

The Role of and Principles for Human Rights and Parliaments

**7th Biennial Conference of the
ECPR Standing Group on Regulatory Governance
“Regulation between Effectiveness and Legitimacy”**

Lausanne, 4 July 2018

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- Why does parliamentary engagement with human rights matter?
- Parliamentary mechanisms and structures
 - What role for national parliaments in promoting and protecting human rights?
 - Different models: specialised v hybrid v mainstreamed
 - Advantages and disadvantages of the different models
- How to enhance parliamentary engagement?
 - Seeking to create political will
 - Strengthening parliamentary capacity

The value of parliamentary engagement

- Effectiveness

Human rights implementation necessitates

- robust legislative framework
- holding government to account re. human rights policies
- creating space for civil society engagement
- defending the rule of law

→ Parliamentary action is indispensable.

- Legitimacy

- raising the political visibility of human rights issues
- countering perception that legislative or policy changes in response to adverse judgments lack democratic legitimacy

The obligation on national parliaments

View of the Parliamentary Assembly

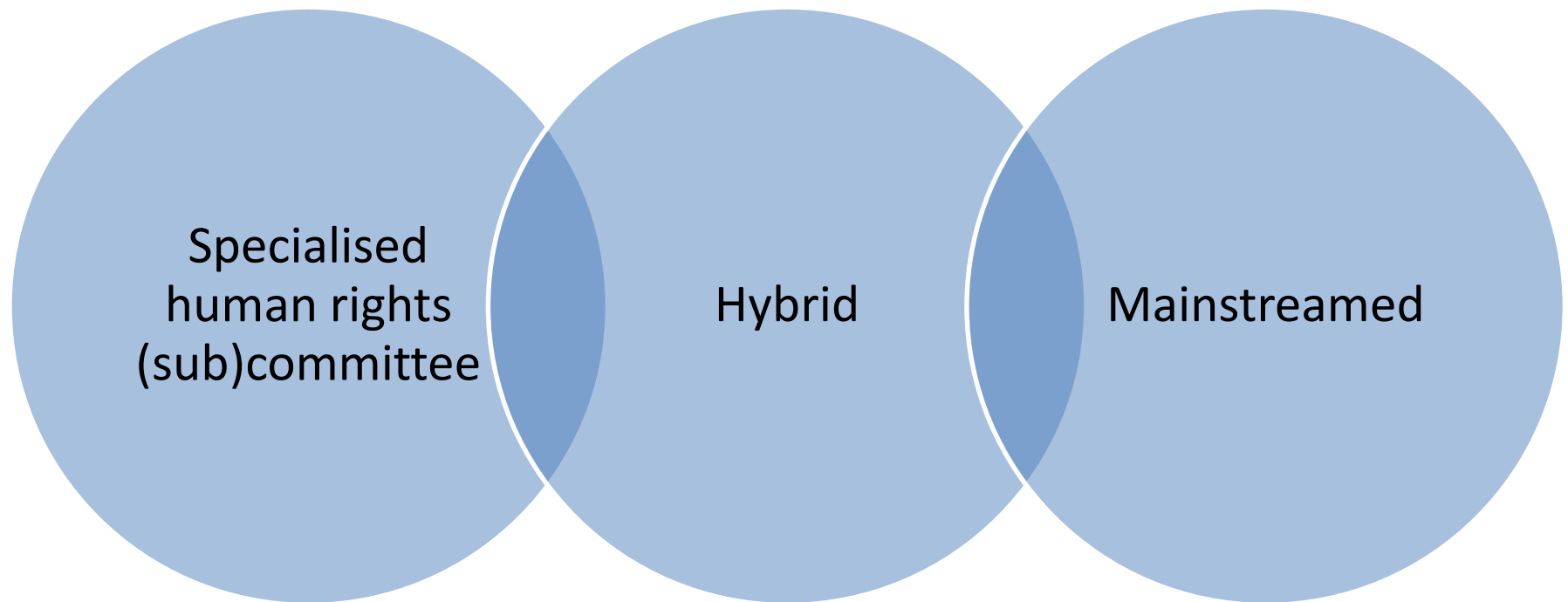
“...the [Parliamentary Assembly] and national parliaments must now play a much more pro-active role in [the execution of judgments]; if this is not done, the key role of the Convention, its supervisory mechanism and the Council of Europe as a whole, in guaranteeing the effective protection of human rights in Europe is likely to be put in jeopardy.”

Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, *Implementation of judgments of the European Court of Human Rights*, 7th report, AS/Jur (2010) 36, 9 November 2010, p 1

Available parliamentary mechanisms for human rights implementation

- Legislative initiative, review and amendment in the light of the international human rights obligations of the state
- Vetting legislative proposals for compliance with international human rights standards
- Oversight of work of the executive in fulfilling its human rights obligations, incl. systematic scrutiny of executive response to adverse judgments
- Thematic / topical inquiries, where relevant
- Monitoring adequacy of domestic institutional machinery for implementation & ensuring adequate resources
- Tools: oral/written questions; correspondence with ministers; hearings; engagement with NHRIs & CSOs

Existing parliamentary structures



The specialised model

- One single, standing (sub-)committee
- Mainly or exclusively concerned with human rights
- e.g. UK Joint Committee on Human Rights (JCHR)
 - Scrutiny of government bills
 - Overseeing the implementation of ECtHR judgments
 - Thematic inquiries
- Other examples exist in Albania, Finland, Greece, Hungary, Latvia, Montenegro (specialised committee); as well as the Czech Republic, Ireland, Romania (specialised sub-committee(s))

The 'mainstreamed' model

- No single committee has a remit covering human rights matters
- Human rights matters are addressed by different committees as they arise within their respective mandates
- e.g. Denmark, Estonia, Iceland, Luxembourg, the Netherlands, Norway, Russia, Sweden and Switzerland

Hybrid models

- Combine elements of the specialised and mainstreamed models
- More than one committee with a human rights remit (though not an exclusive one); or
- Specialised human rights sub-committee within an otherwise mainstreamed system
- e.g. Armenia, Cyprus, Georgia, Germany, Italy, Lithuania

Specialised v mainstreamed?

- Specialised model
 - 👍 Development of systematic oversight mechanisms
 - 👍 Interlocutor with the executive
 - 👍 Human rights expertise among members and staff
 - 👎 Risk of creating a silo of human rights expertise in a specialised committee
- Mainstreamed model
 - 👍 Human rights oversight and expertise becomes integrated across parliament
 - 👎 “Everyone’s responsibility is no-one’s responsibility”?

Specialised v mainstreamed?

“[I]n a weak system of parliamentary committees, mainstreaming human rights might have little effect. Similarly, tacking human rights on to the mandates of other standing committees runs the risk of thin commitment to, and insufficient time and resources for, implementation.”

Open Society Justice Initiative, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions*
(New York: Open Society Foundations, 2013), p 68

Specialised v mainstreamed?

“While human rights are a cross-cutting issue that should be taken into account by all parliamentary committees, the establishment of a parliamentary committee with an exclusive human rights mandate sends a strong political message and should be encouraged.”

Report of the UN Secretary-General on the strengthening of the United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity,
A/72/351, 21 August 2017, para 35

Specialised v mainstreamed?

- Models not mutually exclusive – specialised committees as ‘engines’ of mainstreaming?
- Structures should be sensitive to context – no blueprint

How to enhance parliamentary engagement with human rights implementation?

- Strengthening political will by using both ‘carrot and stick’
- Enhancing parliamentary capacity
 - Role of the executive in facilitating parliamentary engagement
 - Availability of independent legal advice
 - Creating dedicated structures and processes

How to enhance parliamentary engagement?

Role of the executive

- Executive to report systematically to parliament on the human rights compatibility of draft legislation in the form of a memorandum attached to every Bill
- Annual and 'real-time' reporting to parliament on implementation of human rights judgments
 - Sharing of action plans / reports as they are submitted to the Committee of Ministers
 - Detailing in action plans any relevant parliamentary activity
- Broader Annual Human Rights Report to parliament

Role of the executive

Benefits of executive reporting

- Galvanising executive bodies to systematise coordination of implementation and increase efficiency
- Creating a cumulative public record of a state's compliance performance



How to enhance parliamentary engagement?

Independent legal advice

- Legal advisers as ‘mediators’, their functions including
 - Screening ECtHR judgments and other relevant ‘outputs’ of international human rights bodies
 - Analysing the meaning and significance of these outputs in the domestic context
 - Selectively drawing parliamentarians’ attention to them
 - Briefing parliamentarians as to the range of Convention-compliant options available to them
 - Facilitating democratic deliberation on human rights questions and empowering parliamentarians to fulfil their interpretive role

How to enhance parliamentary engagement?

Common principles, functions and powers (I)

- Composition and working methods of human rights (sub-)committees
 - Membership reflects principle of political pluralism
 - Independent legal advisers with human rights expertise
 - Publication of work programme
 - Opportunities for meaningful civil society input
 - Hearings to be held in public (as a rule)
 - Transparency in operations and decision-making
 - Adequately resourced

OHCHR, *Contribution of parliaments to the work of the Human Rights Council and its universal periodic review*, A/HRC/38/25, 17 May 2018, Annex I: 'Draft Principles on Parliaments and human rights'

How to enhance parliamentary engagement?

Common principles, functions and powers (II)

- Status, remit and resources of human rights (sub-)committees
 - Permanent status and clearly-defined remit, sufficiently broad to reflect imperative for parliament to protect and realise human rights domestically
 - Remit includes (or can be interpreted to include) scrutiny of executive response to human rights judgments as a core function
 - Power to initiate legislative proposals and amendments to laws
 - Subpoena powers over witnesses and documents

‘Draft Principles and Guidelines on the Role of Parliaments in the Protection and Realisation of the Rule of Law and Human Rights’

Murray Hunt, Hayley Hooper and Paul Yowell (eds.), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Hart Publishing, 2015), pp 485-95

The obligation on national parliaments

View of the United Nations (I)

“Acknowledging the crucial role that parliaments play in, *inter alia*, translating international commitments into national policies and laws ... and hence their contribution to the fulfilment by each State Member of the United Nations of its human rights obligations and commitments and to the strengthening of the rule of law...”

UN Human Rights Council Resolution 35/29

*Contribution of parliaments to the work of the Human Rights Council
and its universal periodic review*

A/HRC/RES35/29, 23 June 2017 [emphasis added]

The obligation on national parliaments

View of the United Nations (II)

“OHCHR emphasizes the importance of the active participation of parliaments in the follow-up process [to UPR recommendations], 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.”

OHCHR, *Contribution of parliaments to the work of the Human Rights Council and its universal periodic review*,
A/HRC/38/25, 17 May 2018, para 11

The obligation on national parliaments

View of the Parliamentary Assembly

“National parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, **such as dedicated human rights committees or appropriate analogous structures**, whose remits shall be clearly defined and enshrined in law.”

Parliamentary Assembly Resolution 1823 (2011), *National parliaments: guarantors of human rights in Europe: Appendix – Basic principles for parliamentary supervision of international human rights standards*, para 1

The obligation on national parliaments

View of the Parliamentary Assembly (II)

“I reiterate my predecessors' calls for national parliaments to take a stronger interest in [the implementation of Court judgments], create structures to ensure that draft legislation is compatible with the Convention as interpreted by the Court and encourage the executive authorities to keep them regularly informed of the progress achieved in this area.”

PACE Committee on Legal Affairs and Human Rights
Implementation of judgments of the European Court of Human Rights

Doc. 14340, 12 June 2017, para 54

The obligation on national parliaments

View of CoE member states

- Brussels Declaration (2015) urges states to, *inter alia*,
 - establish ‘contact points’ for human rights matters within ... legislative authorities
 - involve national parliaments in the judgment execution process, for instance, by transmitting to them annual or thematic reports or by holding debates with the executive authorities on the implementation of certain judgments
- Copenhagen Declaration (2018) urges states to, *inter alia*,
 - ‘ensur[e], with appropriate involvement of national parliaments, that policies and legislation comply fully with the Convention, including by [systematically] checking the compatibility of draft legislation and administrative practice in the light of the Court’s jurisprudence’

Specialised v mainstreamed?

“In an ideal world, each select committee and limb of parliament would be educated about human rights... Human rights issues wouldn’t be ghettoised and would become mainstreamed in political debate. The disadvantage is that ... if responsibility is diffused ... human rights could get overlooked entirely.”

NGO interviewee, UK

Interviewed by Alice Donald and Philip Leach in the context of research for their book on *Parliaments and the European Court of Human Rights* (Oxford: Oxford University Press, 2016)