework make it the best-placed institution of the state to realise human rights in the sense of making the necessary adjustments to the legal framework to ensure that human rights are adequately protected and fulfilled.¹

This project seeks to identify how parliaments can be the most effective in this oversight role.

**The Concept of Effectiveness**

A key question to be considered is *what constitutes effectiveness?* The Project takes up the challenge put forward by Professor Yuval Shany for a new approach to be taken to the analysis of institutional effectiveness. He states that his "main interest in this article is ... to develop a research agenda for an interdisciplinary approach toward studying international court effectiveness". This framework could serve as a foundation for future analytical and empirical work [on international courts].² In assessing the effectiveness of international courts, Shany proposes a new analytical framework using a goal-based

¹ Murray Hunt, Hayley Hooper and Paul Yowell, *Parliaments and Human Rights: Redressing the democratic deficit* AHRC Public Policy Series No.5, p. 13. Available online at: [http://www.ahrc.ac.uk/News-and-Events/Publications/Documents/Parliaments-and-Human-Rights.pdf](http://www.ahrc.ac.uk/News-and-Events/Publications/Documents/Parliaments-and-Human-Rights.pdf). The European Court of Human Rights in Animal Defenders International v. United Kingdom (Application no. 48876/08) recently noted the importance of parliamentary scrutiny and debate – in that case in relation to Article 10 ECHR. The Court gave particular weight to the process of parliamentary consideration on the restriction of the applicants’ Article 10 rights finding no breach in light of the system in place in the UK, which, the Court found, struck a fair balance between a free and pluralist debate on matters of public interest and individual interests. The Court found that “The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation” para 108. Grand Chamber Judgement, 22 April 2013 available online at [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-119244# (“itemid”:[“001-119244”])]

definition of effectiveness and an inter-disciplinary approach.\(^3\) He bases his framework on a rational-system approach, which provides that “an action is effective if it accomplishes its specific objective aim.”\(^4\) Consequently, Shany argues, to determine if an institution is effective, the aims or goals of the institution must be identified and a reasonable timeframe ascertained for meeting those goals.\(^5\) Shany argues that a comprehensive approach to assessing international courts’ effectiveness should also take into account “the unforeseen or underestimated consequences of courts’ operations as well as the costs of goal attainment” – that is, organisational efficiency and cost-effectiveness.\(^6\)

Shany’s approach calls for an analysis of the goals of the institution, and the identification of “reliable measurement criteria and indicators” further supplemented by quantitative analysis and the measurement and evaluation of intended and unintended outcomes of the institution, their structures and processes.\(^7\) Key concepts relating to the social science categories of structure, process and outcomes should be assessed for their contribution to the effectiveness of the institution,\(^8\) namely:

- whether the tangible and intangible resources or assets available to the organization actually enable it to meet its objectives (structure);
- whether organizational processes facilitate the aim of the organization (process);
- and whether the outputs and their social effects are consistent with the organization’s goals (outcomes).\(^9\)

In implementing Shany’s approach, the following steps should be undertaken in determining the effectiveness of an institution:

1. identifying the goals;\(^10\)
2. identifying the key constituency: the ‘mandate providers’\(^11\) and identifying their goals;\(^12\)
3. identifying the general and specific goals;\(^13\)
4. Measuring outcomes.\(^14\)

\(^3\) Shany, Ibid., pp. 225-230.
\(^6\) Shany, Ibid., at 237.
\(^7\) Shany, Ibid., 269-270.
\(^8\) Shany, Ibid., 270 and 238, citing Pamela S. Tolbert & Richard Hall, Organizations: Structures, Processes and Outcomes 17 (10th ed. 2008).
\(^9\) Shany, Ibid., at 238 [footnotes omitted].
\(^12\) Shany, Ibid, at 242.
\(^13\) Shany, Ibid. at 243. For example, he identifies four “generic goals” of almost all international courts: primary norm compliance, dispute resolution or problem solving, regime support, regime legitimisation Shany, ibid., at 244-246.
\(^14\) Shany considers that “the difficulties in measuring the actual outcomes generated by international courts increase the relative importance of structural indicators (sometimes referred to as inputs) and process indicators in evaluating judicial effectiveness” at 251. He lists the following as primary determinants for indicators in
Shany calls for research that would be based on: goal identification, outcome assessment, and establishing causation, and which refers to structural and procedural indicators “in order to gauge outcomes better and diagnose root causes for underperformance”, and which further considers cost-effectiveness and efficiency of specific goal-attainment strategies.\(^{15}\) **The aim of this Project is to utilise this approach in the assessment of the most effective means for parliaments to promote and protect human rights.**

### Questions for Consideration: the Concept of Effectiveness

- To what extent can Shany’s approach to assessing effectiveness be applied to Parliaments?
- What is the goal of parliaments in respect of human rights?
- What are the relevant structural and procedural indicators that impact upon parliaments in their role as a human rights actor?

### Comparative Perspectives on Parliamentary Oversight

One of the most common mechanisms utilised by parliaments for oversight is the **committee system**. As noted by the Inter-Parliamentary Union in its analysis of existing human rights committees, the structure, mandate, working methods and powers of these committees varies greatly around the world. A number of reports by international and non-governmental organisations and researchers have considered the effectiveness of the operation of the committee system.\(^ {16} \) They have identified the importance of the composition, mandate and power of the committee to its effectiveness. The *composition* of the committee should be representative of the structure of the parliament in question. However, the committee should not let its partisan considerations influence the debates, but rather should focus on the need to protect human rights. Furthermore, such a committee should be independent of the government to carry out its work in the most productive way possible and the committee should have a broad *mandate*, covering all human rights. In particular, there have been suggestions that the committee’s mandate should be focused on human rights exclusively to ensure that human rights are addressed properly. To promote human rights successfully, a committee should have the *power* of legislative initiative. It should, also review and scrutinise legislation for any human rights violations. Additionally, it should play an advisory role to the parliament (plenary chamber) and to other committees and have the power to receive petitions from third parties. Therefore, a committee should be able to conduct investigations into human rights abuses and have the power to summon witnesses and obtain documents. The Inter-Parliamentary Union highlights three possible committee-based approaches: human rights as a cross-cutting issue, an exclusive human rights mandate and ‘intermediate solutions’ such as attaching human rights to another area.

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\(^{15}\) Shany, Ibid., at 254-255.

The UK’s Joint Committee on Human Rights is often cited as a model of the committee system, in light of its strong position within the UK Parliament and its role in relation to the UK Human Rights Act. In her comparative analysis of parliamentary human rights protection, Janet Hiebert discusses the creation of a “political culture of rights”. In particular, she notes the “parliamentary rights model” of the UK Human Rights Act, considering that it “represents a different approach to rights protection... broaden[ing] the scope of rights review beyond judges to include political and public actors...” and creating “dialectical tensions between the government and Parliament, and between the judiciary and parliament, when determining if legislation is compatible with rights or, alternatively, is warranted despite judicial declarations of incompatibility”. Hiebert states that the UK, as well as Canada and New Zealand approaches were rooted in recognition of “the inability of modern parliaments to protect rights and yet adopted measures that anticipated an important parliamentary oversight role as part of a new project of protecting rights.” Hiebert proposes that “given the long-standing doubts about the efficacy of a rights committee”, the following conditions are required:

1. First, its reports must be perceived as being motivated by principled and not partisan deliberations.
2. Second, it must be able to review bills and report back to Parliament within a time frame that allows Parliament to make use of its guidance.
3. Third, it must be generally independent of government influence.
4. Fourth, the committee must command the respect of other parliamentarians and its reports must be taken seriously in parliamentary deliberations.

This Project thus builds upon a growing area of scholarship, identified by Hunt et al as gaining ground in the common law world, and in relation to which they provide the following useful summary of some of the leading proponents:

In the US, for example, Mark Tushnet has argued for the constitution to be taken away from the courts, and Jeremy Waldron has mounted a sustained critique of judicial review, arguing that human rights are better protected through legislatures than courts. In Canada, Janet Hiebert has argued for recognition of a distinctive “parliamentary model of rights protection”, while in Australia, Tom Campbell, Jeffrey Goldsworthy and Adrienne Stone have also argued consistently in favour of the protection of human rights through the development of institutions and processes not involving courts.

Hunt et al argue however in favour of effective protection coming both from courts and legislatures, proposing an approach whereby “human rights scrutiny of parliaments

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19 Hiebert, Ibid., pp. 5-6.
20 Hiebert, Ibid., pp. 15.
should complement, not replace, the different scrutiny [of courts].”

Their research, focusing on “substantive references to JCHR reports” by Members of the UK Parliament, also may provide some useful indicators for the application of the goal-based approach.

Questions for consideration: Comparative perspectives

- Does a single-mandate committee risk compartmentalising human rights – limiting its examination as a cross-cutting issue?
- Does attaching it to another issue, such as ‘justice’ risk side-lining human rights or limiting its consideration to civil and political rights?
- Does an approach to human rights as a cross-cutting issue mean that it is adequately covered and considered?
- Are parliaments more effective in overseeing human rights where there is a specific piece of human rights legislation that empowers them with a ‘rights vetting’ role such as under the Human Rights Act in the UK or similar legislation in Canada, New Zealand, Ireland and other jurisdictions?
- Should parliamentary committees be empowered to examine or even potentially reject legislation for non-compliance with international human rights standards?

International Standards on Human Rights and Parliaments

The UN Human Rights Council has recently considered the role of parliaments in relation to its work, particularly as regards the Universal Periodic Review process. In its Resolution 22/15 of 10 April 2013 on the Contribution of parliaments to the work of the Human Rights Council and its universal periodic review it highlighted the role of parliaments in “translating international commitments into national policies and laws”. The Office of the High Commissioner for Human Rights appears to support a committee-based system as an effective means of promoting parliamentary oversight of human rights. The UN High Commissioner for Human Rights emphasised that parliaments should establish committees to promote and protect human rights, stating “I would also like to encourage those parliaments that have not yet done so, to establish human rights committees that undertake the promotion and respect of human rights and reinforce the role of parliamentarians in the implementation of these rights.”

The Office of the High Commissioner for Human Rights has done a significant amount of work in relation to parliaments both on its own initiative and in cooperation with the Inter-Parliamentary Union. An OHCHR Report from 2011 reveals examples of cooperation with national parliaments in areas of impunity and the rule of law, discrimination, poverty and economic, social and cultural rights, and armed conflict.
and insecurity.\textsuperscript{30} And in 2005, the OHCHR, together with the IPU, published a Handbook on Human Rights for Parliamentarians.\textsuperscript{31}

### Questions for Consideration: International Standards

- What limitations might a committee system have? What level of scrutiny should it have of the security and intelligence services? The Army?
- How much is the effectiveness impacted by legislative powers and how much by other considerations such as the traditional executive/legislature relationship within the state?
- What role should the plenary of a parliament have?
- What support should be given to parliamentarians themselves? Parliamentarians tend to come from a diverse range of backgrounds and experiences and many may have had little exposure to human rights standards and norm. Should every parliament have a dedicated human rights adviser? Should parliament use the NHRI for this purpose?

### Parliaments within the national context: NHRIs and NGOs

Parliaments do not operate in a vacuum as regards human rights. The human rights infrastructure within the state can have considerable importance for the ability of parliament to play a role as a human rights actor. This project examines two particular interlocutors: National Human Rights Institutions (NHRIs) and Non-Governmental Organisations (NGOs).

NHRIs are independent, state-established institutions at the national level with a mandate to promote and protect human rights. They are created in line with the United Nations Principles Relating to the Status of National Institutions (the “Paris Principles”).\textsuperscript{32} There is a diverse range of NHRI models globally, from single- to multi-member institutions, and the engagement of NHRIs with parliament will vary from country-to-country. However, NHRIs, are regarded as an increasingly important component in the national human rights infrastructure. The value of cooperation of NHRIs with Parliaments has recently been elaborated upon in the ‘Belgrade Principles’. The Principles set out the standards for cooperation and the relationship of parliaments with their NHRI. The Principles recommend, \textit{inter alia}, that parliament and the NHRI establish a formal framework for cooperation, which should include an identification or establishment of an appropriate parliamentary committee that would be in charge of regularly communicating with the NHRI. They recommend that parliament should consult the NHRI on human rights issues and on legislative proposals or amendments. Further, experts from the NHRI could provide valuable advice on legislation and its potential conflicts with human rights standards. Parliament should also include a NHRI in activities relating to international human rights mechanisms by requesting and examining the NHRI’s opinion.

Apart from “Code of Good Practice for Civil Participation in the Decision-Making Process,” which was adopted the Conference on International Non-Governmental Organisations in

\textsuperscript{29} http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/11_Poverty.pdf, p. 66, 68,
\textsuperscript{31} http://www.ipu.org/PDF/publications/hr_guide_en.pdf
\textsuperscript{32} http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx
2009 under the auspices of the Council of Europe, there are no developed international standards on a relationship between a parliament and national civil society organisations

**Questions for consideration: Civil society**

- Should parliamentary committees be required to accept submissions from civil society and what obligations should be on them to engage or respond to these?
- What form of interaction or engagement with civil society will be the most effective?
## Appendix: Comparative Table of Human Rights' Oversight within the Parliamentary System

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<tr>
<th>Country</th>
<th>Committee’s name</th>
<th>Committee’s Mandate and Powers</th>
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<tr>
<td>Bosnia and Herzegovina</td>
<td>The Joint Committee on Human Rights, Rights of Children, Youth, Immigration, Refugees, Asylum and Ethics (^{i})</td>
<td>- Considers issues pertaining to the exercise of human rights and fundamental freedoms as guaranteed in the constitution, legislation, state institution etc.; children’s rights, rights of the youth, immigrants, refugees and asylum-seekers&lt;br&gt;- Develops proposals for an effective protection of human rights&lt;br&gt;- Reviews proposals submitted by citizens&lt;br&gt;- Considers petitions on human rights violations and must inform the petitions and both Houses of the outcome alongside the obligation to take appropriate measures, addressing the issue (^{ii})&lt;br&gt;- Plays an important part in the legislative process by ensuring that the proposed draft law is consistent with the principles on which it is grounded (^{iii})&lt;br&gt;- May propose draft laws (^{iv})&lt;br&gt;- May conduct public hearings on draft laws before the second reading (^{v})</td>
<td>- The House of Representatives’ committee system includes the Committee on Gender Equality, which considers matters relating to gender equality. It pays particular attention to women’s rights (^{vi})&lt;br&gt;- Both Houses also have their own Legal-Constitutional Committees, which are concerned primarily with the constitution, however, they also cover issue relating to immunities (^{vii})</td>
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<tr>
<td>Australia</td>
<td>The Parliamentary Joint Committee on Human Rights (administered by the Senate) (^{viii})</td>
<td>- Examines Bills and other legislative instruments for compatibility with human rights&lt;br&gt;- Examines Acts for compatibility with human rights&lt;br&gt;- Must inquire into any matter relating to human rights, which is referred to it by the Attorney-General&lt;br&gt;- Must report on these</td>
<td>- The legislative basis for the Committee can be found in the Human Rights (Parliamentary Scrutiny) Act 2011 (^{xiii})</td>
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| Ireland      | The Joint Committee on Justice, Defence and Equality  | - Plays a role in shaping opinion and policy in the fields of justice, security, the rule of law, equality, defence and immigration  
- May draft recommendations for legislative change and new legislation  
- May appoint subcommittees and invite written submissions from interested parties and bodies |                     |
| Scotland     | The Equal Opportunities Committee                    | - Considers matters of discrimination, relating to sex, marital status, race, disability, sexual orientation etc.  
- May introduce a Bill to give effect to a proposal, which is within its mandate  
- Participates in a legislative activity by examining whether an introduced Bill complies with the general principles on which it is based  
- Examines bills and subsequent legislation  
- Scrutinises the work of the government  
- May conduct inquiries into matters within its remit and may consider petitions | - The Scottish Parliament also has a Justice Committee, which indirectly touches upon some human rights topics, such as criminal justice |
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<tr>
<td>The United Kingdom</td>
<td>The Joint Committee on Human Rights §xxvi</td>
<td>- Considers matters relating to human rights in the United Kingdom §xxvii</td>
<td>- The Joint Committee on Human rights is a permanent joint select committee. §xxxi</td>
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<td>- Proposes remedial orders when legislation is inconsistent with human rights §xxviii</td>
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<td>- May conduct an examination of a particular issue relating to human rights §xxxix</td>
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<td>- Scrutinises the work of the government and make reports §xxx</td>
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<td>The Philippines</td>
<td>The House of Representatives' Committee on Human Rights §xxxii</td>
<td>The House of Representatives' Committee on Human Rights:</td>
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<td>- Considers all matters directly and principally related to the protection and enhancement of human rights, offers assistance to victims of human rights and is in charge of preventing violations of human rights §xxxiv</td>
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<td>- Studies, deliberates and acts upon all measures referred to it, including Bills, resolutions and recommends for approval and adoption those Bills that promote the welfare of the people §xxxv</td>
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<td>- Ensures dialogue with people affected by measures to be adopted §xxv</td>
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<td>- Oversees whether the legislation is properly implemented and recommends changes to legislation if so needed §xxv</td>
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<td>- May conduct hearings and conduct inquiries in relation to any issues within its respective jurisdiction §xxxvi</td>
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| Canada  | The House of Commons’ Committee on Justice and Human Rights | The House of Commons’ Committee on Justice and Human Rights:  
- Has the power to review and report on the policies and programmes and legislation from of the Canadian Human Rights Commission, Canadian Human Rights Tribunals, Office of the Commissioner for Federal Justice Affairs Canada etc.  
- May review proposed amendments to federal legislation, which relates to certain aspects of human rights, criminal justice, family law etc.  
- May undertake studies and investigations on matters within its mandate and for this purpose, it may hold public hearings or take evidence from the witnesses |  

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|            | The Senate’s Committee on Human Rights\(^{ii}\) | The Senate’s Committee on Human Rights:  
- Has the mandate to deal with issues relating to human rights as may be referred to it by the Senate\(^{iv}\)  
- Examines, explores and monitors issues of human rights by educating the public and ensuring an adherence to international human rights standards\(^{iv}\)  
- Ensures that federal legislation and policies are properly applied and in conformity with the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act\(^{v}\)  
- Provides a forum for dialogue\(^{viii}\) |  |

\(^{iii}\) [https://www.parlament.ba/sadrzaj/about/faq/default.aspx?id=20357\&langTag=en-US&pril=b](https://www.parlament.ba/sadrzaj/about/faq/default.aspx?id=20357\&langTag=en-US&pril=b) (Question: What is the path of a draft law in the first committee phase and in the first reading?)  


