



THE
WESTMINSTER
CONSORTIUM



the global voice of
the legal profession*

HUMAN RIGHTS AND PARLIAMENTS: HANDBOOK FOR MEMBERS AND STAFF



the global voice of
the legal profession®

THE WESTMINSTER CONSORTIUM

HUMAN RIGHTS AND PARLIAMENTS: HANDBOOK FOR MEMBERS AND STAFF

MARCH 2011



CONTENTS

| | |
|-----------------------------------|----|
| Acknowledgements | 9 |
| Foreword | 11 |
| The Westminster Consortium | 13 |
| This handbook | 15 |

PART I

| | |
|---------------------------------------------------------------------------------------------|----|
| 1. Introduction | 17 |
| <i>Why human rights?</i> | 17 |
| <i>Good governance, the rule of law and human rights</i> | 18 |
| <i>Sharing responsibility: a democratic dialogue on rights</i> | 19 |
| 2. Protecting human rights | 21 |
| <i>The international human rights legal framework</i> | 21 |
| INTERNATIONAL HUMAN RIGHTS INSTRUMENTS | 21 |
| RESERVATIONS AND DECLARATIONS: CAN STATES OPT-OUT OF MINIMUM HUMAN RIGHTS STANDARDS? | 23 |
| MAKING RIGHTS REAL | 25 |
| <i>Supervision, monitoring and implementation of international human rights law</i> | 25 |
| THE REPORTING PROCESS | 25 |
| ENFORCEMENT BY STATES PARTIES | 28 |
| INDIVIDUAL COMPLAINTS: THE RIGHT OF INDIVIDUAL PETITION | 30 |
| INDEPENDENT INQUIRIES BY UN TREATY BODIES | 34 |
| NATIONAL PROTECTION MECHANISMS | 34 |

| | |
|--------------------------------------------------------------------------------------------|----|
| OTHER UN STANDARDS | 36 |
| THE HUMAN RIGHTS COUNCIL | 38 |
| <i>Regional protection of human rights</i> | 40 |
| AFRICA | 40 |
| THE ARAB REGION | 41 |
| EUROPE | 41 |
| THE COUNCIL OF EUROPE | 41 |
| THE EUROPEAN SOCIAL CHARTER | 42 |
| THE EUROPEAN CONVENTION AGAINST TORTURE AND THE COMMITTEE FOR THE PREVENTION OF TORTURE | 42 |
| THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS | 43 |
| THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION | 43 |
| <i>Domestic protection of human rights</i> | 44 |
| CONSTITUTIONAL BILLS OF RIGHTS | 44 |
| LIMITATIONS ON LEGISLATIVE OR EXECUTIVE POWER | 46 |
| COMPLIANCE WITH INTERNATIONAL STANDARDS | 48 |
| LEGISLATIVE PROTECTION AND REVIEW | 49 |
| 3. What do human rights mean for States? | 49 |
| <i>Who is the State?</i> | 49 |
| 4. Suggested questions for parliamentarians | 52 |
| Table Footnotes Part I | 53 |

PART II

| | |
|------------------------------------------------------------------|----|
| 1. What are human rights? | 55 |
| <i>Civil and political, economic, social and cultural rights</i> | 55 |

| | |
|--------------------------------------------------------------------------------------|-----|
| <i>Rights are universal, indivisible and interdependent</i> | 57 |
| UNIVERSAL | 57 |
| INALIENABLE, INDIVISIBLE AND INTERDEPENDENT | 59 |
| <i>Everyone is equal in human rights law</i> | 60 |
| <i>Respect, protect and fulfil</i> | 61 |
| <i>Absolute, non-derogable, derogable and qualified rights</i> | 62 |
| <i>The obligation of progressive realisation</i> | 70 |
| <i>Rights and remedies</i> | 70 |
| 2. Human rights in practice | 77 |
| <i>Equality and non-discrimination</i> | 77 |
| UNLAWFUL DISCRIMINATION: 'OTHER STATUS' | 82 |
| JUSTIFIED DISTINCTIONS | 84 |
| <i>Action to ensure equality</i> | 86 |
| 3. The right to life | 91 |
| <i>The death penalty</i> | 97 |
| <i>Deaths in custody</i> | 99 |
| <i>Abortion and the right to life</i> | 101 |
| 4. The prohibition on torture, inhuman and degrading treatment and punishment | 105 |
| <i>Law enforcement personnel</i> | 110 |
| <i>Deportation and extradition</i> | 111 |
| <i>Treatment of vulnerable persons</i> | 113 |
| 5. The right to liberty | 116 |
| 6. The right to a fair hearing | 123 |
| <i>Special protection in criminal cases</i> | 124 |

| | |
|------------------------------------------------------------------------|-----|
| <i>Special courts</i> | 125 |
| <i>Administrative decision making</i> | 128 |
| 7. The right to privacy and respect for private and family life | 132 |
| <i>What is the right to privacy?</i> | 132 |
| 8. The right to freedom of thought, conscience and religion | 134 |
| 9. Freedom of expression and freedom of association | 137 |
| <i>Public protests</i> | 144 |
| <i>'The right to offend'</i> | 145 |
| <i>Media regulation and freedom of the press</i> | 146 |
| <i>Censorship</i> | 148 |
| 10. Economic, social and cultural rights | 149 |
| <i>Food</i> | 150 |
| <i>Clothing</i> | 152 |
| <i>The right to housing</i> | 153 |
| 11. The right to education | 156 |
| 12. The right to work and other labour rights | 159 |
| 13. The right to health | 164 |
| Table Footnotes Part II | 169 |

PART III

| | |
|---------------------------------------------------|-----|
| 1. Parliaments and human rights | 173 |
| <i>Parliaments that represent us all</i> | 173 |
| <i>Parliamentarians and freedom of expression</i> | 176 |
| <i>Parliaments and corruption</i> | 176 |

| | |
|------------------------------------------------------------------------------------|-----|
| <i>Parliamentary resources</i> | 179 |
| <i>Parliamentarians as human rights defenders</i> | 179 |
| <i>Human rights standards and standard setting</i> | 182 |
| <i>Legislative scrutiny</i> | 183 |
| STATEMENTS OF COMPATIBILITY AND OTHER FEATURES OF LEGISLATIVE SCRUTINY | 186 |
| SAMPLE STATEMENT OF COMPATIBILITY | 186 |
| <i>Oversight of government</i> | 190 |
| EXECUTIVE AND ADMINISTRATIVE ACTIVITY | 190 |
| EFFECTIVE PROTECTION OF HUMAN RIGHTS BY EXECUTIVE AND ADMINISTRATIVE BODIES | 191 |
| NATIONAL HUMAN RIGHTS INSTITUTIONS | 193 |
| A NATIONAL ACTION PLAN FOR HUMAN RIGHTS? | 197 |
| BUDGETARY ANALYSIS FOR HUMAN RIGHTS COMPATIBILITY | 199 |
| <i>Scrutiny of human rights judgments</i> | 201 |
| <i>Monitoring compliance with UN and regional treaties</i> | 204 |
| 2. Parliamentary tools for human rights protection | 206 |
| <i>Individual parliamentarians working on human rights issues</i> | 206 |
| PARLIAMENTARY QUESTIONS AND OTHER PROCEDURES | 206 |
| MEMBERS' LEGISLATION | 207 |
| CAUCUSES AND PARLIAMENTARY GROUPS | 208 |
| THE IPU/CPA | 209 |
| <i>Parliamentary committees</i> | 209 |
| <i>Dedicated human rights committees</i> | 210 |
| <i>Specialist issue-based human rights committees</i> | 212 |
| <i>Mainstreaming human rights scrutiny?</i> | 212 |

| | |
|-------------------------------------------------------------------------------------------|-----|
| <i>The right tools for the job?</i> | 214 |
| ACCESS TO INDEPENDENT, IMPARTIAL LEGAL ADVICE | 214 |
| ACCESS TO OTHER SPECIALIST SUPPORT AS NECESSARY | 214 |
| 3. Supporting parliamentarians to protect human rights | 217 |
| <i>Identifying human rights issues</i> | 217 |
| INDICATORS FOR HUMAN RIGHTS COMPLIANCE | 219 |
| <i>Providing parliamentarians with effective support on human rights issues</i> | 221 |
| WORKING EFFECTIVELY WITH GOVERNMENT, CIVIL SOCIETY AND INTERNATIONAL ORGANISATIONS | 226 |
| ENHANCING TRANSPARENCY AND PUBLIC ENGAGEMENT | 226 |
| EFFECTIVE FOLLOW-UP BY PARLIAMENTS: AN ONGOING DIALOGUE ON HUMAN RIGHTS ISSUES? | 230 |

ANNEX

| | |
|--------------------------------------------|-----|
| Glossary of acronyms | 231 |
| Domestic resources | 234 |
| International law resources | 250 |
| Regional human rights law resources | 254 |
| Comparative practice | 263 |
| Parliaments and human rights | 266 |

ACKNOWLEDGEMENTS

The International Bar Association's Human Rights Institute (IBAHRI) wishes to give special thanks to Angela Patrick, Assistant Legal Adviser, Joint Committee on Human Rights (JCHR) who took primary responsibility for developing and writing this Handbook, and to JCHR staff who commented on the draft.

The Handbook stems from several workshops the IBAHRI has organised in partnership with The Westminster Consortium for Parliaments and Democracy (TWC). The IBAHRI would like to thank George Kunnath (Programme Manager, TWC) for the significant role he has played in mentoring these programmes. The workshops and Handbook would not have been possible without the dedicated support of TWC Country Managers and local partners who provided comments on the draft. Thanks go to Walid Abdurahim (Faculty of Law, Lebanese University), Paul Comoane and Armando Cuemba (Centre for Human Rights, Eduardo Mondlane University, Mozambique), Giorgi Gotsiridze (Georgian Young Lawyers Association), Thea Kentchadze (Georgia), Oksana Klymovych (Centre for European Integration, Ukraine), Jill Kyatuheire (Uganda), Farida Mamad (Centre for Human Rights, Eduardo Mondlane University, Mozambique), Felizaberto Mulhovo (Mozambique) Sheila Muwanga (Foundation for Human Rights Initiative), Livingstone Sewanyana (Foundation for Human Rights Initiative, Uganda), Halyna Shevchuk (Ukraine) and Hovig Wannes (Lebanon).

Jenny Marsh, former IBAHRI Programme Lawyer, played an invaluable role in developing the workshops and handbook. IBAHRI interns, Faye Bovingdon, Sophia Harris, Martina Magnarelli, Kayla Martin, Yasser Vanderman, Elizeta Velado, Camilla Whitehouse and Olivia Wybraneic, are also thanked for their assistance.

The generous financial support received from the Department for International Development's Governance and Transparency Fund for this publication is gratefully acknowledged.

Angela Patrick is a qualified barrister and is one of two human rights lawyers working with the JCHR. She has advised on a range of human rights issues and has held academic posts as visiting fellow of the Institute of Advanced Legal Studies in London and at University College, London. She holds a First Class LLB from Durham University and a First Class LLM from Cambridge University.

Any comments or commentary on the work of the Committee are those of the author, Angela Patrick, and should not be attributed to the JCHR, its members or the House of Commons.

Material contained in this report may be freely quoted or reprinted, provided credit is given to the International Bar Association.

The IBAHRI works to promote, protect and enforce human rights under a just rule of law. The IBAHRI operates under the belief in the fundamental right of the world's citizens to have disputes heard and determined by an independent judiciary, and for judges and lawyers to be able to practise freely and without interference. In order to advance human rights and the rule of law across the globe the IBAHRI undertakes a variety of projects to build capacity, lobby for change and highlight issues of international concern to the public, the media and the legal community. Further details about the Institute's work can be found at: **www.ibanet.org/IBAHRI.aspx**

FOREWORD

Every democracy worthy of the name ensures government under the rule of law, by an independent judiciary and through the effective protection of the rights and freedoms recognised as universal by the United Nations in 1948 and given specific content in the UN International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, as well as in later conventions. A functioning democracy will ensure that there is access to justice and to effective remedies for violations of those rights and freedoms.

The task of securing and protecting human rights is not the exclusive responsibility of the judiciary, the legal profession and civil society. It is also a primary responsibility of the legislative and executive branches of government: the executive in the way it exercises its public powers, and the legislature in ensuring that legislation is compatible with human rights and in calling the executive to account for its actions and omissions.

Parliamentarians and their staff need to be well informed about the nature and content of human rights and the obligations – positive as well as negative – which need to be performed. They need to understand the key principles of legal certainty and proportionality – that laws should not suffer from the vices of vagueness and over-breadth – and the need to strike and maintain a fair balance between conflicting individual rights and other aspects of the public interest. They need the means to scrutinise and monitor draft legislation and to conduct timely and expert inquiries by specialised parliamentary committees able to take evidence from NGOs and to question ministers and public officers acting as public watchdogs.

The Westminster Consortium for Parliaments and Democracy (TWC) was established to help developing parliaments create their own sustainable centres of learning for their staff and members. The TWC comprises leading experts in the fields of parliamentary practice, financial oversight and communications.

The International Bar Association's Human Rights Institute (IBAHRI) was founded in 1995 and works to promote, protect and enforce human rights under a just rule of law. In order to advance human rights and the rule of law around the world, the IBAHRI undertakes a variety of projects to build capacity, lobby for change and highlight issues of international concern to the public, the media and the legal community.

The aim of this valuable handbook is to give practical guidance about how members of parliament and their staff can perform their crucial role in ensuring the legislature upholds the rule of law and human rights. It describes the content of specific rights and their limits, gives case studies and provides checklists to prompt action.

It draws on the experience gained from a series of training sessions undertaken by the IBAHRI, as part of TWC, for parliamentarians and parliamentary staff in Georgia, Lebanon, Mozambique, Uganda and Ukraine in 2009 and 2010. It is a useful, practical guide for all parliamentarians and parliamentary staff in all countries. This handbook is designed to support the development of strong and democratic parliamentary institutions to achieve these aims. Asking the questions and following the steps it contains will contribute to a greater awareness and implementation of human rights and fundamental freedoms across the world.

Anthony Lester*

(Lord Lester of Herne Hill QC)

London

February 2011

* Lord Lester of Herne Hill QC is a practicing barrister and a Liberal Democrat peer. He introduced two Private Members' Bills in the House of Lords to incorporate the European Convention on Human Rights into UK law. He has argued many leading cases before domestic and international courts and has published numerous books and articles on constitutional law and human rights. He has been a member of the Joint Committee on Human Rights since 2001.

THE WESTMINSTER CONSORTIUM

The Westminster Consortium for Parliaments and Democracy (TWC) is made up of a group of organisations that work collectively to strengthen parliamentary democracy by building capacity in the areas of parliamentary process and management, financial oversight and access to information. The programme is aimed at developing sustainable capacity building in five parliaments namely: Ukraine, Georgia, Uganda, Mozambique and Lebanon.

Our UK partners

- The Westminster Foundation for Democracy
- Commonwealth Parliamentary Association, UK Branch
- House of Commons, Overseas Office
- International Bar Association's Human Rights Institute
- National Audit Office
- Thomson Reuters Foundation
- University of Essex, Institute for Democracy and Conflict Resolution

Rule of law and human rights

As part of the strengthening of parliaments and democracy programme, the International Bar Association's Human Rights Institute (IBAHRI) and the House of Commons, together with local partners, designed a course to improve the understanding of parliamentarians and civil society of the role of the parliament in upholding the rule of law and in strengthening the implementation of human rights obligations.

THIS HANDBOOK

This handbook provides a basic introduction to human rights principles and practice as they apply to the work of parliaments and parliamentarians worldwide. It forms an expanded curriculum for training on human rights and the rule of law provided jointly by the International Bar Association's Human Rights Institute (IBAHRI), the House of Commons and the Joint Committee on Human Rights as part of the TWC programme.

- **Part I** provides a basic introduction to human rights; how human rights are protected in the international human rights law obligations of most States and in domestic constitutional guarantees; and what those rights mean in practice for rights holders, governments, government agencies, courts and parliaments.
- **Part II** outlines key human right standards and explains key human rights issues which parliamentarians may routinely face.
- **Part III** outlines how parliamentarians can use and adapt existing parliamentary processes and powers to better protect human rights in practice. It offers guidance for parliamentary staff on supporting parliamentary engagement with human rights issues through suggesting sources of information; methods of effective briefing; tools for engaging with civil society and enhancing public participation; and techniques for enhancing the profile of parliamentary work on human rights in the media.
- **The Annex** contains useful sources of information on human rights and the rule of law, and a glossary of acronyms.

The purpose of the handbook is to present practical tools which members and parliamentary staff may use in their work. It uses examples and case studies from around the globe and specifically from each of the TWC partners, including the UK. These are used to illustrate the increasing role played by parliamentarians in human rights protection globally and to provide inspiration and learning opportunities for readers and participants in the TWC programme. The handbook also uses suggested questions and checklists to help users to frame their thinking on future human rights projects. These are basic and designed to provide a framework for further research, analysis and development of domestic tools and techniques for domestic oversight by parliamentarians of human rights standards in government and administrative activity.

PART I

1. Introduction

'As trustees of people's combined aspirations, parliaments have a responsibility to forge new tools, develop new mechanisms and espouse human rights causes. As emissaries of democracy, parliamentarians must also exercise oversight of both governmental and non-governmental spheres and ensure that both State and non-State actors do not waver from commitment to a human rights regime.'

World Bank, Parliamentary Staff Training Programme on Human Rights

Why human rights?

'Human rights are the most fundamental rights of human beings. They define relationships between individuals and power structures, especially the State. Human rights delimit State power and, at the same time, require States to take positive measures ensuring an environment that enables all people to enjoy their human rights.'

Inter-Parliamentary Union, Human Rights Handbook for Parliamentarians, 2005

Since the Second World War, the fundamental human rights enjoyed by us all by virtue of our humanity have increasingly been enshrined in national constitutions and in international agreements. At a basic level, these rights are designed to ensure that everyone – regardless of national or ethnic origin, socio-economic background, race, gender, sexual orientation or other status – enjoys the fundamental entitlements of being human and the basic standards required to ensure our human dignity.

International human rights law and local constitutional guarantees place obligations on States to refrain from acting in a way which violates those basic standards, but they also create positive obligations on States to act to protect, promote and fulfil the practical enjoyment of rights. Without access to a functioning system of sanitation, can an individual really enjoy the right to health? Equally, without a functioning, independent and impartial judiciary what is the point of a constitutional right to a fair trial?

Good governance, the rule of law and human rights

'The purpose of democracy like that of human rights protection is to uphold the dignity of every individual and to ensure that the voices of the weakest are also heard. Its core values – freedom, equality, fraternity, accommodation of diversity and the assurance of justice underpin the norms of human rights as well.'¹

World Bank, Parliamentary Staff Training Programme on Human Rights

Human rights standards are often described as being both a sword and a shield: rights protect individuals against the State but also provide a means of challenging the scope of State power. For parliamentarians, the international human rights framework encapsulates both a set of clear legal duties and a practical tool of governance which can be overlooked. As law-makers and as elected representatives, parliamentarians can play a key role in upholding the rule of law by ensuring that domestic legislation is compatible with constitutional and international human rights obligations. Parliamentary staff play an important role in providing appropriate technical advice on human rights law and practice and by ensuring the smooth running and proper coordination of the legislative process.

'It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.'

Preamble, Universal Declaration of Human Rights

Scrutiny for human rights compliance dovetails neatly with the work of parliamentarians in democratic States to promote and protect good governance and the rule of law within their democratic States.²

-
- 1 World Bank, 'Parliamentary Staff Training Programme on Human Rights' www.parliamentarystrengthening.org/humanrightsmodule/pdf/humanrightsalt.pdf.
 - 2 Office of the United Nations High Commission on Human Rights (UNHCHR) 'Good Governance Practices for the Protection of Human Rights', 2007 (examples of how good governance supports the protection of human rights have been prepared by the UNHCHR, together with a number of detailed case studies) www.ohchr.org/Documents/Publications/GoodGovernance.pdf.

The rule of law creates the presumption that everyone is equal before the law, including the State. It acts as a guarantee for individuals and to limit State power: individual activities can only be restricted in so far as an accessible stable system of law provides. The rule of law creates a basic minimum standard for the operation of good governance within a State so that law must be clear, accessible, stable, consistent and capable of being followed. Individuals must be treated equally by the law, which therefore must be applied impartially and independently.

Without a commitment to the rule of law it is easy to see why the protection of individual rights could falter. However, the tools used by democracies to ensure good governance according to the rule of law also inform and support the work of human rights defenders worldwide to promote and protect individual rights:

- transparency in government;
- personal and institutional accountability of decision makers;
- effective public participation and responsiveness to people's needs; and
- responsibility for the impact of democratic, executive and administrative decisions.

Each of these elements of good governance is necessary to ensure the effective implementation of minimum human rights standards in practice. Without understanding individual needs, it would be impossible to understand whether rights are endangered. Without transparency in government, it would be difficult to identify decisions which may breach constitutional rights. Without personal and institutional accountability, could parliamentarians credibly promote challenges to human rights abuses?

Sharing responsibility: a democratic dialogue on rights

'If human rights are to become a reality for everyone, parliaments must fully play their role and exercise to this effect the specific powers they have, namely legislating, adopting the budget and overseeing the Government.'

Louise Arbour, Former UN High Commissioner for Human Rights
Anders B Johnsson, Former Secretary General Inter-Parliamentary Union,
Inter-Parliamentary Union, Human Rights Handbook for
Parliamentarians, 2005

Over the past decade, international organisations and human rights commentators have increasingly called for a greater involvement of democratic institutions in the protection and promotion of human rights.³ This represents a move away from the traditional model of judicial enforcement of constitutional rights and international human rights law and aims to shift rights protection from the exclusive dominion of courts and expert lawyers into mainstream political discourse and governmental responsibility.

Some critics of human rights law argue that 'legalising' rights removes their democratic legitimacy by moving debates about the role of the State and the protection of individuals from mainstream political debate and democratic argument by elected representatives into the more sterile and remote hands of the judiciary. If rights are the preserve of those who are legally literate and able to litigate, vulnerable groups whose rights are most at risk of violation could have no means of effective enforcement or redress.⁴ Increasing, democratic involvement in the protection of rights in part answers this criticism. It recognises that each of the arms of government has a legitimate role in rights protection and when each of the constituent parts recognises their responsibility as rights defenders, rights are given greater respect without resort to litigation.

A modern human rights-based approach to government requires ministers and administrators to tailor activities and programmes to meet fundamental human rights standards; legislators to scrutinise legislation and review executive action for compatibility; and an independent and impartial judiciary to control excesses. This type of proactive, front-loaded approach to human rights protection aims to remove the onus from individual victims of human rights abuse to seek legal redress and to ultimately reduce the risk that violations will happen at all.

3 Council of Europe, 'Interlaken Declaration on the Future of the European Court of Human Rights', 19 February 2010, and 'National parliaments can do more to promote human rights', Viewpoint, 16 February 2010, in 'Human Rights in Europe: time to honour our pledges', Viewpoints by Thomas Hammarberg, Commissioner of Human Rights, pages 153-158.

4 T Campbell, K D Ewing and A Tomkins, *Sceptical Essays on Human Rights* (Oxford University Press, 2001) and D Raab, *The Assault on Liberty* (Fourth Estate, 2009).

2. Protecting human rights

Human rights are concrete legal standards recognised in international human rights law and in domestic constitutional guarantees across the world. This global legal regime routinely circumscribes the bounds of acceptable State action. In this section, we consider the international human rights legal framework and its implementation in domestic constitutional guarantees.

The international human rights legal framework

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The Universal Declaration of Human Rights 1948 (UDHR)⁵ establishes the fundamental principles and standards which form the basis of subsequent developments in both global and regional human rights law. The UDHR is comprehensive in its scope, setting out a catalogue of civil, political, economic, social and cultural rights, but it is only declaratory as it has no legal force.

The principles of the UDHR are given binding force in international law in two principal treaties:⁶

- the International Covenant on Civil and Political Rights (ICCPR);⁷ and
- the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁸

Its standards are further developed by five subsequent UN treaties designed to address specific human rights problems or to provide particular protection for the rights of vulnerable groups of people:

- the Convention Against Torture (UNCAT);⁹
- the Convention on the Elimination of all forms of Racial Discrimination (CERD);¹⁰

5 The Universal Declaration of Human Rights, United Nations General Assembly (UNGA) Res 217 A (III) (10 December 1948, Paris).

6 Inter-Parliamentary Union, 'Human Rights Handbook for Parliamentarians' (IPU Handbook) 2005 (Chapters 1–4) www.ipu.org/PDF/publications/hr_guide_en.pdf.

7 International Covenant on Civil and Political Rights (ICCPR) UNGA Res 2200A (XXI) (16 December 1966).

8 International Covenant on Economic, Social and Cultural Rights (ICESCR) UNGA Res 2200A (XXI) (16 December 1966).

9 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) UNGA Res 39/46 (10 December 1984).

10 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) UNGA Res 2106 (XX) (21 December 1965).

- the Convention on the Elimination of all forms of Discrimination against Women (CEDAW);¹¹
- the Convention on the Rights of the Child (UNCRC);¹² and
- the Convention on the Rights of Persons with Disabilities (UNCRPD).¹³

Together, these commitments form the core of UN human rights protection. Each of the countries participating in the TWC programme is party to the majority of these treaties (see Table 1). Each of the States Parties to these treaties is bound by international law to give effect to their provisions within their jurisdiction.

TABLE 1: RATIFICATION OF CORE UN HUMAN RIGHTS TREATIES¹⁴

| Treaty | TWC partner ratifications |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------|
| ICCPR | Georgia (1994) Lebanon (1972) Mozambique (1993) Uganda (1995) Ukraine (1973) United Kingdom (1976) |
| ICESCR | Georgia (1994) Lebanon (1972) Mozambique (<i>Not ratified</i>) Uganda (1987) Ukraine (1973) United Kingdom (1976) |
| UNCAT ¹ | Georgia (1994) Lebanon (2000) Mozambique (1999) Uganda (1986) Ukraine (1987) United Kingdom (1988) |
| CERD | Georgia (1999) Lebanon (1971) Mozambique (1983) Uganda (1980) Ukraine (1969) United Kingdom (1969) |

11 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) UNGA Res 34/180 (18 December 1979, New York).

12 Convention on the Rights of the Child UNGA Res 44/25 (20 December 1989).

13 Convention on the Rights of Persons with Disabilities UNGA Res 60/232 (23 December 2005).

14 United Nations Treaty Collection, United Nations, 2010 <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>.

| | |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CEDAW | Georgia (1994) Lebanon (1984) Mozambique (1997) Uganda (1985) Ukraine (1981) United Kingdom (1986) |
| UNCRC | Georgia (1994) Lebanon (1991) Mozambique (1994) Uganda (1990) Ukraine (1991) United Kingdom (1991) |
| UNCRPD | Georgia (<i>Not ratified</i>) Lebanon (<i>Not ratified</i>) Mozambique (<i>Not ratified</i>) Uganda (2008) Ukraine (2010) United Kingdom (2008) |

RESERVATIONS AND DECLARATIONS: CAN STATES OPT-OUT OF MINIMUM HUMAN RIGHTS STANDARDS?

There are very limited opportunities for States to opt-out of the minimum human rights standards in international human rights law once they become a party to a treaty. These restrictions are designed to ensure adequate flexibility to open up international human rights treaties to as many parties as possible, while maintaining the integrity of the universal minimum standards agreed. In limited circumstances, States may enter a reservation to a treaty on ratification or accession. Reservations are only possible where they are not prohibited by the treaty and where the reservation proposed is not incompatible with its object and purpose. Other States Parties may object to any reservation and reservations may be withdrawn at any time. In practice, reservations are published and are subject to scrutiny not only by States Parties but by civil society and international and domestic human rights commentators.

Opting-out: scrutiny of UK reservations to the UNCRC

In 1991, on ratification of the UNCRC, the UK entered two reservations which limited the effect of the Convention in the UK. The first reservation exempted children subject to immigration control from the minimum protection offered by the Convention and the second related to the prohibition on holding children in custody at adult facilities. The UN Committee on the Rights of the Child criticised both of these reservations and called on the UK to remove them.¹⁵ Similarly, the Joint Committee on Human Rights of the UK Parliament (JCHR) repeatedly reported its conclusion that the reservations should be removed.¹⁶ It considered that the immigration reservation was overly broad and incompatible with the object and purpose of the UNCRC.¹⁷

In 2008, after almost two decades of international and domestic criticism, the UK Government withdrew both reservations. Lifting the reservations, the Secretary of State for Children said: 'The lifting of these reservations is proof that the Government is delivering on its mission to improve the lives of all children, including the most vulnerable, such as asylum seeking children and children in custody'.¹⁸

After ratification, States may generally only derogate from their international human rights obligations in times of national emergency. This test is strict and applies only when:

- a treaty permits derogation;
- a state of national emergency exists;
- any specific derogation is strictly required by the situation;
- that derogation is reported to the relevant international organisation and other States Parties; and
- the derogation is lifted as soon as the circumstances permit.

15 Committee on the Rights of the Child, 8th session, CRC/C/15/Add.34, 15 February 1995, 'Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland', para7 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/153/97/PDF/G9515397.pdf?OpenElement>.

16 19th Report of Session 2003-04, 'Children Bill', HL Paper 161, HC 537, para95 www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/161/161.pdf; and 10th Report of Session 2002-03, 'The UN Convention on the Rights of the Child', HL Paper 117, HC 81 www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/117/117.pdf.

17 10th Report of Session 2002-03, 'The UN Convention on the Rights of the Child', HL Paper 117, HC 81, para 87 www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/117/117.pdf.

18 Press Release, Department for Children, Schools and Families (22 September 2008) www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0209.

Some absolute rights – including the right to life and the prohibition on torture, inhuman and degrading treatment and punishment – generally do not permit any form of derogation.

International human rights law recognises that not all rights are absolute. By necessity, some rights inherently recognise that they can justifiably be limited in order to preserve the rights of the community or the competing rights of others. For example, the right to liberty may be limited in order to impose a lawful and proportionate custodial sentence after a serious crime has been committed. International treaties and domestic constitutions recognise these limitations either through specific limitation clauses or in the language of individual, limited or qualified rights. The nature of absolute, limited and qualified rights is explored in more detail in Part II of this handbook.

MAKING RIGHTS REAL

In practice, the obligation to give effect to a treaty can have a number of implications for domestic law and practice. These include checking whether domestic law complies with the obligations in the treaty; considering whether any reservations or declarations made by the State (limiting the effect of the treaty) are compatible with its object and purpose; amending or repealing any laws and administrative practices which are incompatible with the treaty; and taking positive steps to ensure that the rights guaranteed are enjoyed in practice (for example, by allocating funds to support programmes for social housing where standards of housing available fall short of the requirements of the ICESCR). National governments and parliaments may also have a responsibility to respond effectively to judgments of international courts and international monitoring mechanisms.

Supervision, monitoring and implementation of international human rights law

Implementation of the UN human rights treaties is supervised by the 'treaty bodies' which are independent expert committees established under each of the treaties, through a system of periodic State reports, complaints by States Parties and, under some of the treaties, petitions from individuals.¹⁹

THE REPORTING PROCESS

Each UN human rights treaty requires its parties to report periodically to explain the extent of the State's compliance with the obligations in the treaty. For completeness, the State is expected to involve each of the institutions of government, any national human rights institution or ombudsmen, any relevant non-government organisations and civil society organisations. The report should provide periodic information about:

19 Chapter 5 IPU Handbook.

- Steps taken by the State to give effect to the rights guaranteed by the treaty;
- Evidence of the practical enjoyment of those rights;
- Statistics and data relevant to support that evidence; and
- Any problems or difficulties which have arisen in securing effective domestic implementation of the treaty (and an explanation from the government regarding the reasons for those difficulties).

Once a report has been submitted, the responsible treaty body will examine it together with submissions of NGOs and others. Following this consideration and the oral examination of the State's representatives, the treaty body will issue 'Concluding Observations' highlighting the positive and negative aspects of the State's level of compliance and they will make recommendations for appropriate changes to law or practice. These conclusions and recommendations have no binding legal force but they provide an authoritative interpretation of the individual treaty obligations. Concluding Observations can include recommendations on the ratifications of treaties, the removal of reservations and specific observations on the compatibility of law and practice within an individual State. Examples of some of the Concluding Observations of various UN monitoring bodies in relation to TWC partner countries are used throughout this handbook.

TABLE 2: SUMMARY OF UN TREATY REPORTING REQUIREMENTS

| Treaty | Monitoring Body | Frequency of Reports |
|---------------|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| ICCPR | The Human Rights Council ⁱⁱ | Every four years (via the Universal Periodic Review process) ⁱⁱⁱ |
| | The Human Rights Committee | Initially within one year of accession and then when the Human Rights Committee requests, usually every four years ^{iv} |
| ICESCR | Committee on Economic, Social and Cultural Rights | Initially within two years of accepting the ICESCR and then every five years ^v |
| CERD | Committee on Elimination of Racial Discrimination | Initially within a year of accepting the CERD and then every two years ^{vi} |
| CEDAW | Committee on the Elimination of Discrimination against Women ^{vii} | Initially within a year of accepting the CEDAW and then at least every four years ^{viii} |
| UNCAT | Committee against Torture and Sub-Committee on Prevention ^x | Initially within a year of accepting the CAT and then every four years ^x |
| | | The Subcommittee aims to visit every State Party every four of five years ^{xi} |
| UNCRC | Committee on the Rights of the Child | Initially within two years of accepting the UNCRC and then every five years ^{xii} |
| UNCRPD | Committee on the Rights of Persons with Disabilities | Initially within two years of accepting the UNCRPD and then every four years ^{xiii} |

Treaty monitoring and the UK Parliament: children's rights and the UNCRC

The JCHR has regularly scrutinised the Concluding Observations of the UN treaty bodies in respect of the UK, to consider whether changes to UK law and practice are necessary in order to meet the UK's obligations under the UN human rights treaties.

The Committee on the Rights of the Child (CRC) published its Concluding Observations on the UK in October 2009.²⁰ It noted the UK's failure to fully implement the UNCRC. In particular, the CRC noted that principles on non-discrimination, corporal punishment, education, asylum-seekers and refugee children, juvenile justice, and domestic violence and abuse. The CRC considered that the principles of the UNCRC were not adequately taken into account across UK legislation.

Following the release of the latest CRC Concluding Observations, the JCHR published a report on the status of Children's Rights in the country.²¹ The report found several shortcomings in the protection of children's rights in the UK, including discrimination, the treatment of children in custody and a lack of protection for children in vulnerable and marginalised groups. The JCHR called on the UK Parliament to legislate to address the issues identified, and to develop a plan to achieve the implementation of the recommendations made by the CRC.

ENFORCEMENT BY STATES PARTIES

Some UN instruments, notably, ICCPR, CERD and UNCAT allow one State Party to bring a complaint to the treaty monitoring body that another State Party is not fulfilling its treaty obligations. To date, no such inter-State complaints have been made.²² States have generally tended to use broader diplomatic means to raise concerns about human rights issues outside their jurisdiction, for example, from making diplomatic representations through their ambassadors or heads of State, or by making donor support conditional on increased protection for individual rights.

20 Committee on the Rights of the Child 'Consideration of Reports submitted by States Parties under Article 44 of the Convention: Concluding Observations: United Kingdom of Great Britain and Northern Ireland', 49th session, (20 October 2008) CRC/C/GBR/CO/4 www.unhcr.org/refworld/publisher,CRC,CONCOBSERVATIONS,GBR,4906d1d72,0.html.

21 25th Report from the JCHR 'Children's Rights', Session 2008-2009, (13 October 2009) www.publications.parliament.uk/pa/jt200809/jtselect/jtrightts/157/15702.htm.

22 'Civil and Political Rights: The Human Rights Committee' Fact Sheet no 15 (Rev 1), p 27 www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf.

Inter-state dialogue on human rights issues

The Ugandan Anti-Homosexuality Bill

In 2009, the Ugandan Parliament considered the passage of an Anti-Homosexuality Bill. This private member's Bill gained a significant degree of international criticism on human rights grounds, including discrimination on the grounds of sexuality, violation of the right to freedom of expression, the right to life and the right to respect for private life. It proposed a number of measures including the creation of new specific offences related to homosexuality, in respect of which the death penalty would apply. The Bill attempted to set aside any international human rights obligations of Uganda in so far as the provisions of the Bill were incompatible. A number of Uganda's international partners – including donor nations – publicly criticised the implications of the Bill for Uganda's international human rights obligations. It was reported that a number of donor States intended to withdraw or reduce support for Uganda if the Bill became law. It was reported that the Ugandan Government had given international undertakings to donors that the Bill would not become law. In May 2010, a Cabinet Committee appointed to review the Bill recommended that the Bill in its current state should be withdrawn from Parliament. At the end of the 2010 Parliament, the Bill had not completed its committee stage and continued to face international criticism.

UNCAT: alleged UK complicity in torture

In 2009, the JCHR conducted an inquiry into allegations of UK complicity in torture related to rendition and ill-treatment of individuals suspected of terrorist offences overseas.²³ In this report, the JCHR called on the government to instigate a full public inquiry to investigate the allegations made against the UK and its security personnel. This report followed international questions over the role of the UK raised by diplomatic partners in both the EU and the Council of Europe over a significant period.²⁴ It also followed decisions by the new US Administration, under President Obama, to publish a number of documents relating to allegations of US involvement in torture, inhuman and degrading treatment including of detainees in Iraq and those alleged

23 'Allegations of UK complicity in Torture' 23rd Report of 2008-2009, HL 152/HC 230 www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/152/15202.htm.

24 European Parliament 'Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners' (2006/2200(INI)), FINAL A6-0020/2007, 30 January 2007 www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN; and Council of Europe Parliamentary Assembly 'Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states', Doc 10957, 12 June 2006 <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf>.

to have been subject to rendition.²⁵ In summer 2010, the new coalition government in the UK announced a public inquiry into allegations of UK complicity in torture. The government explained that this inquiry was intended to address domestic and international criticism and to prevent costly, high profile domestic litigation by alleged victims of torture.²⁶

Georgian Law on Assembly and Demonstrations

In July 2009, the Georgian Parliament introduced amendments to the Law on Assembly and Demonstrations. Article 13 of the amendments required that where an assembly or demonstration violates the law it 'shall be halted immediately at the request of an authorised representative of a local government body', and requiring that the persons responsible 'shall break up the assembly or demonstration and take measures to drive the participants away.' The amendments were met with criticism from civil society and the German and Swedish Embassies issued public statements on the law. The amendments were considered to create an obstacle to and a disproportionate interference with the right to freedom of assembly. Subsequently, in August 2009, the Deputy Speaker of the Georgian Parliament requested an 'Opinion' on the amendments from the Venice Commission. In its interim opinion, the Commission criticised Article 13, stating that it was inconsistent with the presumption in favour of freedom of assembly. As a result of the Opinion, Article 13 was revised to alter the meaning of 'immediately', so that on the request of an authorised representative the organisers are 'obliged to appeal to the participants of the assembly or demonstration and to take all reasonable efforts within the next 15 minutes to eradicate the violations', and only after all reasonable efforts have been taken by the organisers to end the violations can law-enforcement bodies take measures to end the assembly.

INDIVIDUAL COMPLAINTS: THE RIGHT OF INDIVIDUAL PETITION

Individual petitions to the treaty bodies are possible under five UN treaties:

- ICCPR;
- CERD;
- CEDAW;

25 'Obama releases Bush torture memos' *The Guardian* (16 April 2009) www.guardian.co.uk/world/2009/apr/16/torture-memos-bush-administration.

26 'Government to compensate torture victims as official inquiry launched' *The Guardian* (6 July 2010) www.guardian.co.uk/law/2010/jul/06/government-to-compensate-torture-victims-inquiry.

- UNCAT; and
- UNCRPD.

The right of individual petition permits any individual claiming to be a victim of a violation of rights under a treaty to bring a complaint to an international supervising treaty body.

As noted above, decisions of the treaty bodies are not binding in either national or international law and cannot provide an individual with compensation or other remedies. The treaty bodies may, however, recommend remedial action and request a response within a specified period. Rights of individual petition do not apply to States Parties to the treaties unless they are specifically accepted by the State. For example, the UK currently only accepts the rights of individual petition provided by CEDAW and UNCRPD.²⁷

Separate rights of petition apply in respect of regional human rights mechanisms, which are explored in greater detail below.

Right of individual petition

Mutombo v Swizerland: Article 3 UNCAT

Article 3 UNCAT prohibits a State Party from expelling, refouling or extraditing an individual to a country where 'there are substantial grounds for believing that he would be in danger of being subjected to torture.' The State Party is under an obligation to take into account 'the existence in the [destination] State [...] of a consistent pattern of gross, flagrant or mass violations of human rights.'

In *Mutombo v Swizerland*,²⁸ Mr Mutombo had entered Switzerland illegally from Zaire (as it was called at the time) and claimed asylum. He had been a member of the Zairian armed forces but was also of Luban origin and a member of the *Union pour la démocratie et le progrès social*, a political movement, and participated in illegal meetings and demonstrations. He was arrested in June 1994 and detained in the Tshatsi military camp where he was tortured for four days before being tried and convicted of conspiracy against the State. He was sentenced to 15 years imprisonment of which he served seven months in the Ndolo military prison. After his release, he was advised to leave Zaire which he

27 United Nations Treaty Collection, Status, Optional Protocol to the CEDAW http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en#5 and Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en.

28 Communication No 13/1993, Switzerland CAT/C/12/D/13/1993 (27 April 1994) www.worldlii.org/int/cases/UNCAT/1994/1.html.

did by way of Luanda and Italy. He crossed the border illegally from Italy to Switzerland and there claimed asylum.

On 31 January 1992, the Federal Refugee Office rejected his asylum application as it doubted that he had been a political prisoner as he had not been visited by the International Committee of the Red Cross who had been to Ndolo prison in November 1989. They also doubted the authenticity of the provisional release order and considered there were no indications that he would be exposed to cruel, inhuman or degrading punishment or treatment were he to be returned to Zaire. All Mr Mutombo's appeals were denied.

The Committee found substantial grounds for believing that Mr Mutombo would be in danger of being subjected to torture. The Committee noted his ethnic background, political activity, detention history, desertion from the army, illegal exit from Zaire and that, in requesting asylum, he had put forward arguments which could be seen as defamatory to Zaire. These factors exposed him 'to a real risk of being detained and tortured.' The Committee also pointed to the 'serious human rights situation in Zaire', concluding 'that a consistent pattern of gross, flagrant or mass violations does exist in Zaire and that the situation may be deteriorating', and that Zaire was not a State Party to UNCAT, closing the possibility for Mr Mutombo to apply to the Committee for protection.

Switzerland did not return Mr Mutombo to Zaire.

Exercise of individual petition in Georgia

During 1994 and 1995, four Georgian nationals each submitted a communication to the Human Rights Committee stating that the Georgian Government was in contravention of several articles of the ICCPR, including the right to life, the prohibition on torture and cruel and degrading treatment, the right to liberty and various fair trial rights. The four applicants had been arrested on charges of terrorism or involvement in a military coup and alleged that they had been tortured for information, and tried in contravention of the presumption of innocence and the standards of a fair trial. Two of them were sentenced to death. All claimed to have been arrested illegally and persecuted for their political views.

In April 1998, the Human Rights Committee adopted the view that Georgia was in violation of Articles 7, 9, 10(1), 14(3)(d) and 14(5) of the ICCPR. Article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'; Article 9 prohibits the arbitrary deprivation of liberty; Article 10(1) states that persons deprived of liberty shall be treated with humanity and respect for human dignity; and Articles 14(3)(d) and 14(5) concern the right of an accused to be tried in his presence and to judicial appeal. The Committee also expressed the view that the four applicants were entitled to an effective remedy under Article 2, including their release, and that Georgia was under an obligation to ensure that similar violations did not occur in the future.

At the time of writing, two of the applicants had been released and two remained in custody. As of 2009, the Human Rights Committee follow-up on the issue was still on-going.

TABLE 3: RIGHT OF INDIVIDUAL PETITION AGAINST TWC PARTNER COUNTRIES²⁹

| State | Individual petition rights |
|------------|------------------------------------------------------------------------------------------------------------------|
| Georgia | ICCPR (1994) CERD (1994) CAT (1994) CEDAW (2002) UNCRC PD (signed 2009 <i>but not yet ratified</i>) |
| Lebanon | UNCRC PD (signed 2007 <i>but not yet ratified</i>) |
| Mozambique | CEDAW (2008) |
| Uganda | ICCPR (1995 <i>but has a reservation in relation to Article 5(2)</i>) UNCRC PD (2008) |

29 UN Treaty Collection <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

| | |
|----------------|--------------------------------------------------------------|
| Ukraine | ICCPR (1991) CERD (1969) CEDAW (2003) UNCRPD (2010) |
| United Kingdom | CEDAW (2005) UNCRPD (2009) |

INDEPENDENT INQUIRIES BY UN TREATY BODIES

The treaty bodies established under UNCAT and CEDAW have the power to conduct independent inquiries in relation to potential violations of those Conventions. This power includes a power to conduct fact-finding missions to the States involved but only subject to the approval of the State concerned. These inquiries may be launched if either body receives credible evidence that either torture or discrimination against women is being practised systematically in a country.³⁰

NATIONAL PROTECTION MECHANISMS

There has been an increasing focus on domestic implementation of international standards in international human rights law. This is reflected in the adoption of new treaty requirements for national protection mechanisms designed to either implement or monitor the implementation of treaty obligations. These national protection mechanisms are required by both the Optional Protocol to UNCAT (2007) (OPCAT) and the UNCRPD.

Under OPCAT, States Parties are required to designate a National Preventative Mechanism (NPM) for the purpose of visiting places of detention and for the prevention of torture and other cruel, inhuman or degrading treatment. OPCAT provides that these bodies must be given access to information and other powers (such as the right to conduct private interviews with detainees) and they should be enabled to make recommendations to relevant authorities.³¹ The UK has designated 18 public inspectorates across the UK to act as the UK NPM (these include HMIP, HMIC and HMIP (Scotland) and the Independent Monitoring Boards in Northern Ireland). The HMIP is to adopt a coordinating role. In Georgia, the role is carried out by the Public Defender. A department of prevention and monitoring has been established within the Office of the Public Defender, and the department is assisted by experts from different fields including penitentiary lawyers, psychologists and forensic personnel.

30 Article 20 CAT and Article 8 to 10 OP CEDAW.

31 Article 3 OP CAT.

Under UNCRPD, States Parties are required to designate a 'focal point' within government and a 'national framework including one or more independent mechanisms' to promote, protect and monitor the implementation of the Convention.³² The focal point is responsible for the implementation of the Convention in the UK and the National Framework is responsible for monitoring that implementation. The UK has designated the Government Office for Disability Issues as the focal point and the three UK National Human Rights Institutions (NHRIs) – the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC) and the Northern Ireland Human Rights Commission (NIHRC) – as the UK National Framework.

Human rights and development

'Every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.'

UN Declaration on the Right to Development (1986)

Each of the key international instruments on the right to development places individual rights at its heart. Promoting the fundamental rights of the individual as the key participant and beneficiary of any development measures recognises the commitment States make to integrate fundamental human rights standards into democratic governance including through the development process. These instruments recognise that respect for human rights can advance development, while effective and progressive development better allows states to give effect to fundamental human rights standards.

For example, the Millennium Development Goals (2000) set concrete targets based on the achievement of development goals grounded in human rights, such as the eradication of poverty (the right to an acceptable standard of living); universal primary education (the right to education); the promotion of gender equality (the right to equality before the law); reduced child mortality and enhanced maternal health (the right to health); and the reduction of HIV/AIDS and the spread of other diseases (the right to health).³³

32 Article 33 UNCRPD.

33 Summit on the Millennium Development Goals (20-22 September 2010) www.un.org/millenniumgoals.

Human rights, humanitarian law and international criminal law

The International Criminal Court

Many of the most significant human rights violations arising from the Second World War and other conflicts in the 20th century were connected to abuse during periods of war and violations of the laws of war. Numerous attempts have been made by the international community to establish minimum standards for the protection of the most fundamental human rights during times of both war and peace. In 1998, the Rome Statute of the International Criminal Court (ICC) was opened for signature.³⁴ Entering into force in 2002, the Statute creates the first general international court designed to deal with war crimes and the most grave human rights abuses. Crimes within its jurisdiction include genocide and crimes against humanity and cover direct State responsibility and the responsibility of individuals who commit or solicit such crimes or aid and abet their commission. Cases can be referred to the ICC by States Parties, the UN Security Council and the ICC Prosecutor acting on his own initiative.³⁵

Importantly, the Court operates on the principle of complementarity, which means that the ICC will only act when individual States are unable or unwilling to prosecute the crimes before domestic courts. Many parliaments have taken measures to ratify the ICC Statute, to approve the ratification of the Statute or to give the Statute effect through domestic legislation. Other parliaments have taken concrete steps to bolster the credibility of the ICC.

OTHER UN STANDARDS

The United Nations has also developed extensive non-binding standards, guidelines and recommendations relating to particular aspects of human rights. These take no direct legal effect in either international or domestic law, but may influence the development of law and policy, and the interpretation of legislation or treaty provisions. They include, for example:

- Beijing Minimum Rules on the Administration of Juvenile Justice;³⁶

34 Rome Statute of the International Criminal Court (ICC) (adopted on 17 July 1997, entered into force on 1 July 2002).

35 Chapter 10 IPU Handbook.

36 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules') UNGA Res 40/33 (29 November 1985) www2.ohchr.org/english/law/pdf/beijingrules.pdf.

- Standard Minimum Rules for the Treatment of Prisoners;³⁷
- Basic Principles on the Independence of the Judiciary;³⁸ and
- Paris Principles on the Status of National Human Rights Institutions.³⁹

Parliamentarians and parliamentary staff working on human rights issues may wish to be aware of the broad range of human rights guidance and recommendations which form part of the international human rights legal framework and to monitor developing standards through this work. For example, during 2010, the UN General Assembly agreed a resolution on the right to clean water and sanitation.⁴⁰ It is clear that this resolution – although passed with a significant number of abstentions – will now be relevant to any human rights issues arising from access to water.

Creation of a National Human Rights Institution: the Paris Principles

The UN General Assembly adopted the Paris Principles to set an internationally agreed set of minimum standards for the establishment of national institutions designed to protect and promote international human rights standards. These principles have become the international benchmark for assessing the role and functioning of NHRIs. Broadly they must:

- be independent from government and have that independence guaranteed by their statutory or constitutional framework and in practice;
- be representative and pluralistic in their roles and composition;
- have a broad mandate and adequate powers of investigation;
- have access to adequate funding; and
- involve the public in their work and be accessible to all.⁴¹

37 1st United Nations Congress on the Prevention of Crime and the Treatment of Offenders 'Standard Minimum Rules for the Treatment of Prisoners' (1955, Geneva) www2.ohchr.org/english/law/treatmentprisoners.htm.

38 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders 'Basic Principles on the Independence of the Judiciary' (26 August to 6 September 1985, Milan) www2.ohchr.org/english/law/indjudiciary.htm.

39 Principles relating to the Status of National Institutions (The Paris Principles) UNGA Res 48/134 (20 December 1993) www2.ohchr.org/english/law/parisprinciples.htm.

40 UNGA 'Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields', 64th session (26 July 2010) www.unesco.org/water/wwap/news/archives/UNDecWaterHR_EN.pdf.

41 *Ibid*, note 39.

THE HUMAN RIGHTS COUNCIL

The Human Rights Council, which replaced the Commission on Human Rights, held its first meeting on 19 June 2006.⁴² This intergovernmental body, which meets in Geneva for a total of ten weeks per year, is composed of representatives of 47 elected UN Member States who serve for an initial period of three years, and cannot be elected for more than two consecutive terms. The Human Rights Council is empowered to prevent abuses, inequity and discrimination, protect the most vulnerable, and expose perpetrators of human rights abuse. Its key activities include:

- *Complaints*: The Human Rights Council has adopted a specific complaints mechanism to allow individuals and States to draw complaints about breaches of international human rights law to the attention of the Human Rights Council.
- *Special Procedures*: The Human Rights Council has the power to use special procedures to investigate specific instances of human rights abuse or to consider general topical issues of interest or concern. These procedures include the appointment of special rapporteurs, representatives, expert panels or working groups.
- *The Universal Periodic Review (UPR)*: The UPR involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

The Human Rights Council is advised and supported by the Human Rights Council Advisory Committee. The Advisory Committee is composed of 18 international experts on human rights, functions as a think-tank for the Council and works on specific thematic and other topical issues.

42 The Human Rights Council www2.ohchr.org/english/bodies/hrcouncil.

The UPR and the UK

The UK was one of the first countries to take part in the UPR, reporting to the Human Rights Council in April 2008. The first cycle of reviews will be completed by the end of 2011. The UK will next participate in the UPR in 2012. A number of recommendations were made by the Human Rights Council in the Report of the Working Group on the UK UPR. These covered topics including:

- the need for a review of terrorism legislation and policy;
- changes to corporal punishment in the UK, including punishment of children;
- enhancement of domestic protection for the right to protest;
- changes to law and policy to ensure that individuals detained by military forces enjoy the full protection of international human rights law; and
- the withdrawal of existing reservations and interpretative declarations of the UK to the UN human rights treaties.⁴³

Prison conditions in Lebanon and the UPR

Over the years Lebanese and international human rights NGOs have reported that Lebanese prisons do not fully meet the minimum international standards. Human Rights Watch made the following submission in its *World Report, 2011*:

‘Conditions in prisons remain poor, with overcrowding and lack of proper medical care a persistent problem. According to the Internal Security Forces, pretrial detainees represent around two-thirds of the total number of detainees.’⁴⁴

In November 2010, following the suggestions of the Working Group on the UPR for Lebanon, the Lebanese Government supported the recommendation to establish a National Commission on Human Rights and to improve the fight against torture by criminalising all forms of torture and ill-treatment.⁴⁵

43 UNHCHR Universal Periodic Review www.ohchr.org/EN/HRBodies/UPR/PAGES/GBSession1.aspx and Universal Periodic Review – United Kingdom www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx.

44 Human Rights Watch ‘World Report, 2011 – Lebanon’ www.hrw.org/en/world-report-2011/lebanon.

45 Human Rights Watch: ‘Lebanon: Heed Concern at Human Rights Watch Review, November 2010’ www.hrw.org/en/news/2010/11/24/lebanon-heed-concerns-human-rights-review.

Regional protection of human rights

In addition to these UN mechanisms, there are also specialised, regional systems for the protection of human rights. These generally reflect the standards of the UN system, but may provide additional methods for the monitoring and supervision of the implementation of regional treaty obligations.

These systems vary in type, age and effectiveness but each aims to reflect and supplement the international human rights legal framework in a more local context. For example, there is a relatively developed inter-American regional system based on two separate processes: the Charter of the Organisation of American States and the American Convention on Human Rights. The latter is a sophisticated, treaty-based system which provides for inter-State and individual complaints against States Parties, ultimately to the Inter-American Court of Human Rights in Costa Rica.⁴⁶ By contrast, there is no pan-regional system in Asia, where regional cooperation has focused on the effective domestic and regional implementation of UN standards. However, the Association of South East Asian Nations (ASEAN) has been working on the development of an ASEAN regional mechanism and accompanying charter of human rights since the early 1990s. In 2008, all ten ASEAN States ratified the ASEAN Charter on Human Rights.⁴⁷ The Charter provides for the creation of a regional human rights body and the inaugural meeting of an ASEAN inter-governmental Commission on Human Rights took place in 2009.⁴⁸

This handbook focuses principally on the regions where TWC operates to strengthen parliaments' capacity to protect human rights domestically: Africa, the Middle-East and North Africa and Europe.

AFRICA

The African Charter on Human and People's Rights⁴⁹ was adopted in 1981 by the Member States of the Organisation of African Unity (now the African Union) and came into force in 1986. The Charter is a general human rights treaty and includes both civil and political rights and economic and social rights. All of the members of the African Union have ratified the Charter, including each of the African TWC partner countries.⁵⁰ The Union has also

46 Organization of American States and Inter-American Court of Human Rights www.oas.org/en/topics/human_rights.asp.

47 The Association of South East Asian Nations (ASEAN) Charter on Human Rights (20 November 2007) (entered into force on 14 December 2008).

48 Working Group for an ASEAN Human Rights Mechanism www.aseanhrmech.org/aboutus.html.

49 African Charter on Human and Peoples' Rights, 8th Assembly of Heads of State and Government (June 1981, Nairobi).

50 African Union 'List of Countries Which Have Signed, Ratified/Acceded to the African Union Convention on African Charter on Human and People's Rights' www.achpr.org/english/ratifications/ratification_african%20charter.pdf.

adopted additional protocols and subsequent treaties to protect the rights of vulnerable groups, and specifically the rights of African women and children.⁵¹

Since 2006, the African Court of Human Rights has had jurisdiction over inter-State and individual complaints of violations of the Charter. The Court may only exercise its jurisdiction when it is accepted by an individual State Party.⁵² In 2010, 25 States Parties to the Charter had accepted its jurisdiction. Its work is complementary to the African Commission on Human Rights. The Commission may refer cases to the Court and the Court may ask the Commission for an opinion on a particular case.⁵³ The Protocol to the Charter establishing the Court⁵⁴ is clear that both institutions should continue to work to promote and protect human rights throughout Africa.

THE ARAB REGION

The Arab Charter on Human Rights⁵⁵ was adopted at a summit of the League of Arab States in 2004 and came into force in 2008 after ratification by seven States. Lebanon, a TWC partner country, has not ratified the Arab Charter. A committee was formed of the seven States Parties in 2009, designed to act as a monitoring body, tasked with reviewing reports of States Parties on compliance with the Charter.⁵⁶

EUROPE

THE COUNCIL OF EUROPE

Human rights protection is central to the mandate of the Council of Europe. The European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR),⁵⁷ and its protocols, focus on the protection of civil and political rights in Europe. Every member of the Council of Europe has ratified the ECHR and accepts the jurisdiction of the European Court of Human Rights, which has the jurisdiction to hear individual complaints and inter-State disputes over the interpretation and application of the ECHR. The European Court of Human Rights can order 'just satisfaction' or compensation

51 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa www.achpr.org/english/_info/women_en.html and the African Charter on the Rights and Welfare of the Child www.achpr.org/english/_info/child_en.html and Organization for African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa www.achpr.org/english/_info/refugee_en.html.

52 African Court of Human Rights www.african-court.org/en/home.

53 African Commission on Human Rights www.achpr.org/english/_info/news_en.html.

54 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights www.achpr.org/english/_info/court_en.html.

55 League of Arab States 'Arab Charter on Human Rights' (15 September 1994, Cairo).

56 Mervat Rishmawi, 'The Arab Charter on Human Rights' (6 October 2009) www.carnegie-mec.org/publications/?fa=23951&lang=en.

57 European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocol 11 and 14) (ECHR).

for individuals where a violation of the ECHR is found. Contracting parties are required to implement and give effect to judgments of the European Court of Human Rights by taking individual measures to provide a remedy for applicants successful in individual cases and general measures to remove breaches of the ECHR identified by the Court and to prevent future violations of the Convention. The Committee of Ministers of the Council of Europe (the highest political body of the Council, which is made up of relevant government ministers from each of the Contracting Parties) is responsible for enforcing this obligation. The ultimate sanction for failure to respond to judgments of the Court is expulsion from the Council of Europe.⁵⁸

THE EUROPEAN SOCIAL CHARTER

Economic and social rights are protected by the Council of Europe in the European Social Charter⁵⁹ and the Revised European Social Charter.⁶⁰ The European Social Charter guarantees a range of economic, social and cultural rights, including workplace and trade union rights, rights to healthcare, housing, education, social security and non-discrimination. The Charter is supervised by the European Committee on Social Rights, an expert committee which considers yearly reports from States on their compliance with the Charter rights they have accepted.⁶¹ There is also a collective complaints procedure under the Charter, which allows trade unions, employers' organisations or NGOs to bring complaints against States. The Revised European Social Charter, which contains extensions of the rights set out in the Social Charter of 1961, and some additional rights, was agreed in 1996.

THE EUROPEAN CONVENTION AGAINST TORTURE AND THE FOR THE PREVENTION OF TORTURE

The European Convention Against Torture of 1987⁶² established the European Committee for the Prevention of Torture (CPT).⁶³ The Committee has the power to visit any place of detention in a State Party to investigate compliance with ECHR rights to freedom from torture and inhuman or degrading treatment or punishment.⁶⁴ Its findings are communicated to the Member State concerned and may be made public with the agreement of the Member State.

58 Council of Europe www.coe.int.

59 European Social Charter (18 October 1961, Turin).

60 European Social Charter (revised) (3 May 1995, Strasbourg)

61 European Committee on Social Rights www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_EN.asp.

62 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (as amended by Protocol 1 and 2) (26 November 1987, Strasbourg).

63 European Committee for the Prevention of Torture www.cpt.coe.int/en/default.htm.

64 Article 1 European Convention Against Torture.

THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

The Council of Europe Commissioner for Human Rights is elected by the Parliamentary Assembly of the Council of Europe. The role of the Commissioner is to:

- promote education in, and awareness of, human rights in the Member States;
- identify possible shortcomings in the law and practice of Member States in regard to compliance with human rights; and
- to help promote the effective observance and full enjoyment of human rights as embodied in the Council of Europe instruments.⁶⁵

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The EU Charter of Fundamental Rights⁶⁶ contains guarantees of both civil and political, plus economic, social and cultural rights, as well as some guarantees of 'third generation' rights, such as the right to environmental protection.⁶⁷ It includes many of the rights found in the UDHR, the ICCPR, the ICESCR and the ECHR. Since 1 December 2009, and the coming into force of the Lisbon Treaty, the Charter has the same force of law as any other EU treaty (that is, it has direct effect in the domestic law of EU Member States).⁶⁸ The Charter does not create new domestic law rights, but will apply whenever EU Member States are acting within areas of EU competence to give effect to EU law. Where the Charter covers the same rights as the ECHR, it provides that the Charter will ensure at least the same level of protection as the ECHR for those rights. The Treaty of Lisbon provides the legal basis for the EU to ratify the ECHR as an institution.⁶⁹ Negotiations began in 2010 promoting the idea that the EU accede to the ECHR.

65 Council of Europe Commissioner for Human Rights www.coe.int/t/commissioner/About/welcome_en.asp.

66 Charter of Fundamental Rights of the European Union (30 March 2010) [2010/C 83/02] (the text adapts the wording of the Charter proclaimed on 7 December 2000 and it will replace it from the date of entry into force of the Treaty of Lisbon) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:EN:PDF>.

67 Article 33, 35, and 37 Charter of Fundamental Rights of the European Union.

68 Treaty of Lisbon, Taking Europe into the 21st Century, a Europe of rights and values http://europa.eu/lisbon_treaty/glance/rights_values/index_en.htm.

69 Article 6 Treaty on European Union, art 6 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF>.

Protecting human rights across the globe

Core regional treaties on human rights

AFRICA

- African Charter on Human and Peoples' Rights (1981) and additional protocols
- Convention on the Rights and Welfare of the African Child (1990)

ARAB REGION

- Arab Charter on Human Rights (2004)

EUROPE

- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and additional protocols
- European Social Charter (1961), additional protocols and Revised European Social Charter (1996)
- Charter of Fundamental Rights of the European Union (2010)

Domestic protection of human rights

Ratification of regional and international human rights standards requires States to ensure that their obligations are reflected in domestic law. Where changes to law or practice are necessary in order to implement these basic standards, States are required to act. There are a number of basic steps which States can take to better ensure domestic protection of human rights.

CONSTITUTIONAL BILLS OF RIGHTS

Each of the TWC partners – except the UK – has a written constitution which includes a chapter or bill of rights which entrenches rights protection in the national constitution.

Constitutional bills of rights vary in each State but generally ensure that certain recognised rights are enshrined in the highest law of the State. This means that all other legislation must conform to those rights and that the State cannot depart from those rights without following a special procedure for constitutional amendment. This approach lends great weight to the

rights guaranteed in the constitution. Not all countries' constitutional rights guarantees reflect all of the international standards accepted by the State. For example, some may focus solely on civil and political rights while others may cover economic and social rights.

Constitutional rights protection in TWC partner countries

'Everyone is free by birth and is equal before law.'

Article 14, Chapter II, Georgian Citizenship, Basic Rights and Freedoms of the Individual The Constitution of Georgia, 1995

'Lebanon is... a founding and active member of the United Nations Organisation and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.'

Preamble, Chapter II, The Rights and Duties of the Citizen, Constitution of Lebanon, 1926 (amended)

'All persons are equal before and under the law in all spheres of political, economic, social and cultural life, and in every other respect and shall enjoy equal protection of the law.'

Chapter IV, Protection and Promotion of Fundamental and Other Human Rights and Freedoms, Constitution of Uganda, 1995

'The Constitution reaffirms, develops and deepens the fundamental principles of the Mozambican State, and enshrines the sovereign nature of the democratic rule of law, based on pluralism of expression and partisan organisation and on respect for and the guarantee of fundamental rights and liberties of citizens.'

Preamble, Chapter III, Constitution of Mozambique, 2004

'Constitutional rights and freedoms are guaranteed and shall not be abolished.'

Chapter II, The Rights, Freedoms and Duties of Individuals and Citizens, The Constitution of Ukraine, 1996

LIMITATIONS ON LEGISLATIVE OR EXECUTIVE POWER

Many constitutions expressly prohibit the creation of unconstitutional laws, including those which fail to protect the fundamental rights guaranteed by the constitution. A supreme or constitutional court is empowered to advise on the constitutionality of legislation and to strike down any legislation which does not comply. Other constitutional provisions may include a condition relating to the limitation of executive power. For example, Article 17 of the Constitution of Lebanon provides that executive power may only be exercised in accordance with the Constitution (including the rights protected by Chapter II). The constitutionality of executive action is reviewed by the Constitutional Council (Article 19). Article 5 (1) of the Constitution of Georgia provides that the governmental power is exercised within the framework established by the Constitution. The Constitution of Ukraine provides that it is the main duty of the State to 'affirm and ensure human rights and freedoms'. Article 6 of the Constitution of Ukraine requires each of the pillars of government to exercise their authority in accordance with the Constitution.

Some constitutions make international human rights treaties directly effective in domestic law, which may allow individuals to rely on the rights guaranteed by international human rights in domestic courts to challenge domestic law and practice. Article 9 of the Constitution of Ukraine provides that all international treaties – once approved by parliament and in force – are to be treated as part of the national law of Ukraine.⁷⁰ Article 18 of the Mozambican Constitution has a similar effect.

In some States, like the UK, international human rights treaties have little effect on domestic law until incorporated through domestic legislation. In the UK, the incorporation of the rights protected by the European Convention on Human Rights in the UK Human Rights Act 1998 (HRA 1998),⁷¹ preserves the UK constitutional principle of parliamentary sovereignty and establishes a clear role for parliament in the protection of human rights in the UK.

Across the commonwealth, a few other States follow the UK model and, without a constitutional bill of rights, they rely on common law traditions or specific legislation to protect individual rights. For example, in New Zealand there is no constitutional guarantee but the New Zealand Bill of Rights Act 1990 places interpretative and substantive duties on the courts and public authorities, similar to those in the HRA 1998. In Australia, following a widespread public consultation on a Bill of Rights for Australia, the government rejected any new constitutional or legislative model of federal rights protection.⁷²

70 Article 9 and 147 Constitution of Ukraine (28 June 1996).

71 Chapter 42 Human Rights Act 1998.

72 'A-G rules out bill of rights', *ABC News*, 21 April 2010 www.abc.net.au/news/stories/2010/04/21/2879078.htm.

Constitutional models for rights protection

'The Constitution of Georgia is the supreme law of the country. All other legal acts should be compatible with the Constitution.'

Article 6(1), Constitution of Georgia 1995

'Executive power is entrusted to the Council of Ministers to be exercised in accordance with the conditions laid down in this constitution.'

Article 17, Constitution of Lebanon, 1926 (amended)

'Acts contrary to the provisions of the constitution shall be subject to punishment in terms of the law.'

Article 38, Constitution of Mozambique, 2004

'The content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force.'

Article 22, Constitution of Ukraine, 1996

The UK Human Rights Act 1998

The HRA 1998 requires UK courts to interpret all UK legislation 'in so far as possible' in a way which complies with the civil and political rights guaranteed by the ECHR (section 3). All public functions in the UK must be performed in a way which is compatible with those rights (section 6). Individuals can seek a remedy for a breach of this duty and domestic courts are empowered to give individual remedies including compensation (sections 7-8). The courts cannot however strike down primary legislation which is incompatible with the ECHR and cannot be read in a way which would protect Convention rights. In these circumstances the courts may make a 'declaration of incompatibility' (section 4). It will then be for the UK Parliament to determine whether or not to amend the legislation to remove the violation.

COMPLIANCE WITH INTERNATIONAL STANDARDS

Regardless of the model adopted by the domestic legal framework, the State retains an obligation in international law to implement their obligations effectively.⁷³ In each model, parliamentarians may face different challenges to ensure that human rights standards are protected effectively by domestic law and practice.

Even in States with a strong tradition of constitutional rights protection, there may be circumstances when constitutional guarantees do not meet international standards. In these cases, the State is still required to take action to implement the international standard and should take steps to secure any constitutional amendments that are necessary. If this type of conflict arises, UN monitoring bodies can recommend action by the State to implement the treaty effectively. Even when a constitution provides that international human rights treaties have direct effect in domestic law, parliamentarians may wish to ask themselves whether rights are enjoyed in practice without placing a burden on individuals to litigate to ensure changes to existing domestic law and practice.

Constitutional compliance with international law standards

In 1994, the Dominican Republic promulgated and adopted a new national Constitution. This change was designed to meet criticisms of the then UN Human Rights Committee that the Constitution was incompatible with the ICCPR, notably providing for internal exile and requiring reciprocity before recognition of the rights of aliens from third countries. In 2001, the Committee praised the steps taken by the Dominican Republic to give full effect to the ICCPR and to remove the violation in their Constitution.⁷⁴

73 Article 18 Vienna Convention on the Law of Treaties 1969.

74 Human Rights Committee (CCPR) 'Concluding observations of the Human Rights Committee: Dominican Republic' (26 April 2001) [CCPR/CO/71/DOM] paragraphs 3-5 [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.DOM.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.DOM.En?Opendocument).

LEGISLATIVE PROTECTION AND REVIEW

Effective constitutional protection or implementing legislation like the HRA 1998 aside, legislation designed to give effect to specific aspects of international human rights law can ensure changes in domestic practice and effective individual remedies on an issue by issue basis. The best example of this approach is perhaps found in equality and anti-discrimination legislation, which is enacted in most countries to supplement any international obligations or constitutional equality guarantees in order to provide a more precise legal framework to prohibit public authorities, service providers and employers discriminating against individuals without justification.

States are under an ongoing obligation to review existing law and practice to make sure that it complies with its international obligations. We return in Part III to the specific roles for parliamentarians in ensuring that this review is effective and that fundamental human rights standards are enjoyed by everyone.

3. What do human rights mean for States?

Every State has principal responsibility for the protection of the rights of every person within its jurisdiction. In practice, this includes both negative and positive duties. This means that the State must understand the requirements of its domestic and international human rights obligations and must implement them in laws, policies and practices which give real, practical effect to human rights guarantees for everyone. These legal obligations may limit the ability of the State to act or they may require the State to take action to control the relationships between private individuals, groups, organisations or companies or to implement positive measures to ensure that the standards required by international human rights law are achieved in practice.

Who is the State?

In international law, the responsibility of the State extends to each of the three institutions of government: legislature, executive and judiciary. In practice, the activities of both government and administrative agencies will be key to the effective implementation of fundamental human rights. So for example, the activities of state prosecutors, prison inspectors, prison governors and police officers will often involve ensuring the respect for rights to liberty, the right to be free from torture, inhuman and degrading treatment and punishment, the right to respect for private life and physical integrity and the right to a fair hearing in the criminal justice system.

Protection of rights in Ukraine

The Ukrainian Constitution provides that the Parliament (the Verkhovna Rada) and the Procuracy have important roles in fulfilling the State's obligations to ensure the respect for human rights required by Article 1 of the ECHR. The parliament has the authority to appoint and dismiss the Authorised Human Rights Representative of the Verkhovna Rada, and to hear the Representative's annual reports on the observance and protection of rights and freedoms in the Ukraine (Article 85(17)). The duties of the Procuracy include the supervision of the observance of laws by bodies that carry out investigative activities, inquiry and pre-trial investigations; the supervision of observance of laws in the execution of judicial decisions in criminal cases; and in the application of other coercive measures related to the restraint of personal liberty of citizens (Article 121). Following recommendations by the Council of Europe and OECD, the Government of Ukraine has also developed the concept of a person authorised to fulfil a public function to include every person or agency providing public services and/or using public money, from State or local budgets. This definition has been incorporated into anti-corruption legislation which entered into force on 1 January 2011.

In some States, key services may be provided in public-private partnership by private providers. In those cases, questions may be raised around how a State will guarantee that those services are provided in a way which meets the State's responsibility to protect individual rights in practice. For example, in the UK, the HRA 1998 was designed to ensure that any person, institution or organisation – public or private – performing 'public functions' was subject to the duty to act in a way which respects Convention rights.

The scope of the UK Human Rights Act 1998: restoring the original intention of parliament

The HRA 1998 incorporates the ECHR into domestic law in the UK. It requires all public authorities to act in a manner compatible with Convention rights. This duty does not apply to private bodies, except when they perform a 'public function'.

In 2004, the JCHR reported its conclusion that domestic courts had frustrated the original intention of parliament by reading the definition of 'public function' too narrowly. Parliament had intended the HRA 1998 to apply to any private contractor 'stepping into the shoes' of the State, providing key public services using public money. It recommended that the government intervene in cases to argue for a broader judicial interpretation of the HRA 1998.⁷⁵

In 2006, the JCHR reported again, calling for a legislative solution to clarify the scope of the HRA 1998.⁷⁶ Following this report, the House of Lords decided a leading case involved the politically sensitive issue of the application of Convention rights to the provision of publicly funded care in private residential care homes for the elderly. The House of Lords took the view that this was not a public function. Both civil society and the press put considerable pressure on the government to take action.

After further action by the JCHR, in 2008, the government introduced specific legislation to ensure that publicly funded residential care was a 'public function' subject to the HRA 1998.

The JCHR continues to call for a wider interpretation of 'public function' – for example in relation to private provision of social housing – to be incorporated in domestic law.

The intricate framework designed to meet the obligations of a State and to provide essential public services will have a significant impact on the mechanisms and methodologies within that State for the protection of human rights standards. In practice this can mean that the executive, legislature and judicial branch have specific responsibilities to ensure minimum standards are observed. These can be achieved by ensuring that the powers of key State agencies and those providing public services are designed in a way which reflects international human rights law; that those agencies are provided with training and oversight designed to encourage compliance; and

75 'The Meaning of Public Authority under the Human Rights Act' 7th Report from the JCHR, Session 2003-2004 (3 March 2004) HL 39/HC 382 www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/39/3902.htm.

76 'The Meaning of Public Authority under the Human Rights Act' 9th Report from the JCHR, Session 2006-2007 (27 March 2007) HL 77/HC 410 www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/77/7702.htm.

that ultimately, individuals can challenge the performance of their duties before domestic courts on human rights grounds. As explained above, the roles for each of the respective pillars of government may be defined in a State's constitution, by law or in custom and practice. Although practice will vary by State, understanding the structure, powers and duties of key State agents, agencies and other bodies, as well as having up to date information on their activities and practices will be essential for parliamentarians when considering human rights implementation in practice.

4. Suggested questions for parliamentarians

- Has your State ratified each of the UN international human rights instruments?
- What about the Optional Protocols?
- Do you know why your State has not ratified these instruments?
- Is there anything you can do to encourage speedy ratification?
- Are any reservations compatible with the object and purpose of the treaty?

- Has your State effectively implemented each of the UN international human rights instruments it has ratified?
- Do domestic constitutional rights reflect international human rights standards?
- Do you know what the last report on your country from each of the UN treaty monitoring bodies concluded?
- What has the government done to respond to any recommendations for change?
- When did parliament last debate the concluding observations of a UN treaty monitoring body?
- Is there anything you can do to encourage changes to law and practice in your country to meet the recommendations of UN treaty monitoring bodies?

- Has your State participated in the Universal Periodic Review?
- What role did parliament play?
- How has your government responded to the Universal Periodic Review, and any potential violations highlighted by that process?
- Has your government responded to the opinions expressed during the Universal Periodic Review?
- Has parliament debated the outcome of the Universal Periodic Review?
- Is there anything you can do to improve the process or to encourage the government to better implement international human rights at home?

Table footnotes (pp 22-23, 27 and 33)

- i See below, note ix.
- ii The Human Rights Council www2.ohchr.org/english/bodies/hrcouncil.
- iii Universal Periodic Review www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx.
- iv Human Rights Committee www2.ohchr.org/english/bodies/hrc/index.htm.
- v Committee on Economic, Social and Cultural Rights www2.ohchr.org/english/bodies/cescr/index.htm.
- vi Committee on the Elimination of Racial Discrimination www2.ohchr.org/english/bodies/cerd/index.htm.
- vii Committee on the Elimination of Discrimination Against Women www2.ohchr.org/english/bodies/cedaw/index.htm.
- viii Committee on the Elimination of the Discrimination Against Women 'Reporting guidelines of the Committee on the Elimination of Discrimination Against Women' www2.ohchr.org/english/bodies/cedaw/docs/AnnexI.pdf.
- ix Optional Protocol to the Convention against Torture (OPCAT) UNGA Res 57/199 (18 December 2002) (The OPCAT provides for the creation of the Subcommittee on Prevention of Torture)
- x Committee Against Torture www2.ohchr.org/english/bodies/cat/index.htm.
- xi Committee Against Torture 'First Annual Report Of The Subcommittee On Prevention Of Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment', February 2007 to March 2008, paragraphs 14 and 15: www.unhcr.org/refworld/category,COI,,SESSIONALREPORT,,4885cf7c0,0.html.
- xii Committee on the Rights of the Child www2.ohchr.org/english/bodies/crc/index.htm.
- xiii Committee on the Rights of Persons with Disabilities www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx.

PART II

This part of the handbook provides readers with a basic introduction to key human rights principles and it explores a number of substantive human rights and common human rights issues which parliamentarians might encounter. This section also includes case studies from around the world to illustrate how parliaments can act to protect the aforementioned rights in practice.

1. What are human rights?

Underlying any study of human rights are the fundamental principles which underpin the international human rights legal framework. These principles may help readers better understand the evolution of human rights law.

Civil and political, economic, social and cultural rights

A distinction is generally drawn between 'civil and political' rights and 'economic, social and cultural' rights. As explained in Part I, these two categories of rights were both included in the Universal Declaration but are protected by two different international Conventions.

Civil and political rights are those rights traditionally seen to protect the dignity of the individual in law and which guarantee a person's right to participate in civil and political society. These include the right to life, liberty and the right to personal integrity; the right to equality before the law; due process rights; the rights to freedom of expression, association and assembly; and the right to freedom of thought, conscience and religion.

Economic, social and cultural rights are those which people need to ensure their personal, social and economic development and identity. These rights include, for example, the right to an adequate standard of living and housing; the right to education, health and well-being; the right to work; and the right to social security. Cultural rights specifically recognise the value of traditional cultural practices and affiliations to personal and individual development, for example, protecting the right to benefit from culture such as the right to indigenous land, rituals and shared cultural practice. Cultural rights generally include language rights.

'Third generation rights' are rights recognised in international law which do not naturally fit in either of these categories of protection, for example, the right to a clean environment.

TABLE 4: LIST OF BASIC CIVIL AND POLITICAL RIGHTS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS

| Civil and political rights | Economic, social and cultural rights |
|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The right to life ^{xiv} | Adequate standard of living ^{xv} |
| The right to be free from torture, inhuman and degrading treatment or punishment ^{xvi} | Housing ^{xvii} |
| Freedom from slavery and servitude ^{xviii} | Health ^{xix} |
| The right to liberty and security of the person ^{xx} | Education ^{xxi} |
| Equality before the law ^{xxii} and the right to equal treatment ^{xxiii} | Freedom from hunger ^{xxiv} |
| Right to a fair hearing by a independent and impartial tribunal ^{xxv} | The right to participate in cultural life ^{xxvi} |
| Protection from retrospective punishment ^{xxvii} | Social Security ^{xxviii} |
| The right to privacy, family, home and correspondence ^{xxix} | Just and favourable conditions of work, ^{xxx} including: <ul style="list-style-type: none"> • the right to strike;^{xxxi} • protection of families, expectant and recent mothers and children;^{xxxii} and • prohibition on child labour.^{xxxiii} |
| Freedom of thought, conscience and religion ^{xxxiv} | |
| Freedom of expression, association and assembly ^{xxxv} | |
| The right to marry and found a family ^{xxxvi} | |
| The right to participate in free and fair elections ^{xxxvii} | |
| The right to an effective, legal remedy ^{xxxviii} | |

Rights are universal, indivisible and interdependent

'[T]he inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.'

Preamble, Universal Declaration of Human Rights

UNIVERSAL

International human rights law stems from the shared values and experiences of human dignity. Fundamental human rights apply to us all irrespective of our race, colour, sex, ethnic or social origin, religion, language, nationality, age, sexual orientation, disability or any other distinguishing characteristic.⁷⁷ The rights are accepted without deviation and must apply equally and indiscriminately to us all.⁷⁸ In practice, States take responsibility for ensuring respect for rights within their own jurisdiction and are permitted a 'margin of appreciation' in their approach to certain rights to ensure their effective application within local conditions.⁷⁹ However, despite this degree of discretion, someone travelling across international borders and between States which both accept the obligations of the international human rights legal framework should enjoy equal protection despite his or her border crossing. Later in the handbook, we will explore the nature of absolute rights and those rights which permit some justified restrictions. Even in those cases where justified limitations are recognised, the core protection offered by international law requires the application of a universal standard.

77 Article 2 UDHR.

78 Preamble and Article 1 Vienna Declaration and Programme of Action (VDPA) (adopted 25 June 1993) UN DOC A/CONF 157/23.

79 Article 5 VPDA.

Popular myths about human rights

'Rights only protect the undeserving criminal classes.'

'To put it simply, it protects the rights of the bad people against the good people.'

*Age Concern, Rights for Real, 2006*⁸⁰

A number of popular myths arise around human rights. One of the most popular of these myths – or criticisms – is that human rights laws only protect the criminal classes or those popularly considered to be 'undeserving' of protection. International human rights law is designed to protect us all – its universal nature becomes clear in a quick reading of the rights protected by the ICCPR and the ICESCR. This is further illustrated by a UK research project conducted by Age Concern (now Age UK), a UK NGO focusing on the rights of older people, in 2006. The project asked a group of older people about their views about human rights and the HRA 1998. Researchers reported widespread hostility to human rights principles, largely based on information in the media. After providing the group with information about rights in practice, the researchers reported wider understanding that rights were capable of protecting older people in vulnerable situations, their friends and families.⁸¹

Human rights laws ignore local cultures and practices

'Universal human rights emerge with sufficient flexibility to respect and protect cultural diversity and integrity. The flexibility of human rights to be relevant to diverse cultures is facilitated by the establishment of minimum standards and the incorporation of cultural rights. The instruments establish minimum standards for economic, social, cultural, civil and political rights. Within this framework, States have maximum room for cultural variation without diluting or compromising the minimum standards of human rights established by law. These minimum standards are in fact quite high, requiring from the State a high level of performance in the field of human rights. The Vienna Declaration and Programme of Action (1993)⁸² provides explicit consideration for culture in human rights promotion and protection, stating that: 'the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind'. This is deliberately

80 F Butler, *Rights for Real: Older People, Human Rights and the CEHR* (Report, Age Concern, May 2006) p48 www.edf.org.uk/news/0406%20Rights%20for%20Real%20Report.pdf.

81 Ayton-Shenker, 'The Challenge of Human Rights and Cultural Diversity', United Nations Background Note, March 1995, DPI/1627/HR www.un.org/rights/dpi1627e.htm.

82 VDPA, see above note 78.

acknowledged in the context of the duty of States to promote and protect human rights regardless of their cultural systems. While its importance is recognised, cultural consideration in no way diminishes States' human rights obligations.

Most directly, human rights facilitate respect for and protection of cultural diversity and integrity, through the establishment of cultural rights embodied in instruments of human rights law. These include: the International Bill of Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Declaration on the Principles of International Cultural Cooperation; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Right to Development; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the ILO Convention No 169 on the Rights of Indigenous and Tribal Peoples.

Human rights which relate to cultural diversity and integrity encompass a wide range of protections, including: the right to cultural participation; the right to enjoy the arts; conservation, development and diffusion of culture; protection of cultural heritage; freedom for creative activity; protection of persons belonging to ethnic, religious or linguistic minorities; freedom of assembly and association; the right to education; freedom of thought, conscience or religion; freedom of opinion and expression; and the principle of non-discrimination.'

UN Department for Public Information⁸³

INALIENABLE, INDIVISIBLE AND INTERDEPENDENT

No individual can be deprived of his or her rights except in so far as any limitation is recognised, justifiable and legally defined. For example, a person's right to liberty may be restricted if he or she is convicted of a crime by a recognised and legitimate court and a custodial sentence is proportionate and necessary.⁸⁴

83 See above, note 81.

84 Article 9(1) ICCPR.

'The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'

Vienna Declaration and Programme of Action 1993⁸⁵

Although rights can be labelled civil, political, economic or social rights, rights are by their very nature indivisible and interdependent.⁸⁶ Without the right to health and an adequate standard of living, the right to life is endangered. Similarly, without the right to a clean environment, our right to personal integrity and private life and our right to health may be undermined. Civil and political and economic and social rights together form a holistic package of rights which underpin basic human dignity. They are complementary and each is essential to individual integrity and development.

Everyone is equal in human rights law

States are required to implement human rights standards without discrimination on any grounds including gender, race, colour, nationality, religion, political or other opinion, ethnic or social origin, age, disability, sexual orientation or other status.⁸⁷ The impact of the right to equal treatment is considered in greater detail in Section 2.⁸⁸

85 Article 5 VPDA.

86 *Ibid.*

87 Article 2 UDHR.

88 'Human rights in practice', page 77 onwards.

Respect, protect and fulfil

States are under an obligation to implement international human rights law fully and effectively (see Part I). In practice, States have a tripartite obligation to respect, protect and fulfil individual rights.⁸⁹ While States are the primary duty bearers in international human rights law, it is broadly recognised that individual rights are not only endangered by State behaviour, but by the actions of other individuals and legal persons.⁹⁰ So, for example, our right to work and safe working conditions may be most directly affected by private employers. Our rights in human rights law are generally enforceable only against the State. However, the State may be under a positive duty to create economic and regulatory conditions to prevent poor working conditions and to protect individuals' right to work in practice.⁹¹

The duty to respect requires the State to refrain from actively violating a right.⁹² For example, the right to liberty includes a right to be free from arbitrary arrest. The obligation to protect recognises that the State may have positive obligations to take steps to protect a right from interference by others.⁹³ For example, the right to personal integrity and security⁹⁴ includes an obligation on the State to adopt a system of effective criminal justice to protect individuals from criminal violence, including assault. The obligation to fulfil acknowledges that more constructive promotion may be required to ensure that individual rights are enjoyed in an effective practical way.⁹⁵ In order to meet the obligation to secure the highest attainable standard of health with the available resources,⁹⁶ States will be required to instigate plans for national health including through health services, health education and other steps.

The obligation to respect, protect and fulfil may give rise to a different combination of positive and negative obligations for the State depending on the right in play. Some examples of the obligations imposed by the right to life are set out below (Table 4). Further examples are used throughout this part of the handbook.

89 Articles 1 and 13 VPDA.

90 For example, Article 23 VPDA.

91 Article 2(1) ICESR.

92 In relation to the ICCPR, see CCPR 'General Comment 31' (29 March 2004) CCPR/C/21/Rev1/Add 13.

93 *Ibid*, at para 8.

94 Article 9 ICCPR.

95 In relation to the ICCPR, see para 13 CCPR General Comment No 31.

96 Article 11(1) ICESCR.

TABLE 5: EXAMPLES OF STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE RIGHT TO LIFE⁹⁷

| | Respect | Protect | Fulfil |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The right to life | <ul style="list-style-type: none"> • Individuals are free from the threat of arbitrary State killing • The death penalty is imposed only in the limited circumstances recognised by international law • Deaths where State authorities are involved are subject to a full, open and effective investigation involving the family of the deceased. | <ul style="list-style-type: none"> • A fully functioning and non-arbitrary criminal justice system operates to protect individuals from violent crime. | <ul style="list-style-type: none"> • Where a real risk to human life exists, measures are taken to reduce the threat. For example, does the State have a strategy to protect human life in the event of a major terrorist attack or to deal with epidemics and other public health emergencies? Are education and awareness programmes in necessary to prevent such risks? |

Absolute, non-derogable, derogable and qualified rights

The principle of universality applies to all rights.⁹⁸ Some rights are absolute and States cannot impinge upon them or derogate from them in any circumstances. For example, the prohibition on torture applies regardless of any perceived threat to public safety or national or global security.⁹⁹

By contrast, international and domestic human rights law generally recognises that in some circumstances, certain rights must inherently be limited. The right to liberty may lawfully be limited when individuals who have committed serious criminal offences are lawfully convicted and sentenced to a prison term. Equally, the State may derogate from certain minimum standards where derogation is temporarily justified and proportionate to a state of emergency (see Part I). Finally, certain rights are by their nature qualified and may be limited in order to meet certain narrowly defined legitimate public interests or to respect the competing rights of others.

97 Committee on Civil and Political Rights (CCPR) 'General Comment No 6' 16 Session 1982 (30 April 1982).

98 Article 1 Vienna Declaration and Programme of Action 1993.

99 Article 1 CCPR General Comment No 7 'Torture or cruel, inhuman or degrading treatment or punishment (Article 7)', 16 Session 1982 (30 May 1982). www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/7e9dbcf014061fa7c12563ed004804fa?Opendocument.

TABLE 6: EXAMPLES OF ABSOLUTE, NON-DEROGABLE, LIMITED, QUALIFIED AND DEROGABLE RIGHTS IN THE ICCPR

| Absolute, non-derogable^{xxxix} | Limited, derogable rights | Qualified, derogable rights |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prohibition on torture ^{xi} | <p>The right to life^{li}</p> <ul style="list-style-type: none"> • The ICCPR permits the death penalty in certain limited and defined circumstances.^{xii} • The right to life is necessarily limited in circumstances of self-defence or where necessary to protect the lives of others. | <p>The right to freedom of expression^{xliii}</p> <p>ICCPR allows restrictions on the right to freedom of expression which are:</p> <ul style="list-style-type: none"> • provided by law; • necessary to respect the rights or reputations of others or to protect national security, public order, public health or morals.^{xliv} |
| Prohibition on slavery and servitude ^{xlv} | <p>The right to liberty and security of the person^{xlvi}</p> <ul style="list-style-type: none"> • The ICCPR permits the use of custodial sentences imposed in accordance with the law. | <p>The right to freedom of peaceful assembly^{xlvii}</p> <p>The ICCPR permits restrictions which are:</p> <ul style="list-style-type: none"> • imposed by law; • necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. |

The absolute prohibition on torture

In 2010, the European Court on Human Rights again stressed the absolute nature of the prohibition on torture, inhuman and degrading treatment. The governments of Lithuania, Portugal, Slovakia and the UK intervened in the case of *A, Ramzy v Netherlands and N v Sweden*¹⁰⁰ to argue that Article 3 of the ECHR could apply more flexibly in cases where applicants posed a risk to national security. In these cases, the applicants sought to resist deportation to countries where they argued that they faced a real risk of torture. The intervening governments argued that in national security cases, deportees suspected of posing a risk to national security should have a significantly higher responsibility to prove that they were 'more likely than not' to face torture, before the prohibition would apply.¹⁰¹ The Court said:

'The Court... is acutely conscious of the difficulties faced by States in protecting their populations from terrorist violence and that this makes it all the more important to underline that Article 3 enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention... Article 3 makes no provision for exceptions and no derogation from it is permissible... notwithstanding the existence of a public emergency threatening the life of the nation. Even in the most difficult of circumstances, such as the fight against terrorism, and irrespective of the conduct of the person concerned, the Convention prohibits in absolute terms torture and inhuman or degrading treatment and punishment.'¹⁰²

Limited, derogable rights: the right to liberty and UK counter-terrorism policy

After the 2001 terrorist attacks on the United States, the UK Government and Parliament put in place a series of legislation designed to prevent terrorist attacks in the UK. As part of these measures, on 11 November 2001, the Home Secretary made the HRA 1998 (Designated Derogation) Order 2001, under section 14 of the HRA 1998, derogating from Article 5(1) ECHR on the right to liberty.¹⁰³

100 *A v The Netherlands* (Application No 4900/06) (20 July 2010) European Court of Human Rights (ECHR) <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&source=tkp&highlight=4900/06&sessionid=63138114&skin=hudoc-en>.

101 *Ibid*, para 130.

102 *Ibid*, para 143.

103 Article 5(1) European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Section 14 HRA 1998 requires that a derogation order fulfill the conditions set out by Article 15 ECHR which allows derogations from the ECHR only when there is a 'public emergency threatening the life of the nation'.¹⁰⁴

The UK Parliament also adopted the Anti-terrorism, Crime and Security Act 2001.¹⁰⁵ This Act empowered the Home Secretary to issue a certificate in relation to a person if he reasonably believed that the person was a threat to national security and suspected that the person was a terrorist. The effect of such a certificate, in relation to non-UK nationals, was to allow the deportation or detention of the individual, without trial.

In December 2001, eight individuals were certified by the then Home Secretary. They were then detained in Belmarsh Prison on 19 December 2001 because they could not be deported to their own States. They challenged their certification and subsequent detention under Article 5(1) ECHR on the basis that there was no 'public emergency threatening the life of the nation' required under Article 15 ECHR and therefore vitiating the Derogation Order.

The House of Lords found that it was bound by the judgment of the Home Secretary, government and parliament in the assessment that there was, indeed, a public emergency threatening the life of the nation. However, the Court found that the Derogation Order was disproportionate and discriminatory as it was directed only to non-UK nationals leaving UK nationals suspected of terrorism at large. The Derogation Order was therefore quashed and a declaration of incompatibility with Articles 5 and 14 ECHR made in relation to the underlying Anti-terrorism Crime and Security Act.¹⁰⁶

104 *Ibid*, Article 15(1).

105 Anti-terrorism, Crime and Security Act 2001, Chapter 24 www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=Anti-terrorism%2c+Crime+and+Security+Act&Year=2001&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&activeTextDocId=267726&parentActiveTextDocId=267726&showAllAttributes=0&hideCommentary=0&showProp=0&suppressWarning=1.

106 *A and others v Secretary of State for the Home Department* [2004] UKHL 56 www.bailii.org/uk/cases/UKHL/2004/56.html.

A 'control order' system was put in place to replace the unlimited detention of terror suspects. The Prevention of Terrorism Act 2005 permitted the Home Secretary to make an order on to a person as to whom he had reasonable grounds of suspecting he was involved in terrorism or terrorist related activities.¹⁰⁷ The control orders had the effect of putting those subject to them under house arrest and were imposed without the subjects having a right to see the evidence against them. Three of those subject to the orders challenged them on the basis of a violation of their Article 6 ECHR right to a fair trial. The House of Lords, following the European Court of Human Rights in *A v UK*,¹⁰⁸ found that the individuals' right to a fair trial had indeed been violated as they were not even aware of the allegations against them.¹⁰⁹ In response to this judgment, the then-Home Secretary revoked some of the control orders.¹¹⁰

The new coalition government ordered a review of the UK's anti-terrorism legislation and control orders were part of that review.¹¹¹ The new government intends to scrap the control order system and replace it with a new scheme of Terrorism Prevention and Investigation Measures (TPIM). These measures will include orders which restrict the movement and activities of individuals but will be subject to greater judicial oversight. The UK Parliament was due to debate TPIM in spring 2011.

107 Prevention of Terrorism Act 2005, Chapter 2 www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=Prevention+of+Terrorism+Act&Year=2005&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1414108&ActiveTextDocId=1414108&filesize=126955.

108 *A and Others v The United Kingdom* (Application No 3455/0 (19 February 2009) ECHR http://cmiskp.echr.coe.int/___tkp197/viewhbk.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=24704&sessionId=63418716&skin=hudoc-en&attachment=true).

109 *Secretary of State for the Home Department v AF and another and one other action* [2009] UKHL 28 www.bailii.org/uk/cases/UKHL/2009/28.html.

110 'Ruling sends message on control orders', *The Guardian*, 28 July 2010 www.guardian.co.uk/commentisfree/libertycentral/2010/jul/28/court-ruling-sends-message-control-orders.

111 'Theresa May rebukes Lord Macdonald over control orders intervention', *The Guardian*, 31 October 2010 www.guardian.co.uk/law/2010/oct/31/theresa-may-lord-macdonald-control-orders.

Qualified rights: privacy and surveillance – Ugandan Regulation of Interception of Communications Act

The Ugandan Parliament adopted the Regulation of Interception of Communications Act on 14 July 2010. The original Bill had been subject to criticism by human rights commentators¹¹² as, among other things, it allowed the Minister in Charge of Security to authorise interception and made him arbiter of challenges to interception warrants.

The Act as adopted allows the interception of any postal, telephone, e-mail or text message communications with the prior consent of a Judge of the High Court. Challenges by individuals to interception are vested in the Court of Appeal and the Supreme Court. The High Court may only issue a warrant for interception where there is a threat to the lives of citizens, cases of drug or human trafficking or where national security or national economic interests are under threat. In addition, all mobile phone subscribers are required to submit their identification details to their service providers within a period of six months. If they do not, they will be deregistered. Mobile phone service providers are required to make their networks available to the government which will open a communications monitoring centre.¹¹³

Debates over the substance of the Bill in Parliament and civil society centred on whether the Bill contained adequate safeguards for the right to privacy and whether the measures proposed struck an adequate balance between the prevention of crime and individual freedoms.

112 Amnesty International 'Amnesty International Concerns on the Regulation of Interception of Communications Bill 2007', 27 August 2008 www.amnesty.org/en/library/asset/AFR59/005/2008/en/0ff97403-7507-11dd-8e5e-43ea85d15a69/afr590052008en.html.

113 'Uganda: Interception of Communication Law Passed' *allAfrica.com*, 14 July 2010 <http://allafrica.com/stories/201007150451.html>.

*Volokhy v Ukraine*¹¹⁴

The applicants were the mother and brother of a person being prosecuted of tax evasion who had absconded. The applicants' mail and phone calls were made subject to an interception order on the basis that they may receive correspondence informing them of the family member's whereabouts. The applicants attempted to claim damages from the Regional Prosecutor's Office, but were informed that the interception was legal and there were therefore no grounds for damages. The European Court of Human Rights accepted that there had been an interference by a public authority within the meaning of Article 8 ECHR, and then examined whether the interference was justified. The Court affirmed that the secret surveillance of citizens during criminal investigations are tolerable only as far as they are strictly necessary, stating that to comply with Article 8, the surveillance must be in accordance with the law, pursue a legitimate aim under Article 8(2), and be necessary in a democratic society to achieve that aim. The Court found that the interference could not be considered to be in accordance with the law because the law was not sufficiently clear as to the scope and conditions of exercise of the authorities' discretionary power and there were not adequate safeguards against the abuse of the use of surveillance. The interference was therefore found to be in violation of Article 8.

Limitation clauses in international treaties or constitutions generally identify those rights which are absolute, limited or qualified and those which are derogable. Some treaties are drafted to ensure that rights are limited or qualified by their text. Regardless of the model operating, the principle remains the same. Absolute rights remain absolute. Some rights are qualified and expressly permit the State to justify limitations – or interferences – with the right where necessary to meet legitimate aims in the interests of the community or to protect the rights of others. Any limitation or qualification must be reasonably and objectively justified by the State in accordance with the law and supported by credible evidence.

114 *Volokhy v Ukraine* (Application No 23543/02) (2 February 2007) ECHR.

Some examples of limitation clauses

'The exercise of rights and freedoms may be restricted for the purposes of safeguarding other rights and interests that are protected by the Constitution. The law may restrict rights, freedoms and guarantees only in cases expressly provided for in the Constitution. Legal restrictions on rights and freedoms shall be of a general and abstract nature and shall not have retroactive effect.'

Article 56, Constitution of Mozambique (1990)

'Constitutional human and citizens' rights and freedoms shall not be restricted, except in conditions envisaged by the Constitution of Ukraine.'

Article 64, Constitution of Ukraine (1996)

Qualified rights: the right to respect for private life in the ECHR

Article 8 of the ECHR protects the right to respect for private and family life, home and correspondence. Article 8(2) ECHR expressly recognises that this right is qualified. It provides:

'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'¹¹⁵

In practice any interference with the right to respect for private life must serve one of the 'legitimate aims' in Article 8(2) ECHR. The interference itself must be 'in accordance with the law' and necessary to address a 'pressing social need in a democratic society'. In practice, these requirements mean that the State can only justify interferences which are legally certain and ascertainable, not arbitrarily imposed or subject to an excess of executive or administrative discretion. Any interference must be no more than is necessary to achieve the aim identified by the administration; that is, it must be capable of achieving the aim identified; the benefit must be proportionate to interference with the right proposed; and the aim should not be achievable through less-intrusive means.

¹¹⁵ Article 8(2) ECHR.

Any government which interferes with a qualified right has the substantive and evidential burden to provide the objective and reasonable justification of its actions. This can include the responsibility for providing evidence to support a policy or legislative proposal's impact and likely costs to parliament and any parliamentarians who question the compatibility of the policy or proposal with domestic and international human rights law.

The obligation of progressive realisation

The ICESCR recognises that every State has different economic capabilities and commitments.¹¹⁶ The right to adequate housing¹¹⁷ does not require the State to build a house for every family in the country. However, every State remains under a legally binding obligation to work towards the 'progressive realisation'¹¹⁸ of the highest housing standards within the resources available to the State. In practice, this means that government must have strategies, programmes and targets in place to ensure that social and economic rights are achieved in practice. So, in meeting the right to the highest attainable standard of health, this will include planning a system of healthcare designed to ensure people can access effective primary healthcare; providing health education programmes designed to improve health; and implementing public health programmes designed to address serious health risks and improve basic facilities.

Rights and remedies

Rights and remedies go hand in hand. In most international human rights treaties, the right to an effective remedy is recognised as an independent, free-standing right.¹¹⁹ The right to remedy and reparation before a domestic tribunal operates to empower individuals to enforce the international obligations of the State at home and to make rights real in practice.

116 Article 2(1) ICESCR.

117 *Ibid*, Article 11(1).

118 *Ibid*, Article 2(1).

119 Article 2(3) ICCPR.

The right to an effective remedy may vary according to the right and the extent and nature of the violation concerned. However, generally in order to be effective, the remedy must be accessible, real and enforced. Remedies must generally be administered by independent and impartial authorities, free from interference by the State.

Key questions for parliamentarians considering the right to a remedy relate to effective routes to challenge the activities of government and administrative authorities and the effective operation of the domestic courts system to allow effective access to an independent and impartial tribunal satisfying minimum international standards. We consider the right to a fair hearing by an independent and impartial tribunal in Section 2.

The right to a remedy

'Each State Party to this Covenant undertakes:

- a) To ensure that any person whose rights and freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State and to develop the possibilities of judicial remedy;
- c) To ensure that the competent authorities shall enforce such remedies when granted.'

Article 2, ICCPR

The right to a remedy in action: European Convention on Human Rights

Article 13 ECHR protects the right to an effective domestic remedy for violations of the other rights protected by the Convention.¹²⁰ In practice, the European Court of Human Rights has interpreted the right to an effective remedy broadly. Contracting Parties to the Convention must ensure that a domestic mechanism exists which is capable of considering a violation and providing a binding remedy. A remedy will only be effective where an individual is able to raise an allegation of a substantive violation and the remedial authority must be independent and impartial of any parties to the breach and the government. A remedy need not prevent a violation and procedural rules controlling the remedial mechanism may be acceptable. However, the process must be accessible and overly restrictive rules on standing or costs or local social and political conditions may render a remedy ineffective.¹²¹

The implementation of economic and social rights is traditionally viewed by States as the prerogative of the political process. Against this background, the role of the judiciary in the enforcement of these rights has generally been marginalised by both international and domestic law. However, a role for judicial or quasi-judicial oversight of social, economic and cultural rights protection is increasingly recognised. So for example, the Constitution of South Africa clearly recognises the justiciability of the economic and social constitutional rights it guarantees.¹²² Articles 56, 58 and Chapter V of the Mozambique Constitution indicate that in Mozambique, economic, social and cultural rights are justiciable.¹²³ A new Optional Protocol to the ICESCR will enable individuals to bring individual complaints before the Committee relating to economic, social and cultural rights.¹²⁴

120 Article 13 ECHR.

121 *Camerzind v Switzerland* (1999) 28 EHRR 458; *Akdivar v Turkey* (1997) 23 EHRR 143, para 69.

122 Articles 8, 22–27 and 29 Constitution of the Republic of South Africa 1996 (as amended) www.info.gov.za/documents/constitution/1996/a108-96.pdf.

123 Constitution of the Republic of Mozambique www.mozambique.mz/pdf/constituicao.pdf.

124 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, United Nations General Assembly (UNGA) Res A/RES/63/117 (10 December 2008), Annex, Article 2 www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf.

In practice for parliamentarians, the right to a remedy has a number of implications. Parliament may wish to consider whether domestic courts are independent and impartial; whether they are equipped to understand and implement human rights standards; and whether they are accessible for all. If domestic courts have a limited role in relation to economic and social rights, parliament assumes a greater degree of responsibility for their implementation in practice. The primary responsibility for implementation will lie with the political arms of government: the executive and legislature must ensure that individual economic, social and cultural rights inform and are implemented through all relevant government programmes, strategies and practices.

Economic and social rights in the courts

In its 2008 report considering what a bill of rights for the UK could look like, the JCHR recommended that there could be a role for the courts in implementing economic and social rights, but that the primary duty should remain with parliament:

'We... put forward for consideration an approach which draws inspiration from the South African approach to economic and social rights, but which contains additional wording designed to ensure that the role of the courts in relation to social and economic rights is appropriately limited. The broad scheme of these provisions is to impose a duty on the Government to achieve the progressive realisation of the relevant rights, by legislative or other measures, within available resources, and to report to Parliament on the progress made; and to provide that the rights are not enforceable by individuals, but rather that the courts have a very closely circumscribed role in reviewing the measures taken by the Government.'¹²⁵

125 29th Report from the JCHR, 'A Bill of Rights for the UK?' Session 2007-08 (10 August 2008) HL 165-I/HC 150-I, para 192 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf.

Social economic rights in action

Gachechiladze and Others v Parliament of Georgia

The Constitutional Court of Georgia considered whether new legislation was in violation of Article 39 of the Georgian Constitution, which protects universal rights which are not explicitly mentioned in the Constitution but which stem from constitutional principles. The legislation in question ended the provision of electricity allowances for war veterans and the families of those killed in war. It was alleged that the new legislation violated the right to an adequate standard of living, which is not explicitly recognised by the Constitution but is guaranteed by Article 11 of ICESCR. The Constitutional Court found that the legislation did not serve the progressive realisation of the right to an adequate standard of living, and therefore contravened Article 39 of the Constitution.¹²⁶

Emmanuel Mpondi v Ngwana High School and others

In the *Mpondi* case, the Ugandan Human Rights Commission considered the right to education. Mr Mpondi was a student at Ngwana High School who had been severely punished by teachers and hospitalised. On his return to school, he was sent home to collect his school fees, but his sponsors refused to pay the fees until the school had taken action to discipline the teachers who had hospitalised him. He was forced to leave the school entirely as a result. The Commission found that Mr Mpondi's right to education had been violated, and awarded damages.

This case is interesting in that the Commission did not refer to a specific constitutional provision that had been breached, but centred its discussion on the right to education as a standalone principle.¹²⁷

126 *Public Defender of Georgia v the Parliament of Georgia*; N 1/2/434, (27 August 2009, Batumi).

127 *Emmanuel Mpondi v The Chairman, Board of Governors Ngwana High School et al* (Complaint No 210) (1998) (Reported in [1999-2002]).

Government of South Africa v Grootboom

In this case the Constitutional Court of South African found that the State's failure to provide emergency accommodation for homeless applicants was an unreasonable denial of their right to adequate housing in section 26 of the Bill of Rights. The applicants had been evicted from an illegal squatter camp, and were living in a sports stadium in extremely difficult and unhealthy conditions. Whilst government programmes were in place to develop social housing in the medium and long-term, the Court found that the absence of any government programme to address the needs of those in immediate need of emergency shelter, within the available resources, was an unreasonable interference with the right to adequate housing. It held that:

'... to be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right.'¹²⁸

The Court ordered the government to implement a programme, within available resources, to address the need for emergency housing as part of the right of access to adequate housing.

128 *Government of South Africa v Grootboom* [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169.

Public service guarantees and socio-economic rights

The previous UK Government introduced a number of bills designed to introduce statutory targets or minimum public service guarantees in relation to socio-economic rights, such as the right of children to an adequate standard of living or the right to education (for example, the Child Poverty Act 2010).¹²⁹ The JCHR reported on each of these bills and welcomed the introduction of such enforceable public service guarantees as a means of meeting socio-economic rights, both as a means of ensuring a core minimum entitlement and ensuring that the government works towards progressive realisation of rights (both of which are twin obligations imposed by the ICESCR).¹³⁰ In the Committee's report on the Children, Schools and Families Bill (which introduced minimum parental guarantees on access to education), it concluded:

'We welcome the Government's embrace of legally enforceable guarantees to a minimum set of entitlements in education in this Bill. In our view this is capable of giving effect to the minimum core obligation which human rights law places on the UK to ensure a minimum essential level of provision for the right to education... an approach based on individual service entitlements is likely to improve the UK's compliance with its human rights obligations under the ICESCR.'¹³¹

129 Child Poverty Act 2010 Chapter 9 www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=child+poverty+act&Year=2010&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=3684324&ActiveTextDocId=3684324&filesize=97589.

130 28th Report from the JCHR 'Legislative Scrutiny: Child Poverty Bill', Session 2008-09 (26 November 2009), HL 183/HC 1114 www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/183/18305.htm#a2.

131 8th Report from the JCHR 'Legislative Scrutiny: Children, Schools and Families Bill; Other Bills', Session 2009-10 (19 February 2010) HL 57/HC 369 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/5704.htm#a10.

2. Human rights in practice

Constitutional protections vary from State to State, however there is a core of protected rights which most States recognise. There is inadequate scope in this handbook to deal with each and every right in detail. This section aims to introduce readers to a selection of key individual civil and political rights, including absolute, limited and qualified rights. It also deals with economic, social and cultural rights and the principle of progressive realisation in practice. Its purpose is to introduce the substance of each of these rights and to equip parliamentarians and parliamentary staff with the tools to identify basic human rights issues common to political debate and to conduct a basic assessment of the compatibility of bills, government proposals and practices.

Case studies and examples from parliaments across the world are included to introduce basic mechanisms and techniques for addressing significant human rights issues.

Equality and non-discrimination

Equality and non-discrimination in national and international law

'All human beings are born free and equal in dignity and rights.'

'Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.'

Articles 1-2, UDHR

'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Article 2, ICCPR

'Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.'

The Constitution of Georgia, 1995

'Men and women shall be equal before the law in all spheres of political, economic, social and cultural life.'

Article 36, Constitution of Mozambique, November 1990

Section 1 of Part II, 'What are human rights', introduced the principle of equality as a fundamental principle of international human rights law. This principle is reflected in every international human rights instrument and in most national constitutions. While the right to equal treatment before the law is a free-standing right in itself in most international human rights instruments and domestic constitutions, it is also important in interpreting each of the other substantive rights to remember that they must be enjoyed equally and without unlawful discrimination.

In order to have real effect on the ground, the right to equality imposes both positive and negative obligations on the State.¹³² Governments have an obligation to avoid arbitrary discrimination in their laws, policies and practice. However, everyday lives depend on a far broader matrix of private providers and actors. The right to equal treatment before the law is generally interpreted to require States to take action to ensure access to housing, education and other services provided by the private sector without unlawful discrimination.¹³³ In light of this broad impact on private relations, equality and anti-discrimination guarantees are often implemented in more detailed domestic statutory protection in order to promote legal certainty and to give individuals access to more defined routes of redress for discrimination.

132 CCPR, General Comment No 31 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) [CCPR/C/21/Rev.1/Add 13 para 8] <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>.

133 Article 9 CCPR General Comment No 18 'Non-discrimination' (10 November 1989), 37th Session www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/3888b0541f8501c9c12563ed004b8d0e?Opendocument.

The right to equality in the ECHR and ICCPR: equal treatment compared

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Article 14 ECHR

'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Article 2(1) ICCPR

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Article 26 ICCPR

Article 14 ECHR provides only a subsidiary right to equal treatment when linked to the other rights set out by the ECHR. The ICCPR includes a straightforward freestanding equality guarantee.

This is the constant position of the European Court of Human Rights as set out in, for example, *Schmidt v Germany*¹³⁴ where the Court said:

134 *Karlheinz Schmidt v Germany* (Application No 13580/88) (18 July 1994) ECHR <http://cmiskp.echr.coe.int////tkp197/viewhbk.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=14289&sessionId=63635235&skin=hudoc-en&attachment=true>.

'As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and the Protocols. It has *no independent existence* since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.'¹³⁵

Article 14 ECHR is also a qualified prohibition as treatment is only discriminatory if it:

"has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realized". Moreover the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.'¹³⁶

Under Article 14 of the ECHR, justified differential treatment is not discrimination.¹³⁷

In 2000, Protocol 12 to the ECHR¹³⁸ was opened for signature. It creates a general prohibition on discrimination independently of the other Convention rights. Article 1(1) Protocol 12 provides:

'The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

It therefore creates a more equal comparison to the non-discrimination provisions in the ICCPR for those members who have ratified.¹³⁹

135 *Ibid*, para 22.

136 See above, note 134.

137 *Catholic Care (Diocese Of Leeds) v The Charity Commission for England and Wales*, (2010) EWHC 520 (Ch), para 73 www.bailii.org/ew/cases/EWHC/Ch/2010/520.html.

138 Protocol No 12 to the ECHR (4 November 2000, Rome) <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm>.

139 As at 16 December 2010, the TWC partner countries who had ratified Protocol 12 were Georgia (2005) and Ukraine (2006) <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=7&DF=16/12/2010&CL=ENG>.

TABLE 7: EXAMPLES OF STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE RIGHT TO EQUAL TREATMENT

| | Respect | Protect | Fulfil |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The right to equality | <ul style="list-style-type: none"> Individuals are free from arbitrary discrimination in State decision-making. | <ul style="list-style-type: none"> The State has adopted equality and non-discrimination legislation to prevent unlawful discrimination by the private sector in employment, housing, education and the provision of services. | <ul style="list-style-type: none"> Where social attitudes are promoting discrimination and unequal treatment, the State has introduced positive strategies to promote equality in practice, including through public education programmes. Research and monitoring programmes are in place to monitor the impact of equality guarantees in practice. Where historical disadvantage is entrenched, the State introduces measures to address that disadvantage in practice. |

The UK Equality Act: public sector duties

The UK Equality Act 2010¹⁴⁰ consolidates over three decades of UK anti-discrimination legislation to provide protection for individuals against discrimination on the grounds of race, gender, sexual orientation, religion, thought or belief and age. The Equality Act 2010 imposes obligations on both private and public sector actors for the purposes of ensuring equality in the provision of goods and services, employment, education and housing.

In addition to negative obligations to refrain from arbitrary or unjustified discrimination, public authorities are placed under certain positive duties designed to promote and secure equality in the exercise of their public functions. These duties include general duties to screen public practice for its equality impacts and more specific duties designed to meet obligations defined by each sector.¹⁴¹

UNLAWFUL DISCRIMINATION: 'OTHER STATUS'

The listed and prohibited grounds of discrimination listed in the ICCPR and other international and regional human rights instruments are not exhaustive. Equal protection and non-discrimination clauses have been interpreted broadly in order to protect individuals from discrimination based on their personal characteristics without objective and reasonable justifications. Importantly, individuals must be protected from discrimination based on their sexual orientation.¹⁴² Other grounds which have found the basis for a discrimination claim have included homelessness¹⁴³ and HIV status.¹⁴⁴

140 Equality Act 2010 Chapter 15: www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=Equality+Act&Year=2010&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&activeTextDocId=3698792&parentActiveTextDocId=3698792&showAllAttributes=0&hideCommentary=0&showProp=0&suppressWarning=1.

141 Section 149 and 153 Equality Act 2010; and Schedule 19 Equality Act 2010.

142 Committee on Economic, Social and Cultural Rights General Comment 20 'Non-Discrimination in Economic, Social and Cultural Rights' (Article 2, paragraph 2) (10 June 2009) [E/C 12/GC/20] www2.ohchr.org/english/bodies/cescr/docs/gc/E.C.12.GC.20.doc; *Ibid*, General Comment 20.

143 *R (on the application of RJM) (FC) (Appellant) v Secretary of State for Work and Pensions* [2008] UKHL 63 www.bailii.org/uk/cases/UKHL/2008/63.html.

144 *RM v UK* (App No 22761/93) UN Commission on Human Rights; and United Nations High Commissioner for Human Rights (UNHCHR) 'The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)', Resolution 995/44 (3 March 1995) [E/CN.4/1995/176].

Protection from discrimination on the grounds of sexual orientation

Discrimination on the grounds of sexual orientation is prohibited in international human rights law.¹⁴⁵ The earliest human rights instruments were drafted over half a century ago, when homosexuality was criminalised in most countries. Over the course of this time, international law has recognised that sexuality is a protected status and a personal characteristic of individual identity which should not provide a basis for unlawful and arbitrary discrimination. In 1994, the Human Rights Committee in *Toonen v Australia* recognised that the right to equal treatment in the ICCPR provides protection against discrimination on the basis of sexual orientation.¹⁴⁶ The European Court of Human Rights has expressly recognised that the protection for 'other status' in the ECHR must include protection against discrimination based on sexual orientation. The Court has explained that particularly weighty reasons are required to justify discrimination on the grounds of sexual orientation.¹⁴⁷ Sexual orientation is included, together with gender and race, in a core of personal characteristics where the prohibition on discrimination is considered particularly important to protect the true and full development of the person.

The European Union Charter of Fundamental Rights expressly recognises sexual orientation as a protected status.¹⁴⁸

-
- 145 Article 13 CESCR General Comment 15 'The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)' 29th Session 11-29 November 2002 (20 January 2003) [E/C 12/2002/11] <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement>; and Article 32 CESCR General Comment No 20 'Non-Discrimination in Economic, Social and Cultural Rights (Article 2, paragraph 2)' 42nd Session 4-22 May 2009 (10 June 2009) [E/C 12/GC/20] www2.ohchr.org/english/bodies/cescr/docs/gc/E.C.12.GC.20.doc.
- 146 *Toonen v Australia* (Communication No 488/1992) (4 April 1994) CCPR [CCPR/C/50/D/488/1992] www.worldlii.org/int/cases/UNHRC/1994/15.html.
- 147 *Karner v Austria* (Application No 40016/98) (24 July 2003) ECHR, para 37 <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=KARNER&sessionid=63248094&skin=hudoc-en>.
- 148 Article 21, Charter of Fundamental Rights of the European Union.

Discrimination can be 'direct' or 'indirect'. States directly discriminate by treating one type of person less favourably than another in the same circumstances on the basis of their personal characteristics.¹⁴⁹ Indirect discrimination takes place where a State applies a set of criteria indiscriminately which makes it more difficult for some people to meet because of their personal characteristics.¹⁵⁰ In some contexts these distinctions may be unhelpful and unfamiliar. It may be more helpful to focus on justified distinctions and unjustified discrimination.

JUSTIFIED DISTINCTIONS

Not all distinctions drawn by the State amount to unlawful discrimination. Different treatment may be justified by objective and reasonable criteria based on factual or legal distinctions. However, the burden will always fall on the government to prove that any distinction drawn is reasonably and objectively justifiable in the circumstances. The degree of evidence required to provide an objective justification for discrimination will increase according to the degree and type of distinction drawn and the impact of the discrimination on the individuals affected. Objective and reasonable justification is never set in stone; as societal attitudes change, the reason for a distinction may appear less reasonable and objective, and so, less acceptable.

149 Section 13(1) Equality Act 2010 (definition of direct discrimination).

150 Sections 19(1) and (2) Equality Act 2010 (definition of indirect discrimination).

Case study: justified distinction in the UK

R v Secretary of State for Work and Pensions, ex parte Hooper (*Hooper case*)¹⁵¹ illustrates the concept of justified discrimination, and how the understanding of what is or is not justified may change over time. The case concerned five widowers, whose wives had passed away at a time when under UK law, women whose husbands died received certain benefits and allowances that men whose wives died did not. Since that time, legislation in the UK has changed, to reflect the changing position of women in society, and no longer draws a distinction between widows and widowers.

The five widowers in the *Hooper* case claimed that they should receive the same benefits that were available to widows under the old legislation. That legislation, passed in 1992, provided that women between the ages of 45 and 65 whose husbands died should continue to receive a pension. It was recognised that this distinction was justified at the time it was passed, as 'among existing widows there [remained] a significant number of women who were wholly dependent on their late husband's income... whose expectation on marrying was that their husband would provide a significant part if not all of the income of the household.'¹⁵² The legislation was not changed until April 2001.

The Supreme Court judgment considered whether in the year 2000, when one applicant's wife died, the distinction between men and women whose spouses died was still justified. The Court found that by 1995, taking into account various statistics on the percentage of working women, the distinction had ceased to be justified, as women were equally capable of entering the workforce at any age as men, and were often themselves the main breadwinner of the household. As such, by 1995 the legislation had become discriminatory, in contravention of Article 14 of the Human Rights Act 1998 and the relevant articles of the ECHR.

151 *R v Secretary of State for Work and Pensions, ex parte Hooper* [2003] EWCA Civ 813.

152 *Ibid*, para 53.

Equal treatment in the EU

For Member States of the EU, discrimination on the basis of nationality is prohibited by the Treaty of Rome.¹⁵³ This means that a Member State cannot treat the nationals of other Member States differently to its own nationals. For example, in *Martinez Sala*,¹⁵⁴ the Court of Justice of the European Communities (now, the Court of Justice of the European Union, ECJ) held that a Spanish worker lawfully resident in Germany was entitled to the child-raising allowance paid by the German Government to all German mothers.

The ECJ has long regarded residence and even language requirements to be equivalent to discrimination on the basis of nationality. In *Bidar*,¹⁵⁵ the ECJ held that although the UK Government could request a certain degree of integration in the UK for the granting of student finance, it could not require 'settlement' equivalent to British nationality. Similarly, the ECJ found in *Agonese*,¹⁵⁶ that a private bank's requirement that an individual possess a certificate of linguistic competence which was available from only one region in Italy was contrary to the non-discrimination and free movement provisions of the Treaty.

Action to ensure equality

The right to equal treatment may require States to take positive steps to ensure that individuals can access their rights on an equal basis. So, in order to ensure that persons with disabilities are capable of enjoying their rights, States may have to take positive steps to adjust practices or environments. For example, without adjustments to public transport or school premises, it may be difficult for children with physical disabilities to access mainstream education.

153 Article 18 Treaty on the Functioning of the European Union (ex Article 12 Treaty Establishing the European Community).

154 *María Martínez Sala v Freistaat Bayern* (12 May 1998) [C-85/96], ECHR, Reports 1998, Page I-02691 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996J0085:EN:HTML>.

155 *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills* (15 March 2005) [C-209/03], ECHR, Reports 2005, Page I-02119 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0209:EN:HTML>.

156 *Roman Angonese v Cassa di Risparmio di Bolzano SpA* (6 June 2000) [C-281/98] ECHR, Reports 2000, Page I-04139 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61987J0379:EN:HTML>.

The principle of equality does not preclude recognition of particular group rights for particularly vulnerable groups, for example, women, children, minorities, stateless persons and refugees or persons with disabilities. Thus there are treaties which are designed to address historic inequalities and vulnerabilities which are not discriminatory (they are reasonably and objectively justified).¹⁵⁷ Equally, individual States may be able to justify certain temporary measures designed to redress the effects of past discrimination.¹⁵⁸ However, in each case, these measures must be reasonably and objectively justified.

Lebanon: Protection from domestic violence

Lebanon recently implemented a recommendation given by the Human Rights Council to adopt a law to protect women from domestic violence. The Working Group on the Universal Periodic Review recently confirmed that a specific law on the prevention of domestic violence was in its final stages of adoption by Lebanon.¹⁵⁹

Action by parliaments to promote equality: Uganda

In July 2009, a female Ugandan MP presented a petition to parliament on violence against women, in light of escalating violence against women and increased incidences of domestic violence. The Domestic Violence Act 2009 passed in November of the same year.

157 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965); and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979).

158 Article 10 CCPR General Comment No 18 'Non-discrimination', Thirty-seventh Session (10 November 1989) www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/3888b0541f8501c9c12563ed004b8d0e?Opendocument.

159 UNGA Human Rights Council Working Group on the Universal Periodic Review 'Draft report of the Working Group on the Universal Periodic Review, Lebanon', Ninth Session (1–12 November 2010, Geneva) http://lib.ohchr.org/HRBodies/UPR/Documents/session9/LB/A_HRC_WG.6_9_L.16_Lebanon.pdf.

Protection of the rights of persons with disabilities

In 2006, the UNCRPD¹⁶⁰ opened for signature. Some key features of the UNCRPD – the first major human rights treaty of the 21st century – include:

- *The social model of disability*: The UNCRPD is based on the social model of disability which focuses on social barriers faced by persons with disabilities rather than the medical description, symptoms or conditions experienced by people with disabilities.¹⁶¹ This approach acknowledges that barriers to equality lie in social attitudes and reactions to disability, which can be addressed in practice.
- Reasonable adjustments may be necessary to meet rights of individuals in practice. In line with the social model of disability, the UNCRPD is based on the presumption that social and physical changes may be necessary to ensure equality for people with disabilities.
- Involvement and participation of people with disabilities in community and political life, law-making and administrative decision making is at the heart of the UNCRPD. This approach is designed to address historical and charitable approaches to disability based on the old-fashioned medical model. It echoes the motto of many organisations of and for people with disabilities: ‘nothing about us, without us’.
- *The right to independent living*: For the first time in international human rights law, Article 19 of the UNCRPD expressly recognises the fundamental right of persons with disabilities to live independently as part of the community. Independent living does not mean the right to life without support. Following the social model of disability, it recognises that adjustments and support may be necessary in order to facilitate and enable people with disabilities to live independently within the community in so far as possible making decisions about their own life choices and personal, family and community life.

A number of TWC partner parliaments have approved ratification of the UNCRPD.¹⁶² The Committee on the Rights of Persons with Disabilities (the Committee) first met in 2008. The UNCRPD has highlighted the rights of disabled persons across the world and its operation has led to increasing focus on disability rights in countries which have ratified the UNCRPD. For example, in 2010, Human Rights Watch published a critical report on the treatment of women with disabilities in Uganda, in advance of the submission of the State’s report to the Committee on the Rights of Persons with Disabilities.¹⁶³

160 Convention on the Rights of Persons with Disabilities.

161 *Ibid*, Preamble.

162 Uganda (2008), Ukraine (2010) and the UK (2009).

163 Human Rights Watch ‘‘As if we weren’t human’’ Discrimination and Violence against Women with Disabilities in Northern Uganda’ (26 August 2010) www.hrw.org/sites/default/files/reports/uganda0810webwcover_0.pdf.

Parliamentarians and the rights of persons with disabilities: UK case studies

The JCHR conducted a wide-ranging inquiry into the treatment of adults with learning disabilities in 2007. The Committee made a number of recommendations, including a call for the UK to ratify the UNCRPD at the earliest opportunity.¹⁶⁴

As a follow-up to this inquiry, the JCHR scrutinised the progress of the UK towards ratification of the UNCRPD. The Committee reported twice. In its first report, the Committee welcomed the decision to ratify and called for ratification of the Optional Protocol. It criticised the government's failure to engage with disabled people and their organisations about proposals for reservations to the UNCRPD.¹⁶⁵ In the second report, the JCHR considered three proposed reservations and two interpretative declarations proposed by the UK. The Committee criticised the number of reservations and concluded that at least two of the reservations were incompatible with the object and purpose of the UNCRPD.¹⁶⁶ Committee members secured a pre-ratification debate on the UNCRPD, highlighting their criticisms. It is very likely that the comments of the JCHR will be brought before the UNCRPD when the UK is subject to its first examination in 2011.

In 2011, the JCHR launched a new inquiry on the implementation of the right to independent living in Article 19 UNCRPD. The Committee called for evidence from people with disabilities and published their call for evidence in different formats and media in order to try to reach as many disabled people and their organisations as possible.

At the end of each section in this chapter, we include a basic list of questions for parliamentarians and their staff. These checklists are designed to pose suggested questions to help identify whether a domestic law or practice raises a significant risk of incompatibility with domestic or international human rights law. These checklists are designed to provide a basic, introductory framework for analysis and further research and are not intended to replace the need for independent advice and support from domestic legal advisors.

164 7th Report from the JCHR 'A Life Like Any Other? Human Rights of Adults With Learning Disabilities', Session 2007-2008, HL Paper 40-1, HC 73-1 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/40i.pdf.

165 1st Report from the JCHR 'The UN Convention on the Rights of Persons with Disabilities', Session 2008-2009, HL Paper 9, HC 93 www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/9/9.pdf.

166 12th Report from the JCHR 'UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration', Session 2007-2008, HL Paper 70, HC 397 www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/70/70.pdf.

Basic checklist for equality:

- Does the law, policy or practice provide for different rules for different groups or types of people?
- Does the law, policy or practice have a greater impact on certain groups of people?
- If so, has the government provided a reasonable, objective and legitimate reason to justify the distinction?
- Is the distinction justifiable in light of the reason given?
- Has the government provided credible evidence to support their reason for distinction and the weight of their justification?
- If not, has parliament asked for further information and supporting evidence?

Questions for parliamentary human rights defenders:

- Does your country have a policy designed to secure and promote equality in parliament?
- How does domestic law secure the protection of equal rights in practice?
- Does domestic law guarantee protection from discrimination on each of the grounds recognised in international human rights law, including gender and sexual orientation?
- Are law, policies and practices in place to promote equal treatment in public services?
- Does parliament monitor the impact of new laws, policies and practices for their affects on equality?

3. The right to life

The right to life in international and domestic law

'Everyone has the right to life, liberty and security of the person'

Article 3, UDHR

'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

Article 6(1), ICCPR

'Every person has the inalienable right to life. No one shall be arbitrarily deprived of life. The duty of the State is to protect human life. Everyone has the right to protect his or her life and health, the lives and health of other persons against unlawful encroachments.'

Article 27, Constitution of Ukraine, (1996)

'No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court as may be authorised by law.'

Article 22(1), Constitution of Uganda (1995)

The right to life is fundamental, but not absolute. There can be no derogation from the right to life in states of emergency,¹⁶⁷ but it is recognised that in certain circumstances, the right to life is legitimately limited:

- Where a person dies in war, as a combatant, as a result of a lawful act of war, the right to life is not violated.
- Death resulting from the use of force by State authorities is lawful if the use of force was absolutely necessary for the legitimate purpose of self-defence or the defence of others; to affect a lawful arrest; to prevent the escape of a person lawfully detained or to put down a riot or insurrection.

¹⁶⁷ Article 4(2) ICCPR.

- International human rights law does not prohibit capital punishment entirely. The death penalty may be applied, in very limited, defined circumstances.

Where the State is involved or has responsibility in circumstances where a death occurs, a person is 'disappeared' or a near-death situation arises, the State has a number of specific obligations. These include:

- that an effective investigation into the circumstances of the case takes place,¹⁶⁸
- that the victim's family are closely involved;¹⁶⁹
- that there are appropriate procedures for punishing those responsible; and
- to learn lessons to prevent future deaths occurring.¹⁷⁰

The obligations of the State include a number of positive obligations over and above this investigative duty. These include:

- Homicide must be punished by law and must carry appropriate penalties in domestic law.¹⁷¹
- A functioning criminal justice system must exist in order to prevent and punish violent crime and to bring alleged perpetrators to justice.¹⁷²
- Systems – including criminal law, guidance and training – must be in place to prevent arbitrary and unlawful killing by State agents, including military, police and prison authorities.¹⁷³
- Programmes, strategies, policies and plans should be adopted to address threats and risks to human life and life expectancy, including dealing with poverty, malnutrition and other public health risks.¹⁷⁴ This duty includes an obligation to take steps to investigate and prevent threats of mass violence, including war, genocide and terrorist attacks.¹⁷⁵

168 *Herrera Rubio v Colombia* (Communication No 161/1983) (2 November 1987) CCPR [CCPR/C/31/D/161/1983], para 10.3 www.worldlii.org/int/cases/UNHRC/1987/9.html.

169 UN Human Rights Council 'National Activity Plan 2006: Burkina Faso'; *Communication No 1159/2003: Burkina Faso* (11 April 2006) CCPR [CCPR/C/86/D/1159/2003]; *Jordan v UK* (App No 24746/94) (4 August 2001) ECHR.

170 *Bautista de Arellana v Colombia* (Communication No 563/1993) (13 November 1995) CCPR [CCPR/C/55/D/563/1993] paras 8.3 and 10 www.worldlii.org/int/cases/UNHRC/1995/28.html.

171 *Ibid*, para 8.4.

172 *Ibid*.

173 *McCann v UK*, App No (2008) ECHR para 385; *Suarez de Guerrero v Columbia* (Application No. 11/45) (31 March 1982), Human Rights Committee; *Bautista de Arellana v Columbia* (Communication No. 563/1993) (11 October 1994) CCPR, [CCPR/C/55/D/563/1993 (1995)]; *Burrell v Jamaica* (Communication No. 546/1993)(4 April 1995) CCPR [CCPR/C/53/D/546/1993 (1996)], p181.

174 Article 5 CCPR General Comment No 6 'The right to life (Article 6)' Sixteenth Session (30 April 1982), [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument).

175 UN Human Rights Committee 'General Comment 6', para 2; *Mahmut Kaya v Turkey* (App No 22535/93) ECHR; *EHP v Canada* (Application No. 67/80) CCPR, p185; *Plotnikov v Russian Federation* (Application No 784/97) CCPR, p186.

Counter-terrorism policies and human rights

'The promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing.'

UN Global Counter-terrorism Strategy, GA Res, 60/288¹⁷⁶

Since the attacks on the US World Trade Center in September 2001, the compatibility of counter-terrorism strategies with international human rights standards has been broadly debated in domestic, regional and international arenas.¹⁷⁷ The passage of emergency or specialist terrorist legislation in the face of an identified threat or series of threats places parliaments and parliamentarians under a particular pressure – both of a political and legal nature – to ensure that the right balance is struck between the State interest in protecting individual lives from the threat of terrorist violence and the minimum standards for the protection of individual rights in domestic constitutions and in international human rights law.

In May 2009, an Eminent Jurists Panel, established by the International Commission of Jurists, concluded that many countries had confronted the threat of terrorism with ill-conceived measures that have undermined cherished values and resulted in a serious violation of human rights. It considered that notorious counter-terrorism measures such as extraordinary rendition, torture, arbitrary detention and unfair trials had a 'devastating' impact on human rights worldwide. The global panel of experts warned against increasing secrecy preventing accountability, and the danger of 'temporary' measures becoming permanent features of law and practice in many states. They called for criminal investigations to be conducted according to the ordinary processes of criminal law, in compliance with the international human rights standards of due process, and for this to be the backbone for any domestic or international counter-terror policy.¹⁷⁸

176 UNHCHR 'Human Rights, Terrorism and Counter-terrorism', Fact-Sheet 32 www.ohchr.org/Documents/Publications/Factsheet32EN.pdf.

177 Eminent Jurists Panel of the International Commission of Jurists, 'Assessing Damage, Urging Action', (February 2009); Elisa Massimo, 'The Importance of Human Rights in long-term security', Human Rights First (2004) (international commentaries on the importance of fundamental human rights standards in counter-terrorism policy).

178 Report from International Criminal Court Eminent Jurists Panel, 'Assessing damage, Urging Action' (May 2009) www.justice.org.uk/images/pdfs/EJPFullReport170209.pdf.

Case study: JCHR inquiry on UK Counter-terrorism Policy

During the 2005-2010 parliament, the JCHR conducted an open inquiry on the counter-terrorism policies of the UK. Over the course of 16 separate reports, the Committee raised numerous concerns about the compatibility of UK counter-terrorism policy with the ECHR. The recommendations of the JCHR included:

- Not increasing the pre-charge detention period to 28 days and, if this was to be done, increasing the procedural safeguards to include a full adversarial hearing before a judge when deciding if further detention is necessary;¹⁷⁹
- No increase in the pre-charge detention period to 42 days;¹⁸⁰
- Maintenance of in-country appeals against deportation for national security reasons on asylum grounds;¹⁸¹
- The standard of proof in relation to the imposition of derogating control orders should be the criminal standard of beyond a reasonable doubt and not the civil standard of balance of probabilities¹⁸² and the standard of proof before the Special Immigration Appeals Commission should be increased;¹⁸³
- The special advocate procedure should not be used in proceedings which deprive the individual of his liberty;¹⁸⁴

-
- 179 3rd Report from the JCHR 'Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters', Session 2005-06, HL Paper 75-I, HC 561-I www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/75/75i.pdf.
- 180 2nd Report from the JCHR 'Counter-Terrorism Policy and Human Rights: 42 days' Session 2007-08, HL Paper 23, HC 156 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/23/23.pdf; and 21st Report from the JCHR 'Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 Days and Public Emergencies', Session 2007-08, HL Paper 116, HC 635 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/116/116.pdf.
- 181 3rd Report from the JCHR, Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters', Session 2005-06, HL Paper 75-I, HC 561-I www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/75/75i.pdf.
- 182 12th Report from the JCHR 'Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006', Session 2005-06, HL Paper 122, HC 915 www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/122/122.pdf.
- 183 19th Report from the JCHR 'Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning', Session 2006-07, HL Paper 157, HC 394 www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/157/157.pdf.
- 184 24th Report from the JCHR 'Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention', Session 2005-06, HL Paper 240, HC 1576 www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/240/240.pdf.

- In proceedings where the special advocate procedure is used, the Secretary of State should always provide a statement of the gist of the case against the accused so that the accused may properly instruct the special advocate;¹⁸⁵
- The ban on the use of intercepted evidence in court should be removed;¹⁸⁶
- Continued use of the control orders regime should be subjected to greater parliamentary scrutiny;¹⁸⁷
- Control orders are a deprivation of liberty contrary to Article 5 ECHR;¹⁸⁸
- Control orders should only be used where prosecution of the individual is not possible;¹⁸⁹ and
- An independent investigation into UK complicity in torture should be undertaken.¹⁹⁰

185 19th Report from the JCHR 'Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning', Session 2006-07, HL Paper 157, HC 394 www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/157/157.pdf; 9th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (8th Report): Counter-Terrorism Bill', Session 2007-08, HL Paper 50, HC 199 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/50/50.pdf.

186 See above, note 184.

187 See above, note 182; 8th Report from the JCHR, 'Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007', Session 2006-07, HL Paper 60, HC 365 www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/60/60.pdf; 10th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (9th Report): Annual Renewal of Control Orders Legislation 2008', Session 2007-08, HL Paper 57, HC 356 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/57/57.pdf; 5th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (Fourteenth Report): Annual Renewal of Control Orders Legislation 2009', Session 2008-09, HL Paper 37, HC 282 www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/37/37.pdf; 9th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (16th Report): Annual Renewal of Control Orders Legislation 2010', Session 2009-10, HL Paper 64, HC 395 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/64/64.pdf.

188 *Ibid.*

189 30th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (13th Report): Counter-Terrorism Bill', Session 2007-08, HC 1077 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/172/172.pdf.

190 16th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (17th Report): Bringing Human Rights Back In', Session 2009-10, HL Paper 86, HC 111 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/86/86.pdf.

Many of the Committee's concerns have subsequently been reflected in the criticism of international human rights monitoring bodies¹⁹¹ and judgments of the domestic courts¹⁹² and the European Court of Human Rights.¹⁹³ The new UK Government conducted a review of UK counter-terrorism policy in early 2011. It proposed a number of changes to UK counter-terrorism law and the JCHR engaged with the review by inviting the relevant government minister to give evidence on the outcome before the introduction of legislation to give effect to the changes.¹⁹⁴

-
- 191 CCPR 'Concluding Observations: United Kingdom of Great Britain and Northern Ireland' (30 July 2008) [CCPR/C/GBR/CO/6], para 17 www.bayefsky.com/pdf/uk_t4_ccpr_93.pdf; Human Rights Watch 'UK: Commentary on Prevention of Terrorism Bill 2005' (1 March 2005) www.hrw.org/legacy/backgrounder/eca/uk0305; *Ibid*, 'UK: Counter the Threat or Counterproductive?' (22 October 2007) www.hrw.org/legacy/backgrounder/eca/uk0305/uk0305.pdf; Amnesty International 'UK: Creating a shadow criminal justice system in the name of 'fighting international terrorism'' (16 November 2001) [EUR 45/019/2001] www.amnesty.org/en/library/asset/EUR45/019/2001/en/01141864-d8bf-11dd-ad8c-f3d4445c118e/eur450192001en.pdf; *Ibid*, 'UK: Amnesty International's Memorandum to the UK Government on Part 4 of the Anti-terrorism, Crime and Security Act 2001' (5 September 2002) [EUR 45/017/2002] www.amnesty.org/en/library/asset/EUR45/017/2002/en/b2f38f09-d7ed-11dd-9df8-936c90684588/eur450172002en.pdf; *Ibid*, 'United Kingdom: Amnesty International's briefing on the draft Terrorism Bill 2005' (29 September 2005) [EUR 45/038/2005] www.amnesty.org/en/library/asset/EUR45/038/2005/en/ac0c9546-f790-11dd-8fd7-f57af21896e1/eur450382005en.pdf.
- 192 *A and others v Secretary of State for the Home Department* [2004] UKHL 56 www.bailii.org/uk/cases/UKHL/2004/56.html; *Secretary of State for the Home Department v AF and another and one other action* [2009] UKHL 28 www.bailii.org/uk/cases/UKHL/2009/28.html; *Secretary of State for the Home Department v MB* [2007] UKHL 46 [www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/2007/46.html&query="\[2007\]+EWHC+233"&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/2007/46.html&query=); *Secretary of State for the Home Department v JJ and others* [2007] UKHL 45 [www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/2007/45.html&query="\[2007\]+EWHC+233"&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/2007/45.html&query=).
- 193 *Case of A and Others v The United Kingdom* (Application No 3455/05) (19 February 2009), ECHR [http://cmiskp.echr.coe.int/\[\[\[tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=24704&sessionId=63418716&skin=hudoc-en&attachment=true](http://cmiskp.echr.coe.int/[[[tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=24704&sessionId=63418716&skin=hudoc-en&attachment=true).
- 194 Baroness Pauline-Neville Jones' evidence to the JCHR and Committee's questions to Lord MacDonald of River Glaven, former Director of Public Prosecutions, who had been appointed to review the process of the Government's counter-terrorism review (8 February 2011) www.publications.parliament.uk/pa/jt201011/jtselect/jtrights/uc797-i/uc79701.htm.

The death penalty

At the time when most international human rights instruments were adopted, the death penalty was generally accepted by most States. Despite its widespread use, the ICCPR places strict limits on its operation. These include:

- The death penalty is exceptional punishment and can only be applied in relation to the 'most serious crimes'. The UN has explained that this should be limited to 'intentional crimes, those with lethal or other extremely grave consequences';¹⁹⁵
- The sentence must be required by domestic law at the time of the offence;
- The sentence may only be carried out after conviction by a competent court;
- A pardon or commutation must be open and the offender must have the right to seek pardon;
- Children under 18 and pregnant women should not be subject to the death penalty.

UN-endorsed guidelines on the use of the death penalty guarantee a number of safeguards for prisoners facing execution. In 1971, the General Assembly set a clear goal of the global abolition of the death penalty.¹⁹⁶ Numerous attempts have been made to reach this goal, but international opinion remains strictly divided between those States who wish to retain capital punishment and those who favour abolition in international law.¹⁹⁷ The Second Optional Protocol to the ICCPR, which provides for the abolition of the death penalty at the time of writing, had 72 ratifications.¹⁹⁸

195 Article 1 'UN Safeguards guaranteeing protection of the rights of those facing the death penalty' Economic and Social Council Res 1984/50 (25 May 1984) www2.ohchr.org/english/law/protection.htm.

196 UNGA Res 2857 (XXVI) (20 December 1971) <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/328/73/IMG/NR032873.pdf?OpenElement>.

197 Second OP ICCPR, UNGA Res 44/128 (15 December 1989) www2.ohchr.org/english/law/ccpr-death.htm; UNGA Resolutions 62/149 (26 February 2008) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/472/71/PDF/N0747271.pdf?OpenElement> and 63/168 (13 February 2009) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/480/87/PDF/N0848087.pdf?OpenElement>.

198 Status of Treaties, Chapter IV Human Rights, 12, Second OP ICCPR, as at 8 December 2010 http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en.

Prohibition of the death penalty in Europe

Although Article 2 ECHR recognises the legitimacy of capital punishment, Protocol 6 to the European Convention on Human Rights provides for the abolition of the death penalty.¹⁹⁹ Protocol 6 provides for an absolute prohibition on the death penalty and does not provide for derogation in times of emergency. A limited exception is provided in relation to use of capital punishment in times of war.²⁰⁰ The majority of States in the Council of Europe have ratified Protocol 6 ECHR.²⁰¹ The EU Charter of Fundamental Rights includes a prohibition on the death penalty, so capital punishment is prohibited throughout the EU.²⁰²

Deportation or extradition to a country where an individual faces a real risk of capital punishment incompatible with Article 2 ECHR or treatment in a manner which breaches the prohibition on torture, cruel and inhuman or degrading treatment or punishment (Article 3 ECHR) is also prohibited by the ECHR.²⁰³

199 Protocol No 6 to the ECHR (as amended by Protocol No 11, 28 April 1983).

200 *Ibid*, Article 6.

201 As of 8 December 2010, only Russia had not ratified Protocol 6 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=114&CM=7&DF=08/12/2010&CL=ENG>.

202 Article 2(1) Charter of Fundamental Rights of the European Union.

203 *Soering v UK* (Application 14038/88) (7 July 1989) ECHR <http://cmiskp.echr.coe.int/II/TKP197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=14030&sessionId=63248094&skin=hudoc-en&attachment=true>; *Kindler v Canada* (Communication 470/1991) CCPR [CCPR/C/48/D/470/1991] www.worldlii.org/int/cases/UNHRC/1993/23.html; and *Ng v Canada* (Communication 469/1991) CCPR [CCPR/C/49/D/469/1991] www.worldlii.org/int/cases/UNHRC/1994/1.html.

Case study: Ugandan death penalty case

In January 2009, the Supreme Court of Uganda was asked to consider the constitutionality of the death penalty in the case of *Attorney General v Susan Kigula and 417 Others*.²⁰⁴ The appellants in the case had all at different times been convicted and sentenced to death under Ugandan law, and argued that the application of the death penalty contradicted constitutional provisions that prohibit cruel, inhuman and degrading treatment. The applicants also contended that the delay between sentencing and actual execution breached the provisions, as did hanging as means of execution.

The Court found that the death penalty in and of itself was not unconstitutional in Uganda, provided that the sentence was passed by a competent court after a fair trial and it had been confirmed by the highest appellate court, and hanging was not chosen as the means of execution. However, a mandatory death penalty as imposed by some legislation compromised the right to a fair trial, and so was inconsistent with various constitutional provisions. The Court also held that condemned prisoners who had been awaiting execution for more than three years suffered cruel, inhuman and degrading treatment, and carrying out the death penalty after a period of more than three years of waiting would be unconstitutional. Condemned prisoners in that situation were to have their sentences commuted to life imprisonment without remission.

In its decision, the Court also noted that although the Constitution allows for the death sentence, there is nothing to stop Uganda as a member of the United Nations from introducing legislation to amend the constitution and abolish the death sentence, thus shifting the burden for change onto the Ugandan Parliament.

Deaths in custody

One of the most basic obligations on the State is to refrain from State sanctioned killing. This extends beyond arbitrary killing on the streets by State agents, to include any circumstances where the State takes responsibility for the health and well-being of an individual and the actions of State agents – or their inactions – lead to death. The most obvious example is the use of force against offenders either in police custody or in prisons. Less obvious is the need to ensure safe conditions in mental health institutions and hospitals or the need to ensure effective training for individuals who take responsibility for children either at school or in State

204 *Attorney General v Susan Kigula and 417 Others* (21 January 2009) No 03 of 2006, Uganda Supreme Court www.unhcr.org/refworld/docid/499aa02c2.html.

institutions such as orphanages or youth offenders' institutes.²⁰⁵

These positive obligations illustrate the broad nature of the right to life and its implications for government. The obligation to respect and protect life does not begin with the actions of an individual police officer or an individual soldier, but arises far earlier in the policy and planning process, when strategic measures can be taken to prevent loss of life.²⁰⁶

JCHR inquiry on UK deaths in custody

In 2006, the JCHR conducted a major, wide-ranging inquiry on the issue of deaths in custody, focusing on the right to life as guaranteed by Article 2 ECHR. The JCHR report explained the responsibility of the State to protect individuals in custody:

'When the state takes away the liberty of an individual and places him or her in custody, it assumes full responsibility for protecting that person's human rights—the most fundamental of which is the right to life. This right, and other human rights which protect people detained by the State, now form part of our law under the Human Rights Act 1998. Yet at a time when we have finally abolished the death penalty in the United Kingdom and few of our prisoners serve whole-life sentences, too many still die in custody. Some of these die, of course, from natural causes. A few are killed by fellow inmates. Others die as a result of actions of officers of the state, often without charges being brought or an effective remedy being made available to family and friends. Most deaths are 'self-inflicted', with yet more people in custody, especially women, inflicting upon themselves life-threatening injuries, but surviving. Each and every death in state custody is a death too many, regardless of the circumstances of the person who dies.'²⁰⁷

205 *Herczegfalvy v Austria* (1992) 15 EHRR 437; *Calvelli & Ciglio v Italy* (App No 32967/96) (7 January 2002) ECHR (para 49); *Savage v South Essex NHS Trust* [2008] UKHL 74; CCPR 'General Comment 6'.

206 *McCann v UK*; *Osman v United Kingdom* (1998) 29 EHRR 245.

207 3rd Report from the JCHR 'Deaths in Custody', Session 2004-2005, HL 15-I, HC 137-I, para 1 www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/15/1504.htm#a1.

Deaths in custody in Ukraine

In May 2010 a 20-year-old man died in unclear circumstances whilst in custody at Kyiv's Shevchenko District Police Station. The police said the man had been brought to the station in an intoxicated state and had fallen several times, injuring himself. However, the man's family and rights activists disputed this, claiming that he had been beaten.

Several protests were held in Kyiv and other Ukrainian cities demanding a clear explanation of the man's death, and calling for police officials involved in any beating to be punished. The Ombudsman acknowledged a similar case earlier that year, where police claimed a suspicious death in custody was accidental, and said she was personally monitoring both investigations. The Ombudsman has urged the Interior Minister and the Kyiv City Prosecutor to conduct objective, transparent and unbiased investigations into the deaths. The outcomes of the investigations are still pending.

Abortion and the right to life

Only the American Convention on Human Rights (ACHR) determines that the right to life applies from the point of conception.²⁰⁸ This approach is inconsistent with other international and regional human rights treaties which explicitly do not determine the point at which life begins. No case law under the ECHR or the ICCPR has ever determined that an abortion provided lawfully under domestic arrangements has violated the right to life.²⁰⁹ However, the Protocol on the Rights of African Women requires States to take all appropriate measures to 'protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus'.²¹⁰ The ICCPR and ECHR exclude certain domestic restrictions on the right to access lawful abortion which violate women's rights to respect for private life and physical integrity.²¹¹

208 Article 4(1) American Convention on Human Rights (ACHR)

209 *VO v France* (Application No 53924/00) (8 July 2004), ECHR <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=abortion&sessionId=63445185&skin=hudoc-en>.

210 Article 14(2)(c) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa www.achpr.org/english/_info/women_en.html.

211 *Tysic v Poland* (Application No 5410/03) (20 March 2007), ECHR <http://cmiskp.echr.coe.int/tkp197/view.asp?item=7&portal=hbkm&action=html&highlight=abortion&sessionId=63445185&skin=hudoc-en>; *KL v Peru* (Communication No 1153/2003) (22 November 2005), CCPR [CCPR/C/85/D/1153/2003].

Changing approaches to reproductive rights

In 2005, the Human Rights Committee was asked to consider the case of *KL v Peru*.²¹² KL was a 17 year-old girl who became pregnant. As her pregnancy progressed, it became clear that the foetus suffered from a rare developmental abnormality. The child, if born, would have no or extremely limited brain function and was expected to survive no longer than hours after birth. Her doctor certified that continuing her pregnancy would be detrimental to KL's physical and mental health and would endanger her life. Although Peruvian legislation permitted therapeutic abortion in some cases, KL was refused access to a medical abortion. In the event, she gave birth and was required to breastfeed her child for four days. The Human Rights Committee concluded refusal of access to a medical abortion in these circumstances had been in violation of ICCPR. The Human Rights Committee considered that there had been a violation of Article 2 (the right to an effective remedy), Article 7 (the prohibition on torture, cruel, inhuman and degrading treatment), Article 17 (the right to privacy) and Article 24 (special care due to a child).

Subsequently, the CEDAW Committee²¹³ criticised the failure of the Peruvian authorities to respond to the decision in *KL*. In October 2009, a special congressional committee set up in Peru to review the country's penal code proposed decriminalising abortion in cases of rape, incest and foetal abnormalities.

212 *KL v Peru* (Communication No 1153/2003) (22 November 2005), CCPR [CCPR/C/85/D/1153/2003].

213 CEDAW 'Concluding comments of the Committee on the Elimination of Discrimination against Women: Peru' (2 February 2007), paras 24 and 25 [www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b14b23d67b75a5e9c12572a4003f9a62/\\$FILE/N0724410.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b14b23d67b75a5e9c12572a4003f9a62/$FILE/N0724410.pdf).

Basic checklist for the protection of the right to life:

- Does a law, practice or policy operate in a way which could create or address a threat to human life?
- In particular, does it authorise the use of force by State agents or others?
- Does it create conditions where individual lives may be in danger from the activities of the State or third parties?
- Does the State assume particular responsibility for the health and well-being of specific individuals?
- Is the government aware of a specific significant threat to human life which is not yet being addressed?
- If so, are adequate safeguards in place to protect the right to life?
- Is the use of force authorised in circumstances limited to self-defence or the defence of others or where absolutely necessary to arrest or prevent the escape of a prisoner?
- Is the law or practice adequately defined to ensure that force is only used in those circumstances?
- Is any discretion adequately restricted to prevent misunderstandings or arbitrary application of force in practice?
- Is any necessary guidance appropriately drafted in order to limit force to those circumstances where it is proportionate and justified?
- Is an appropriate degree of training in place to ensure that those working in circumstances where lives may be endangered understand how best to limit risk?
- Are procedures in place designed to minimise risk to life, including providing appropriate safeguards and resources to implement those safeguards in practice?
- Is there a procedure in place to provide for an effective investigation should a death occur?
- Can any victims' families participate in this investigation?
- Is proportionate punishment possible where an individual or group of individuals is directly responsible for a death or deaths?
- What measures does the government have in place to learn lessons from the investigation?
- Are these adequate to prevent future failings? If not, has parliament recommended an alternative mechanism for review?

The right to life: suggested questions for parliamentary human rights defenders

- Are State authorities – such as military, police, prison and mental health personnel – given clear guidance, training and instruction on the right to life and the appropriate boundaries of the use of force?
- Are their powers limited by domestic law?
- Has the government adopted appropriate policies and strategies to deal with major threats to public health, including infant mortality, malnutrition and epidemics?
- Have adequate resources been allocated to meeting risks to public health and safety?
- Is the death penalty authorised by the domestic constitution?
- Is it limited to the circumstances permitted by the ICCPR?
- Do the circumstances in which the death penalty can be imposed meet international standards? (For example, how long do people spend on death row? What are the conditions of people awaiting the imposition of the death penalty?)
- When did parliament last debate the appropriateness of the continued use of the death penalty?

4. The prohibition on torture, inhuman and degrading treatment and punishment

The prohibition on torture in domestic, regional and international standards

'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

Article 5, UDHR

'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.'

Article 7, ICCPR

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

Article 3, European Convention of Human Rights

'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.'

Article 5, African Charter on Human and Peoples' Rights

'No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment. The States Parties shall protect every person in their territory from being subjected to such practices and take effective measures to prevent such acts. The practice thereof, or participation therein, shall be regarded as a punishable offense. Each victim of an act of torture is entitled to a right to compensation and rehabilitation.'

Article 8, Arab Charter on Human Rights

'Todo o cidadão tem direito à vida e à integridade física e moral e não pode ser sujeito à tortura ou tratamentos cruéis ou desumanos.'

(All citizens have the right to life, to physical and moral integrity, and not to be subject to torture or cruel or inhuman treatment.)

'Na República de Moçambique não há pena de morte.'

(There is no death penalty in the Republic of Mozambique.)'

Article 40, Constitution of Mozambique (1990)

'Honour and dignity of an individual is inviolable. Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honour and dignity shall be impermissible. Physical or mental coercion of a person detained or otherwise restricted in his/her liberty is impermissible.'

Article 17, Constitution of Georgia (1995)

Freedom from torture, inhuman and degrading treatment is an absolute, non-derogable right.²¹⁴ The principal international treaty for this right is UNCAT,²¹⁵ but torture is prohibited at international and regional levels by other human rights treaties, and at domestic level by national constitutions, as set out above. Freedom from torture is inherently linked with the fundamental rights to life and personal integrity and dignity.

214 See above, Table 6, page 63.

215 Available at: www2.ohchr.org/english/law/cat.htm.

UNCAT: extracts*Article 1*

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.'

UNCAT defines an act of torture very broadly within Article 1, and permits even wider definitions by other applicable instruments, such as regional and national commitments.

By definition, an act of torture requires official involvement. The pain or suffering must be inflicted or instigated by a public official, or committed with the consent or acquiescence of one. This means that a government can be held responsible for torture even when no government agent has been directly involved in committing the act of torture, but where one has failed to prevent it from happening. The prohibition on torture creates a variety of obligations on States:

- To abstain from committing acts of torture through its agents;
- To take effective measures to protect people from being subjected to torture within their jurisdiction;
- To avoid putting people in situations where they may be subjected to torture in another jurisdiction; and
- To appropriately punish any act of torture.

As freedom from torture is an absolute right, there can be no justification for committing torture, as contained in Article 2 of the CAT. Torture is unjustifiable even in a state of emergency²¹⁶ or where an order to commit torture is received from a superior officer.²¹⁷

The signature of the Optional Protocol to the CAT (OPCAT)²¹⁸ establishes a system of regular visits by independent bodies to places where people are deprived of their liberty within a State, such as prisons and detention centres, to ensure the prevention of torture and other cruel, inhuman or degrading treatment within these places.²¹⁹ That State may then receive advice, assistance and recommendations on their compliance with the requirements of UNCAT. OPCAT also requires States Parties to create a NPM for the purposes of upholding the standards of UNCAT domestically.²²⁰ The purpose of this mechanism is to provide greater domestic focus on the effective implementation of the prohibition on torture, cruel, inhuman and degrading treatment and punishment before violations arise.

The OPCAT National Preventative Mechanism (NPM): UK case study

The United Kingdom ratified OPCAT on 10 December 2003. According to Article 28 of OPCAT, the instrument came into force for the UK on 22 June 2006. This triggered a one-year deadline for the designation of the NPM for the UK as stipulated in Article 17 of OPCAT. On 30 March 2009, more than two-and-a-half years overdue, 18 separate organisations were designated to fulfil the mandate of the NPM for the UK, with the duty of coordinating the work of these institutions levied upon HMIP.

216 Article 4(2) ICCPR and Article 2(2) UNCAT.

217 Article 2(3) UNCAT.

218 Available at: www2.ohchr.org/english/law/cat-one.htm.

219 *Ibid*, Preamble and Article 1.

220 *Ibid*, Article 17.

CASE STUDY: COMMITTEE AGAINST TORTURE REPORT 2007 ON THE UKRAINE^{xlviii}

| Areas of concern identified in the Committee’s report | Response by Ukraine by 2010^{xlix} |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The definition of torture in the Criminal Code does not fully reflect all elements in the Convention and should be brought into full conformity.</p> | <p>The Criminal Code has subsequently been revised twice to bring the definition of torture into full conformity with the CAT.</p> |
| <p>Evidence obtained by coercion being used as the principal form of evidence in prosecutions, and that measures should be taken to eliminate any adverse effects on suspects during the investigation system of promoting confessions, and to ensure that statements made under torture are not invoked as evidence during any proceedings.</p> | <p>No change has been made to the Criminal Procedure Code, so judges, prosecutors and investigators still have the discretion to examine and evaluate all evidence at their own discretion.</p> |
| <p>The persistence in cases of torture and other cruel, inhuman or degrading treatment in the armed forces, against which measures should be taken to eradicate the practices, and the lack of investigation of reported cases which should be met with measures of prompt, impartial and effective investigation, prosecution and conviction.</p> | <p>Special monitoring groups were established within the Ministry of the Interior (MOI) to conduct investigations into torture-related cases. The 2008 Concept on Criminal Justice Reform and National Action Plan on obligations relating to Council of Europe membership allowed for the creation of torture prevention mechanisms. Since these provisions provide for investigation internally, international and domestic NGOs consider that transparency, independence and impartiality of the investigation process continue to pose a problem.</p> |
| <p>Insufficient training on the provisions of the Convention for law enforcement personnel, including penitentiary and border control staff, judges, prosecutors and armed forces personnel, and lack of specific training for medical personnel in the detection of signs of torture and ill-treatment, to be addressed by implementing new training programmes.</p> | <p>Special courses on human rights protection have been introduced into the curricula of the Academy of Judges, Academy of Prosecutors, and Academies of the MOI. Codes of conduct have been implemented by the MOI, border guards, tax police and customs service. However, international and domestic NGOs remain concerned about human rights violations committed by law enforcement agencies.</p> |

Law enforcement personnel

The obligation on States not to commit torture applies most obviously to agents of the State. Law enforcement personnel function in many situations where the opportunity to commit torture could arise and their conduct may be difficult to monitor. Examples of this are: during the interrogation of a criminal suspect by police; the control and discipline of prisoners by prison guards; and the detention of asylum seekers at immigration centres. In these situations, any unusual treatment performed by law enforcement personnel may constitute cruel, inhuman or degrading treatment.

To prevent torture being committed, law enforcement personnel must receive adequate and thorough training to make them aware of all obligations (criminal, constitutional and international) on them not to commit torture and how to avoid situations in which torture can be committed.²²¹ Additionally, any system which involves detention of persons or permits law enforcement personnel to physically restrain persons must incorporate an adequate monitoring system for signs of acts of torture or other cruel, inhuman and degrading treatment, in order to quickly stop any practice constituting torture.²²²

221 Article 10, UNCAT.

222 *Ibid*, Articles 11-13.

Case study: *Ireland v UK*²²³

Ireland brought a case against the UK over the treatment of imprisoned members of the Irish Republican Army (IRA) in Northern Ireland during the 1970s. The application challenged the use of the 'five techniques' against prisoners, which were wall standing, hooding, subjection to noise, deprivation of sleep and deprivation of food and drink. Although the practice of the 'five techniques' was never officially sanctioned, it was authorised at a 'high level'.

In determining whether the practice breached Article 3 of the European Convention, the Court reasoned that the techniques 'caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3. The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.'²²⁴ Although the Court decided the treatment did not amount to torture, the fact that it constituted inhuman and degrading treatment was sufficient to establish a breach of Article 3.²²⁵

Deportation and extradition

UNCAT places States under an obligation not to expel, return or extradite a person to another State where there are substantial grounds for believing that person would be in danger of being tortured upon their return.²²⁶ Any law concerning deportation must reflect this commitment and reflect the necessity to protect all persons within the State's jurisdiction, not just nationals, from being subjected to torture. These obligations must also be considered in the conclusion and compliance with extradition treaties between States and multilateral cooperation in cross-border investigations. The JCHR has noted: 'In working cooperatively with foreign intelligence agents, whether relying on information supplied by them, attending interrogations, or providing information to enable their apprehension or to be used in such interrogations, safeguards are required to ensure that UK

223 *Ireland v United Kingdom* (Application No 5310/71) (18 January 1978), ECHR <http://cmiskp.echr.coe.int/td/197801/tkr197801/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=13921&sessionId=63261870&skin=hudoc-en&attachment=true>.

224 *Ibid*, para 167.

225 *Ibid*, paras 167 and 168.

226 Article 3(1) UNCAT; *Soering v UK* (Application no 14038/88) (7 July 1989) ECHR.

officials do not support or become complicit in the use of torture or inhuman or degrading treatment.²²⁷

Any orders for deportation and extradition given by judges or justices of the peace must also comply with UNCAT.²²⁸ Such orders must be sufficiently flexible so as not to require a person to be sent to a country where they may be subjected to torture. A high level of awareness of other states' human rights records, particularly in relation to torture, is also necessary. Unfortunately, being a party to UNCAT does not necessarily remove the danger of that State committing or permitting acts of torture within its territory or jurisdiction.

Case study: *Agiza v Sweden*²²⁹

The UN Committee Against Torture was asked to decide whether the removal of Mr Agiza from Sweden to Egypt constituted a breach of Sweden's duties under Article 3 of UNCAT not to expel, return or extradite a person to a State where there are substantial grounds for believing he would be in danger of being tortured. Sweden received diplomatic assurances that on being returned to Egypt, Mr Agiza would not be subjected by the Egyptian authorities to torture or other inhumane treatment, or sentenced to death. However, the Committee held that Sweden knew of Egypt's consistent and widespread practice of torture against detainees, especially those detained for political and security reasons, like Mr Agiza, and that there was therefore a real risk of torture being committed against him. The Committee regarded the procurement of assurances, which contained no enforcement mechanism, as insufficient to protect against the manifest risk of torture. The Committee therefore found Sweden's actions to be in breach of Article 3 of UNCAT.²³⁰

227 19th Report from the JCHR 'The UN Convention Against Torture (UNCAT)', Session 205-2006, HL Paper 185-I, HC 701-I, para 60 www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/185-i.pdf.

228 *Soering v the UK* (1989) ECHR; *Chahal v UK* (2000) ECHR; *Attorney General v Zaoui*, [2005] NZSC 38; *Chitat Ng v Canada* (Communication No. 469/1991), CCPR [UN Doc: CCPR/C/49/D/469/1991] para 14.2; 'General Comment 20' (10 March 1992) CCPR, para 9; 'General Comment 31' (26, May 2004) CCPR, para 12.

229 *Agiza v Sweden* (Communication No 233/2003) (24 May 2005) Committee Against Torture [CAT/C/34/D/233/2003] <http://daccess-dds-ny.un.org/doc/UNDOC/DER/G05/421/69/PDF/G0542169.pdf?OpenElement>.

230 *Ibid*, para 13.4.

Treatment of vulnerable persons

Failure to differentiate treatment for vulnerable persons in a care situation, such as a hospital or care home, or in detention, like a prison or an immigration centre, may constitute cruel, inhuman or degrading treatment.²³¹ Treating all persons the same in these situations can have a severe effect on the most vulnerable people in society. A person may be vulnerable by virtue of physical or mental disability, age, gender, sexuality, legal or social status, and many other reasons. Protecting a person from cruel, inhuman or degrading treatment is closely linked to protecting a person's rights to dignity, bodily integrity and privacy.

Any law or order relating or applicable to such vulnerable persons must sufficiently accommodate their needs. In some circumstances, provisions for the prevention of cruel, inhuman or degrading treatment may be met by providing segregated facilities, such as separate male and female accommodation or wards. Physically vulnerable persons may require special medical provisions, for example nursing care for prisoners with ongoing medical conditions. Persons who may be subjected to threats, attacks or persecution may require increased security, such as segregated or guarded sleeping areas.

Case study: *Price v United Kingdom*²³²

Mrs Price was a person with serious disabilities who used a wheelchair and who suffered from serious kidney problems. She was sentenced to a week in custody, and spent one night in a cell and two nights in a prison before being released. She was denied access to her electric wheelchair charger (which the court told her was a luxury item); insufficient provisions were made for her special sleeping and toilet needs; and her dietary needs were not met. During her detention, Mrs Price became dangerously cold, risked developing bed sores because the bed provided was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulties. Mrs Price claimed to suffer health problems for ten weeks as a result of her treatment in detention. The European Court of Human Rights held that her detention without reasonable adequate adjustments to accommodate her severe disabilities constituted degrading treatment and was in violation of Article 3 of the ECHR.²³³

²³¹ *Price v United Kingdom* (Application No 33394/96) (10 July 2001) ECHR <http://cmiskp.echr.coe.int/td/199707/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=15974&sessionId=63261870&skin=hudoc-en&attachment=true>.

²³² *Ibid.*

²³³ *Ibid.*, para 30.

Basic checklist for compliance with the prohibition on torture

- Does domestic criminal law expressly prohibit torture or other cruel, inhuman or degrading treatment or punishment within the jurisdiction?
- Could any part of the law be construed to authorise torture?
- Does domestic law, policy or practice ensure that no person can legally be ordered to carry out an act of torture, even by a superior office or public authority?
- Does domestic law, policy and practice ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that person would be in danger of being tortured?
- Does domestic law ensure that all acts of torture are a criminal offence, including attempts to commit torture, complicity and assistance in torture?
- Are individuals enabled to challenge their treatment as incompatible with the prohibition on torture, inhuman and degrading treatment and punishment?
- Does this challenge provide for a public hearing before an independent and impartial court or tribunal?
- Does domestic law prohibit the admission in court of evidence obtained through the use of torture, cruel, inhuman or degrading treatment and punishment?
- Does domestic law and practice ensure that all acts of torture will be punished with a penalty appropriate to the grave nature of the offence?

Suggested questions for parliamentarians:

- Are adequate safeguards employed in places of State custody and care to ensure that individuals are treated with dignity and in accordance with the prohibition on torture, cruel, inhuman and degrading treatment or punishment?
- Are State authorities responsible for custody and care of others provided with adequate training to ensure that the treatment they provide is compatible with the prohibition on torture, inhuman and degrading treatment and punishment?
- Is parliament or a specialist monitoring body checking how these safeguards work in practice?
- Does the government monitor complaints in respect of the treatment of individuals by the State and statistics on the use of force against individuals in State custody and care?
- Can individuals access official information about their treatment by the State in individual cases?
- Has your country ratified OPCAT and appointed a National Preventative Mechanism to promote international standards in State facilities for detention?
- If not, does parliament understand why not?
- Does the National Preventative Mechanism have adequate powers and resources to meet its obligations under OPCAT?
- Has the government provided an adequate response to the last report of the UN Committee Against Torture?
- What role does parliament play in responding to criticisms of the UN Committee Against Torture?
- When was the last time parliament debated compliance with UNCAT?

5. The right to liberty

The right to liberty: ICCPR

'Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on grounds and in accordance with such procedures as are established by law.'

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for the execution of the judgment.

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that a court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

Articles 9-10, ICCPR

Everyone has the right to be free from the physical control of the State. A person can only be lawfully detained for legitimate reasons and under a procedure defined by law. Any detention must be accompanied by safeguards which permit the detention to be challenged.

Legitimate reasons for control of individual movement or activity include (examples taken from Article 5 ECHR):²³⁴

234 ECHR (as amended by Protocol Nos 11 and 14).

- Detention after conviction by a competent court (ie, a prison sentence);
- Arrest or detention for failure to comply with a court order designed to ensure compliance with an obligation prescribed by law;
- Arrest or detention where they are reasonably suspected of having committed an offence (or detention to prevent a person fleeing after arrest on suspicion of criminal behaviour);
- Detention of children in accordance with domestic law for the purpose of educational supervision;
- For the purposes of preventing the spread of infectious diseases, for the protection of persons with mental health illnesses or the protection of others;
- To control vagrancy or alcohol or drug addiction; and
- For the purposes of immigration, to prevent unlawful entry to a country or for deportation or extradition.

This list provides a good starting point for the scope of 'arbitrary deprivation of liberty' in Article 9 ICCPR.

Although detention may be justified for legitimate purposes, the right to liberty is violated where detention is disproportionate for the purposes of the aim which the State seeks to serve. So, for example, while it may be proportionate in some limited circumstances to detain an intoxicated person to prevent them from causing harm to themselves or others, it would be disproportionate and arbitrary to indefinitely detain all persons who were known to consume alcohol to excess. Equally, in keeping with the presumption of innocence, an important aspect of the right to liberty includes a presumption in favour of bail for people awaiting trial.²³⁵ The State must prove that it is necessary and proportionate to continue to hold someone on remand. Detention can generally only be justified by a risk of flight or interference with witnesses, evidence or the administration of justice, a risk to public order or that the accused will commit further offences.²³⁶

Equally, the State must be capable of illustrating that detention is needed for the reasons given. The purpose of detention must be capable of being achieved. So, for example, where an individual is detained for the purposes of trial, if effective measures to bring him or her to trial are not made, their continued detention will be unlawful. Equally, detention for the purposes of deportation may be arbitrary where a person cannot be

235 Article 9(3) ICCPR.

236 *Wemhoff v Germany* A 7 (1968), 1 EHRR 55, para 14; *Neumeister v Austria* (No 1) A 8 (1968), 1 EHRR 91, paras 9–12; *Matznetter v Austria* A 10 (1969), 1 EHRR 198, para 8; *Stögmüller v Austria* A 9 (1969), 1 EHRR 155, para 15; *Letellier v France* A 207 (1991), 14 EHRR 83, paras 40–43; *W v Switzerland* A 254-A (1993), 17 EHRR 60, para 33; *Kemmache v France* (Nos 1 & 2) A 218 (1991), 14 EHRR 520, paras 55–56; *Toth v Austria* A 224 (1991), 14 EHRR 551, paras 71–72; *Tomasi v France* A 241-A (1992), 15 EHRR 1, paras 96–98; *Van der Tang v Spain* A 326 (1995), 22 EHRR 363, paras 64–67; *Muller v France* (No 1) 1997-II, para 43; *IA v France* 1998-VII, para 105.

deported as their home State is unsafe²³⁷ or where he is extradited to a third country unlawfully.²³⁸

Pre-trial detention: UK case study

In 2003, in the aftermath of the attacks on 11 September 2001, the UK Government made changes to the criminal law to permit the detention of persons suspected of terrorist offences before they are formally charged with an offence from seven to 14 days, subject to judicial authorisation at a number of intervals.

In 2005, the government proposed legislation to increase this pre-charge detention period to 90 days. The JCHR reported on this proposal and concluded that these proposals were incompatible with the right to liberty as guaranteed by Article 5 ECHR and the common law. Members of all political parties relied upon human rights and liberty-based arguments to defeat the government's proposals. An alternative of 28 days was accepted. The JCHR considered the 28-day limit and concluded that there remained a risk of incompatibility:

'In relation to the Bill as introduced, on the important question of whether a maximum pre-charge detention period of 90 days would be compatible with the UK's obligations under the Convention (notably Article 5), we concluded that three months would have been clearly disproportionate and, in view of the deficiencies in the procedural safeguards for the detainee, which the Bill did nothing to improve, would also have been accompanied by insufficient guarantees against arbitrariness. It would also in our view have risked leading to independent breaches of Article 3 ECHR, and to the inadmissibility at trial of statements obtained following lengthy pre-charge detention. Similar, if less substantial risks obtain, in our view, even in relation to the 28-day maximum period now allowed for in the Bill.'²³⁹

237 *A and Others v The United Kingdom* (Application No 3455/05) (19 February 2009), ECHR, paras 162–172 http://cmiskp.echr.coe.int/___tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=24704&sessionId=63557232&skin=hudoc-en&attachment=true.

238 *Bozano v France* (Application No 9990/82) (18 December 1986), ECHR http://cmiskp.echr.coe.int/___tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=13864&sessionId=63557232&skin=hudoc-en&attachment=true.

239 3rd Report from the JCHR 'Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters', Session 2005–2006, HL 75–I, HC 561–I, para 87 www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/75/75i.pdf.

In summer 2007, the government announced its plan to extend pre-charge detention up to 42 days. The Counter-terrorism Bill was introduced in 2008 and proposed 42 days as a maximum period of pre-charge detention. The JCHR report on this proposal again cautioned that this was likely to lead to a breach of Convention rights.²⁴⁰

The UK Government passed this proposal in the House of Commons on only nine votes.²⁴¹ It met a widely expected defeat in the House of Lords by 309 to 118.²⁴² In the face of widespread political opposition by civil society and members of the opposition, the government withdrew its proposals. The Home Secretary announced that the government would introduce an Emergency Bill extending the power to detain terrorist suspects in the event that: 'the worst [*should*] happen, and should a terrorist plot overtake us and threaten our current investigatory capabilities'.²⁴³

Without derogation from the Convention, the JCHR has warned that this approach is likely to be incompatible with the right to liberty as guaranteed by Article 5 ECHR.²⁴⁴ In 2011, the new UK Government announced that the period of pre-trial detention for terrorist suspects would be returned to 14 days. New legislation is expected in spring 2011.

Any detention must also comply with a series of basic procedural safeguards:²⁴⁵

- Detainees must be informed promptly of the reasons for their detention and their right to take legal advice. They must be able to challenge the legality of their detention.
- People charged with criminal offences must have access to a lawyer of their choice. If they cannot afford legal advice, they must be provided with qualified legal representation which is effective. Access to legal advice should not be restricted, and time and facilities for legal consultation should be provided.

240 30th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (13th Report): Counter-Terrorism Bill', Session 2007-2008, HL 172, HC 1077 www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/172/172.pdf.

241 'Brown wins dramatic victory on 42-day detention', *The Guardian*, 11 June 2008 www.guardian.co.uk/politics/2008/jun/11/terrorism.uksecurity.

242 'Ministers shelve 42-day detention', *BBC News* (13 October 2008) http://news.bbc.co.uk/1/hi/uk_politics/7668477.stm.

243 Home Secretary's statement on the Counter-terrorism Bill (13 October 2008) <http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/about-us/news/counter-terrorism-bill-statement>.

244 16th Report from the JCHR 'Counter-Terrorism Policy and Human Rights (17th Report): Bringing Human Rights Back In', Session 2009-2010, HL 86, HC 111, para 83 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/86/86.pdf.

245 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment' UNGA Res 43/173 (9 December 1988) www2.ohchr.org/english/law/bodyprinciples.htm; Article 5 ECHR.

- Detainees must have the right to communicate with people outside their place of detention, including their family, lawyer, physician, judicial authorities, and, where a foreign national, their consulate.
- People suspected of criminal offences have the right to be brought before a judge promptly. They must be able to raise (i) the legal grounds for their arrest; (ii) whether detention before trial is necessary or bail should be granted; (iii) their treatment; and (iv) any violation of their fundamental rights.
- People on remand awaiting trial must be tried within a reasonable time or released. There is a presumption in favour of bail for people pending trial.
- Anyone detained must have the right to have the lawfulness of their detention regularly reviewed by a court. Anyone detained for an unspecified period of time (for example, in a mental health institution) must have their detention reviewed regularly, on a periodic basis.
- Anyone unlawfully detained must have the right to compensation.

Bail and prison conditions in Ukraine

In 2002-2003, the prison conditions in Ukraine were the subject of criticism from Amnesty International and other human rights organisations who alleged that overcrowding and the lack of transparent, effective and adversary bail proceedings constituted breaches of human rights violations, including those of Articles 3, 5 and 6 of ECHR. The current Criminal Procedure Code contains limited opportunities for detained persons to challenge the legality of their detention and to request bail hearings. The latest draft of the new Code provides for adversarial bail hearings, and the draft is currently before parliament. In April 2003, the Supreme Court of Ukraine adopted a Special Resolution on the use of preventative measures, which encourages courts to avoid the use of unreasonable detention where possible, and subsequent amendments to the Special Resolution have encouraged the use of bail, the conducting of investigations within a reasonable time, and the use of adversarial bail proceedings, making express references to Article 5 ECHR.

Case study: *Foundation for Human Rights Initiatives v Attorney General*

In a 2008 case before the Constitutional Court of Uganda,²⁴⁶ the Foundation for Human Rights Initiatives argued that bail is a human right. The issue of bail drew attention in Uganda in 2007 after the re-arrest of six defendants who had previously been granted bail following charges of supporting the opposition leader Kizza Besigye.

The Constitutional Court held that bail was not a human right, nor enshrined in the Ugandan Constitution, stating that in deciding whether to allow an accused bail '[a]ll that is required of the court is to impose reasonable conditions, acceptable and demonstrably justifiable in a free and democratic society.' However, the Court did find that holding a person in police custody for more than 48 hours without charge is a violation of human rights. This decision was important, as it overturned provisions of Ugandan law relating to detention without charge and the constitutional right to a speedy trial in several pieces of legislation, including the Trial and Indictment Act, the Uganda People's Defence Forces Act, the Police Act, and the Magistrates Courts Act.

Basic liberty checklist:

- Has someone been deprived of their liberty?
- Are there lawful grounds for the detention?
- Is the law governing the detention legally certain?
- Is the detention proportionate in the circumstances?
- Is the detention arbitrary or applied in a discriminatory way?
- Have the relevant procedural standards been met?

246 *Foundation for Human Rights Initiatives v Attorney General* (Constitutional Petition No 20 of 2006) [2008] UGCC 1 (26 March 2008) www.ulii.org/ug/cases/UGCC/2008/1.html.

Suggested questions for parliamentarians:

- Are the circumstances when a person can be deprived of their liberty by the State set out clearly in Statute?
- Are those circumstances limited to the legitimate reasons for detention recognised in international law?
- Is it easy for people to understand when they can be detained lawfully and for what reasons?
- Are State authorities required to explain to people being detained the reasons for their detention?
- Are detainees allowed access to their families and to legal advice?
- Do people have the right to challenge their detention?
- Is there a presumption that persons detained pending trial will have a right to bail unless there are legitimate and proportionate reasons to continue their detention?
- How easy is it for people to challenge their detention in practice?
- Is domestic law on detention applied without discrimination and in a transparent and non-arbitrary way?
- Is there a domestic mechanism in place to monitor the treatment of people in places of detention?
- When did parliament last debate the right to liberty and the treatment of detainees?

6. The right to a fair hearing

The right to a fair hearing in national and international law

'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.'

Article 14, ICCPR

'Human and citizens' rights and freedoms are protected by the court. Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.'

Article 55, Constitution of Ukraine (1996)

'The State shall guarantee that citizens have access to the courts and that persons charged with a crime have the right to defence and the right to legal assistance and aid.'

Article 62, Constitution of Mozambique (1990)

The right to a fair hearing in both civil and criminal cases includes a number of distinct elements:²⁴⁷

- *Equal access*: Access to an independent and impartial tribunal for the determination of all criminal charges and civil rights should be open to all without discrimination.
- *Equality of arms*: Both parties to proceedings must, in principle, be able to access the court on equal terms. This means that both the claimant and defendant in civil proceedings or the prosecution and the defence in criminal proceedings should be subject to the same procedural rules and limitations, should generally be able to attend proceedings on the same basis and to access information and arguments relied on by the other side and to have their own arguments and evidence heard by the court on the same basis.

²⁴⁷ CCPR General Comment No 13, 'Equality before the courts and the right to a fair and public hearing by an independent court established by law' (Article 14), 13 April 1984 [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument).

- *Independence and impartiality*: In order to comply with the right to a fair hearing, the case must be heard and determined by a tribunal or court which is independent and impartial. The decision maker must be both substantively independent of each of the parties and the government, but must also be seen to be independent and impartial. This has structural implications for the relationship between the government and the courts and for the appointment of the judiciary. Without a structurally and substantively independent judiciary, the right to a fair trial will be habitually violated. In practice, this means that judges must have clear, stable terms of appointment and should not be appointed or retired at the whim of the executive.
- *Transparency*: Court hearings and judicial decisions must generally be held in public. The only limitations to this principle are narrow, but secrecy may be justified where shown to be necessary for the purposes of public order, national security and exceptionally, in the interests of justice.

Special protection in criminal cases

Additional due process guarantees apply to all criminal cases. These are designed to ensure fairness and accuracy in criminal justice and all accused persons must enjoy these special rights:²⁴⁸

- *The presumption of innocence*: A person charged with an offence is innocent until the prosecution proves guilt. In practice, this means that the burden of proof remains the responsibility of the prosecution and any doubt in favour of the defence must lead to an acquittal.
- Choice of legal representation or qualified appointed legal representation where the accused cannot afford to appoint his own representative.
- Time and adequate facilities to conduct a defence and consult with legal representatives.
- *Trial without undue delay*: Trials must take place without undue delay, since trial within a reasonable time protects the presumption of innocence and helps ensure the fairness of the substantive proceedings. Where an individual remains in custody pending trial, it will be particularly important that the trial proceeds without delay. Any delay could lead to a violation of the right to liberty and the right to a fair hearing.
- The right to attend trial.
- The right to call and examine witnesses.
- The right to trial in a language which the accused understands (or the right to an interpreter without charge).
- The right to appeal to a higher tribunal against conviction.
- *Double jeopardy*: The right to a fair hearing includes protection from multiple prosecutions or punishments for the same offence.
- The right to compensation in the event of a miscarriage of justice
- Non-retroactivity of criminal offences.

248 Articles 14(2) to 14(7) and 158(1) ICCPR.

The right to a fair hearing is non-derogable. This means that in a state of emergency, the State must still ensure that the standards of due process required by international law are respected.²⁴⁹

Parliamentarians may be asked to grapple with a number of important issues relating to the right to a fair hearing. The most basic of these responsibilities includes ensuring the independent, effective operation of the domestic courts system. This responsibility includes oversight of the mechanisms for the appointment and operation of the judiciary. For example, parliamentarians may wish to consider whether the domestic constitutional framework makes adequate provision for the independence and impartiality of the judiciary including through provision for independence in appointment, set terms and conditions of appointment (to avoid arbitrary or political termination of judicial appointments) and adequate provision of resources. A few other additional issues and concerns which parliaments may encounter are considered below.

The right to a fair and speedy trial: Uganda

In September 2007, a Ugandan MP proposed a motion advocating that the President of Uganda urgently consider appointment of new Justices of the Supreme Court and Judges of the High Court to deal with the growing backlog of cases of prisoners awaiting trial while remanded to custody. This motion followed significant delay in the appointment of judicial officers which was having a significant impact on the rights of individual Ugandans accused of criminal offences to a fair and speedy trial. The President has since effected the necessary appointments to the Ugandan judiciary.

Special courts

'Special, extraordinary or military courts have been set up in many countries to try specific types of offences or to try people with special legal statuses. Frequently, such courts offer fewer guarantees of fair trial than ordinary courts and, as noted by the Human Rights Committee: "quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice".'

IPU Handbook on Human Rights (2005)

²⁴⁹ See above, Table 6, page 63.

US military tribunals

The Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism signed on 13 November 2001²⁵⁰ by President Bush (the 'Order') enabled the United States Government to detain without charge, and for an indefinite period, 'certain aliens' suspected of terrorism. The Order also enabled prosecution of such individuals before a military tribunal²⁵¹ and excluded all the procedural guarantees applicable to US citizens.²⁵² Detainees were held by the US military at the Guantanamo Bay detention centre in Cuba. In 2006, the Military Commissions Act 2006²⁵³ (MCA) was presented and adopted. It created the status of 'unlawful enemy combatant'.²⁵⁴ It also set up the military commissions used to try enemy combatants²⁵⁵ and stripped enemy combatants of the right to habeas corpus.²⁵⁶ In 2007, the Court of Appeals for the District of Columbia Circuit upheld the provisions excluding habeas corpus for all detainees.²⁵⁷ The Supreme Court refused to hear the appeal against this judgment on 2 April 2007.²⁵⁸

The status of 'enemy combatant' was imposed by the Combatant Status Review Tribunals (CSRT) established by the Department of Defense, which were composed of military officers who were entitled to rely on secret and coerced information to make their decisions. The individual had no right to counsel nor were they made aware of the allegations against them. They had only limited means of finding and presenting evidence to challenge the accusations and there were no limitations on the admission of hearsay meaning that the opportunity of the defendant to question witnesses was severely curtailed. Crucially, there was no possibility of challenging the CSRT's findings when the individual was convicted of being an 'unlawful enemy combatant'.

250 'Military Order – Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism', Executive Order (13 November 2001) [66 Fed Reg 57833 (16 November 2001)] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-28904-filed.

251 *Ibid*, paras 1(e), 4 & 7(b)(2).

252 *Ibid*, para 1(f).

253 Military Commissions Act of 2006, [10 USC (2007)] paras 948-950 www.gpo.gov/fdsys/pkg/PLAW-109publ366/pdf/PLAW-109publ366.pdf.

254 *Ibid*, para 948a(1).

255 *Ibid*, para 948b.

256 *Ibid*, paras 2241(1)(e) and 948b(d).

257 *Boumediene v Bush* (2007) [476 F 3d 981, DC Cir] <http://caselaw.findlaw.com/us-dc-circuit/1249597.html>.

258 Amnesty International, Report 2008 'The State of Human Rights in the World: Human Rights in the United States of America' www.amnesty.org/en/region/usa/report-2008.

On 29 June 2007, the Supreme Court vacated its order of 2 April and agreed to hear arguments regarding the CSRTs.²⁵⁹ On 12 June 2008, it held that the MCA operated a suspension of habeas corpus to which the detainees had a right and that the replacement procedure was not sufficient given the absence of fair trial guarantees at the CSRT stage. The suspension of habeas corpus was therefore unconstitutional.²⁶⁰

The military tribunals constituted of a military judge and a military jury.²⁶¹ They were entitled to take into account evidence obtained without a search warrant or other authorisation, evidence which would have a 'probative value to a reasonable person', self-incriminating evidence obtained by coercion, hearsay evidence and any evidence which the military judge determined was authentic on a 'sufficient basis to find that the evidence [was] what [it] is claimed to be'.²⁶² Military tribunals were convened by the Secretary of Defense.²⁶³ The accused did, at least, have the right to defence counsel.²⁶⁴

The first person to be convicted under the MCA was Salim Ahmed Hamdan, Osama Bin Laden's driver.²⁶⁵ Mr Hamdan was sentenced to five and a half years detention but, as he had already been held for five years at Guantanamo Bay, only had to serve the remaining six months of his sentence.²⁶⁶

259 *Ibid.*

260 *Boumediene v Bush* (2008) [553 US 723] <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=06-1195>.

261 See above, note 253, paras 948j and 948m.

262 *Ibid.*, para 949a(b)(2).

263 *Ibid.*, para 948h.

264 *Ibid.*, para 948k.

265 'US military convicts Bin Laden driver', *The Guardian*, 7 August 2008 www.guardian.co.uk/world/2008/aug/07/guantanamo.osamabinladen?INTCMP=SRCH.

266 'Bin Laden driver Hamdan sentenced to five and a half years', *The Guardian*, 7 August 2008 www.guardian.co.uk/world/2008/aug/07/guantanamo.osamabinladen1.

On 22 January 2009, President Bush's successor, President Obama, stated that he intended to close the Guantanamo Bay detention centre by January 2010.²⁶⁷ The MCA 2006 was amended by the Military Commissions Act 2009²⁶⁸ which, among other things, excluded self-incriminating evidence²⁶⁹ and made the use of hearsay evidence harder.²⁷⁰ The first Guantanamo inmate to be tried in a civilian court was Ahmed Khalifan Ghailani who, on 17 November 2010, was found guilty of one count of conspiracy to destroy US property in relation to US embassy bombings in East Africa in 1998, but not guilty of 285 other counts including murder.²⁷¹

Administrative decision making

Where administrative decisions impact on individual rights in practice, these decisions may be subject to the minimum standards for a fair hearing. Where, for example, a political body exercises a broad discretion, if the decision affects the rights of individuals, an appeal to an independent and impartial tribunal may be needed to meet the rights of due process required by international human rights law standards.

267 'Obama admits delay on Guantanamo', *BBC News*, 18 November 2009 <http://news.bbc.co.uk/1/hi/world/americas/8366376.stm>.

268 Military Commissions Act of 2009, [10 USC (2010)] paras 948-50 www.defense.gov/news/2009%20MCA%20Pub%20%20Law%2011-84.pdf.

269 *Ibid*, para 948r(b).

270 *Ibid*, para 949a(2)(3)(D).

271 'Detainee convicted of one out of 286 terror charges', *The Independent*, 18 November 2010 www.independent.co.uk/news/world/americas/detainee-convicted-of-one-out-of-286-terror-charges-2137347.html.

Case study: Mrs Tsfayo

Mrs Tsfayo appealed against a decision by a UK local authority to refuse her access to housing benefit. The appeal was determined by a local body which was not an independent tribunal, as a result of its links to the local authority. A further judicial review to the High Court was limited to a review of the reasonableness of the decision. The European Court of Human Rights decided that this appeals process was in breach of Mrs Tsfayo's right to a fair hearing by an independent and impartial tribunal when decisions taken determined her civil rights and obligations (Article 6 ECHR). The Court accepted that some administrative decisions are best taken by local experts in policy and administration. However, it stressed that where decisions have a significant requirement for the fair determination of facts, limited judicial review will be inadequate to provide for due process and a fair hearing.²⁷²

Key questions for parliamentarians:

- How easy is it for people to access the local courts?
- Are all parties subject to the same procedural rules?
- Does the Constitution set out clearly the independence of the judiciary from both the legislature and the executive?
- How are judges selected?
- Do judges have security of tenure?
- Does the executive have the right to review judicial decisions?
- Do parties have the possibility of requesting the recusal of judges?
- Do judges voluntarily recuse themselves?
- Are hearings held in public?
- In what circumstances can hearings be made via camera?
- Are there any reporting restrictions on hearings?
- Are judgments delivered in public?
- Are judgments freely available to the population?

272 *Tsfayo v UK* [2009] 48 EHRR 18.

Checklist for special protection in criminal cases:

- Is the presumption of innocence set out in the Constitution?
- Does the burden of proof in criminal trials lie on the prosecution?
- What standard of proof does the prosecution have to meet?
- Does the accused have the right to choose their legal counsel?
- Is free legal advice available where the accused cannot afford his or her own counsel?
- Does the accused have the right to consult with his or her legal counsel in private?
- Does the accused have the right to see the evidence against them before trial in order to prepare?
- Is the accused given sufficient time to prepare for trial?
- Is the accused tried promptly after charge?
- Does the accused have the right to attend their trial?
- Does the accused have the right to examine prosecution witnesses and call and examine his or her own witnesses?
- Can trials be held in the language of the accused?
- Is the accused provided with an interpreter without charge, where necessary?
- Are there any offences for which the individual does not have the right to appeal?
- On acquittal, is the prosecution barred from charging and prosecuting the individual for the same offence?
- Does the individual have the right to compensation in the event of wrongful conviction?
- Is the exercise of this right to compensation made subject to conditions?
- Are offences, in principle, non-retroactive?

Checklist for special courts:

- Do special courts, such as military tribunals, exist in your country?
- Do the special courts respect the right to a fair hearing by an independent and impartial tribunal?
- How are they established, for example, by Act of Parliament or by Executive Order?
- What is their jurisdiction?
- Are they empowered to try civilians or non-military personnel?
- What are the rules of procedure and evidence applicable?
- Are these rules publicly available?
- Do individuals have the right to appeal judgments of the special courts?
- Do the non-special courts have the right to review judgments of the special courts?
- Does the executive have the right to review judgments of the special courts?

7. The right to privacy and respect for private and family life

'The right to privacy is central to the notion of freedom and individual autonomy. Many of the controversial issues that have arisen in the context of privacy litigation, such as State interference with homosexuality; transexuality; prostitution; abortion; assisted suicide; dress codes; private communication; marriage and divorce; and reproductive rights and marriage and divorce touch on fundamental moral values and ethical issues which are viewed differently in various societies.'

IPU Handbook on Human Rights (2005)

'No-one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks.'

Article 12, UDHR

What is the right to privacy?

- Respect for individual autonomy, including individual expression, relationships and reputation;
- This includes the right of individuals to respect for private and family life (including family and sexual relationships), and the right to respect for the integrity of home and correspondence; and
- The right includes protection for the right to be different and does not depend on the acceptability of private and personal activities according to popular morality in any given society or environment.

The right to privacy often raises controversial questions in society about the boundaries between our private and public lives. This is a qualified right which may be limited only for the pursuit of a legitimate aim – such as the protection of public health and morals, the prevention and detection of crime and the protection of the rights of others – where the measures taken are necessary and proportionate to the interference posed to individual privacy.²⁷³

273 CCPR, General Comment No 16 'The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17)', 32nd Session (8 April 1988), [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/23378a8724595410c12563ed004aeecd?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/23378a8724595410c12563ed004aeecd?OpenDocument).

Limitations often involve careful balances struck between the individual right to respect for their privacy and the wider public interest in terms of security. This means that it is difficult to give definitive guidance on the application of this right in practice. Often a delicate balance will need to be drawn by policy makers, legislators and courts in the development of the law in order to ensure compliance with the right in real life.

Basic checklist for the right to privacy and respect for private life:

- Does a law, practice or set of circumstances ensure the right to privacy?
- Does it set out the lawful interferences with the right to privacy?
- If not, where are these interferences set out?
- Are these limits legitimate and proportional?
- What sort of review is available to ensure the legitimacy and proportionality of these interferences in principle?
- What avenues are available to challenge the application in practice of these limits?

- Does a law, practice or set of circumstances ensure the respect for private life?
- Does it set out the limits to the respect for private life?
- If not, where are these limits set out?
- Are these limits legitimate and proportionate?
- What sort of review is available to ensure the legitimacy and proportionality of these limits in principle?
- What avenues are available to challenge the application in practice of these limits?

8. The right to freedom of thought, conscience and religion

'Everyone has the right to freedom of thought conscience and religion; this right includes freedom to change his religion and belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.'

Article 18, UDHR

The right to freedom of thought, conscience and religion cannot be derogated from, even during a state emergency.²⁷⁴ Religion is given a broad and open interpretation as in this context it applies to all traditional and non traditional beliefs, theistic or non-theistic, and atheist beliefs are protected by the right to freedom of thought, conscience and religion. Religious tolerance is a core principle of international human rights law and no individual can be coerced to subscribe to any individual belief or religion, including any official State religion.²⁷⁵

The right to manifest religious and other beliefs is not absolute and can be limited on legitimate grounds, including for the protection of public health and morals, the prevention and detection of crime and in order to protect the rights of others.²⁷⁶ Manifestation of belief is active and may clearly impinge on the rights of others who do not share similar beliefs. Manifestation of religion or belief cannot include propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.²⁷⁷ States are under an obligation to enact legislation to prohibit such acts.²⁷⁸

274 See above, Table 6, page 63.

275 CCPR General Comment No 22 'The right to freedom of thought, conscience and religion (Article 18)', 48th Session (30 July 1993), CCPR [CCPR/C/21/Rev.1/Add 4] [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument).

276 See above, Table 6, page 63.

277 Article 20 ICCPR; note 275.

278 CCPR General Comment No 11 'Prohibition of propaganda for war and inciting national, racial or religious hatred (Article 20)', 19th Session (29 July 1983) [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/60dcfa23f32d3feac12563ed00491355?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/60dcfa23f32d3feac12563ed00491355?Opendocument).

Manifestation of religion and the rights of others

The right to religious belief does not extend to permit religious people or organisations to infringe the rights of others. The most high-profile cases involving the balancing of individual rights have recently focused on claims by religious organisations or people to be exempt from the application of legislation designed to ensure equal treatment on the grounds of sexual orientation. So, for example, the courts in the UK have been asked to consider the exemption of Catholic adoption agencies from the prohibition of discrimination in the provision of services,²⁷⁹ the requirement for all public registrars to perform both civil marriages and civil partnerships (which provide legal recognition of the relationships of same-sex couples)²⁸⁰ and a claim for exemption from the prohibition of discrimination in the provision of services for guest house owners letting accommodation in their own homes.²⁸¹ In each of these cases, the domestic court held that the right to freedom of religion could not override the right to equal treatment.²⁸²

279 *Catholic Care (Diocese of Leeds) v The Charity Commission for England and Wales*, [2010] EWHC 520 (Ch) www.bailii.org/ew/cases/EWHC/Ch/2010/520.html.

280 *Ladele v Islington* [2009] EWCA Civ 1357.

281 *Hall & Preddy v Bull* [18 January 2011] Case No 9BS02095 <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/hall-preddy-bull-judgment.pdf>.

282 *McFarlane v Relate Avon* [2010] EWCA Civ 880.

Basic checklist for the protection of freedom of thought, conscience and religion:

- Does domestic law ensure the absolute right to hold opinions without interference?
- Does domestic law protect the right to freedom of religion?
- Does this include protection for the freedom to manifest that religion?
- If there are any exceptions or restrictions to the protection of this right, are they strictly for the purpose of protecting the rights and freedoms of others, protecting public safety, public order, public health or public morals?
- Are there adequate safeguards in place to protect any exceptions from being misused?
- Has legislation been enacted to prohibit the manifestation of religion or belief becoming propaganda for war or advocacy of national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence?
- What enforcement mechanism is set out by that legislation?
- Does domestic law recognise that a balance must be drawn between respect of freedom of thought, conscience and religion and the rights of others?

9. Freedom of expression and freedom of association

Freedom of expression, association and assembly in national law

‘(1) Every person shall have the right to –

- (a) freedom of speech and expression which shall include freedom of the press and other media;
- (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;
- (c) freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution;
- (d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and
- (e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.’

Article 29, Ugandan Constitution (1995)

‘La liberté d’exprimer sa pensée par la parole ou par la plume, la liberté de la presse, la liberté de réunion et la liberté d’association, sont garanties dans les limites fixées par la loi.

(The freedom to express oneself orally or in writing, freedom of the press, freedom of assembly and freedom of association, are guaranteed within the limits established by the law.)’

Article 13, Lebanese Constitution (1926)

Freedom of expression, freedom of association and freedom of assembly are distinct but closely related rights. Some human rights treaties and constitutions group these rights together, while others address them separately. These rights facilitate various features of democratic life, such the right to public protest, the right to form political parties and freedom of the press. The success of ensuring these rights may have further reaching implications.

'[N]o major famine has ever occurred in a functioning democracy with regular elections, opposition parties, basic freedom of speech and a relatively free media.'

Amartya Sen (1982)²⁸³

Freedom of expression in international and regional treaties

'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

Article 19, UDHR

'1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.'

Article 19, ICCPR

283 Amartya Sen, 'How is India doing?' (16 December 1982) *The New York Review of Books*.

'1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

Article 10, ECHR

Freedom of expression is formed of three components: the absolute right to freedom of opinion; the fundamental but not absolute right to freedom of expression; and the not absolute right to freedom of information.²⁸⁴

These two latter elements are vital to give effect to the exchange of ideas: freedom of expression allows one to impart information, and freedom of information enables one to receive information.²⁸⁵ Freedom of information is necessary in a democratic society to ensure transparency and accountability of government and allow the media and government opponents to expose any wrongful actions.²⁸⁶

284 UNHCHR General Comment No 10 'Freedom of expression (Article 19)' 19th Session (29 June 1983) www.unhchr.ch/tbs/doc.nsf/0/2bb2f14bf558182ac12563ed0048df17?Opendocument.

285 UNHCHR General Comment No 25 'The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25)' 57th session (12 July 1996) [CCPR/C/21/Rev 1/Add 7] para 25 [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument).

286 IPU Handbook, pages 113-114; Toby Mendel, 'Freedom of Information as an Internationally Protected Human Right', Article 19 www.article19.org/pdfs/publications/foi-as-an-international-right.pdf; *Gauthier v Canada* [633/95] Human Rights Committee; and *XYZ v Victoria Police* [2010] VCAT 255, Victorian Civil and Administrative Tribunal, Australia, para 558 (full review of developing international law on the right to information).

Legitimate restrictions on freedom of expression and information are permitted. The ICCPR allows restrictions on freedom of expression based on respect for the rights and reputations of others, and for the protection of national security, public order, public health or public morals.²⁸⁷ As the UN Human Rights Committee noted in its General Comments on the ICCPR: 'It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.'²⁸⁸

Basic checklist for the protection of freedom of expression:

- Does domestic law, practice and policy protect the right to freedom of expression?
- Does domestic law, practice and policy protect the freedom to share ideas of all kinds with others, through any form of communication or media?
- If there are any exceptions or restrictions to the protection of this right, are they strictly for the purpose of protecting the rights and freedoms of others, protecting public safety, public order, public health or public morals?
- Are there adequate safeguards in place to protect any exceptions from being misused?

287 See above, Table 6, page 63.

288 UNHCHR General Comment No 10 'Freedom of expression (Article 19)' 19th Session (29 June 1983), para 3 www.unhcr.ch/tbs/doc.nsf/0/2bb2f14bf558182ac12563ed0048df17?Opendocument.

Freedom of association in international and regional treaties

'1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.'

Article 22, ICCPR

'1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in Art 29 no one may be compelled to join an association.'

Article 10, African Charter of Human and Peoples' Rights

'1. Every individual shall have the right to form trade unions, become a member of a trade union and to freely exercise trade union activity to defend his interests.

2. No restrictions shall be placed on the exercise of this right other than those imposed in conformity with law and which are necessary in the interests of national security, public safety, public order, the protection of public health, morals or the rights and freedoms of others.

3. Each State Party shall ensure the right to strike provided that it is exercised in conformity with its laws.'

Article 35, Arab Charter on Human Rights

Freedom of Association is also a fundamental but qualified right.²⁸⁹ Examples of groups include those of a social, cultural, political or religious nature, as well as trade unions. The right to freedom of association is often accompanied by the right not to be compelled to join an association, as contained in the UDHR and the African Charter of Human and Peoples' Rights. The UDHR sets out that a legitimate need for protection of public morality, public order or public welfare may justify limitations on these freedoms.

Freedom of association protects the right to belong to labour and trade unions and in this regard, it is closely linked to economic and social rights. In the 2008 case *Demir and Baykara v Turkey*,²⁹⁰ the European Court of Human Rights recognised that Article 11 of the ECHR, which protects freedom of association including the right to join trade unions, also contains the inherent right to collective bargaining.²⁹¹

Freedom of assembly in international and regional treaties

'(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.'

Article 20, UDHR

'The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.'

Article 21, ICCPR

'Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.'

Article 11, African Charter of Human and Peoples' Rights

289 See above, Table 6, page 63.

290 *Demir and Baykara v Turkey* (Application No 34503/97) (12 November 2008) ECHR <http://cmiskp.echr.coe.int////tkp197/viewhbk.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=24131&sessionId=63306688&skin=hudoc-en&attachment=true>.

291 *Ibid*, paras 153 and 154.

Freedom of assembly, like freedom of association, is not an absolute right.²⁹² In many instances, the right concerns only peaceful assembly, for example in the ECHR.²⁹³ As with freedom of association, the right to freedom of assembly may be limited for reasons such as public morality, public order or public welfare.

Derogations from the protection of freedom of speech, association and assembly are permitted in certain circumstances, as long as the derogation is necessary and provided for by law. These permitted limitations may be contained in the same treaties and statutes that protect those freedoms. Other constitutional and treaty obligations may justify derogation from protection of freedom of expression, association and assembly, for reasons specific to the subject of the treaty (examples of the type of limitation clauses provided in individual treaties were explained in Part I). For example, the International Convention on the Elimination of All Forms of Racial Discrimination²⁹⁴ requires limitations to be placed on freedom of expression, association and assembly in order to prevent promotion and incitement of racial discrimination:

'States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights.'

Article 4, International Convention on the Elimination of All Forms of Racial Discrimination

292 See above, Table 6, page 63.

293 Article 11 ECHR.

294 Available at: www2.ohchr.org/english/law/cerd.htm.

Basic checklist for the protection of freedom of association and freedom of assembly:

- Does domestic law, practice and policy protect the right to freedom of association?
- Does domestic law, practice and policy protect the right to form and join trade unions?
- If there are any exceptions or restrictions to the protection of this right, are they strictly for the purposes of protecting the rights and freedoms of others, public safety, public order, public health or public morals?
- Are there adequate safeguards in place to protect any exceptions from being misused?
- Does it ensure that no one may be compelled to join an association?
- Does domestic law, practice and policy protect the right to freedom of assembly?
- If there are any exceptions or restrictions to the protection of this right, are they strictly for the purposes of protecting the rights and freedoms of others, public safety, public order, public health or public morals?
- Are there adequate safeguards in place to protect any exceptions from being misused?

Public protests

Public protest is important in a democracy as it provides citizens with an additional channel to express their opinions and influence their government and others around them. The rights to freedom of expression and freedom of association and assembly are exercised in the course of conducting a public protest. The right to freedom of association is invoked in belonging to a group supporting the same cause; the right to freedom of assembly is invoked in coming together as a group in public; and the right to freedom of expression is invoked in manifesting the protest message.

Any law concerning public protests must ensure that it protects all these rights, and that any restrictions on the right to protest do not go beyond those permitted by the relevant international, regional and constitutional human rights commitments. In the application of these laws, police and law enforcement officers must properly balance the rights to freedom of expression, association and assembly against any legitimate needs to restrict a protest, for example when controlling protests which may have become

violent and may risk the safety of protesters, police and others.²⁹⁵ Any restrictions on protests must be implemented with caution and the utmost regard for the protection of human rights, as methods used by the police to limit protests may have the potential to infringe on other human rights, including the right to liberty and freedom from arbitrary detention, and the right not to be subjected to torture, inhuman or degrading treatment.²⁹⁶

The right to freedom of assembly: Uganda

Local human rights activists criticised the interference with the rights to expression and assembly by wide discretionary police powers provided for in the Police (Declaration of Gazetted Areas) Order, SI 53/2007. These powers were subject to a significant parliamentary inquiry. During the inquiry, the minister was required to submit evidence on the operation of the powers, the government's view that the powers were compatible with the right to assembly and the evidence that the powers were necessary. After this inquiry, the powers were abandoned by the government.

'The right to offend'

The right to freedom of expression includes all types of expressions and speech, including the right to make controversial or offensive comments. Like public protests and freedom of the press, offensive and controversial statements can contribute to democracy by challenging prevailing opinions and sentiments. No restriction can be placed upon forms of expression purely because of their offensive or shocking nature – offensive statements can only be limited on the grounds of the permitted derogations provided for in treaties and constitutions. Legitimate restrictions may include a ban on speech intended to incite violence, in the interest of the preservation of public order. However, such restrictions must be narrowly and objectively defined in order to prevent them from being abused. The burden is on the government to show that any restrictions in place are proportionate to the risk that they are designed to address.²⁹⁷

295 *Oya Ataman v Turkey* (Application No 74552/01) (5 December 2006) ECHR, paras 41-42; and OSCE/ODIHR 'Guidelines on Freedom of Peaceful Assembly', paras 70-71.

296 *Austin & Anon v Commissioner of Police of the Metropolis* [2009] UKHL 5 www.bailii.org/ew/cases/EWHC/Coats/2009/90151.html.

297 UNHCHR 'General Comment No 10' 'Freedom of expression (Article 19)' (29 June 1983), para 4 [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?OpenDocument).

'Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man... it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".'

Handyside v UK [1976] ECHR²⁹⁸

Media regulation and freedom of the press

A free press plays an important role in democracy, taking on a role similar to opposition political parties in challenging government and informing the public. Freedom of the press is especially important in countries where the political environment is dominated by a single party, as the media may be the principal voice that scrutinises the conduct of the government. The media may play a special role in upholding human rights standards, by exposing actions committed by the State which may undermine these rights.

'... whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them.'

Sunday Times v United Kingdom [1979] ECHR²⁹⁹

298 *Handyside v The United Kingdom* (Application No 5493/72) (7 December 1976) ECHR, para 49 <http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=13914&sessionId=63306688&skin=hudoc-en&attachment=true>.

299 *Sunday Times v The United Kingdom* (Application No 6538/74) (26 April 1979) ECHR, para 65 <http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=13995&sessionId=63306688&skin=hudoc-en&attachment=true>.

Government regulation of the media or the press carries the risk of introducing censorship or other measures contrary to the protection of freedom of speech. Such regulation poses a particular threat to the freedom of government opponents to question government actions. These restrictions on free speech may result from merely discouraging the expression of dissenting opinions, or more severely by criminalising statements condemning the government. National rules controlling the ownership of media companies may result in a restriction of free speech, particularly if those rules require the State to own a stake in media companies (although State-ownership of media companies does not necessarily imply a threat to free speech).

Government regulation of the media must respect commitments to freedom of speech and only restrict this freedom as far as it is necessary in order to ensure the protection of other rights and freedoms, or of public safety, order, health or morals. Regulations must be carefully worded and narrowly defined so that they can only be used to regulate media as far as is necessary in a democratic society, and cannot be exploited by a government to suppress or persecute the opposition.

Case study: raid on Imedi television, Georgia

On 7 November 2007, Imedi, the main opposition television station in Georgia, was raided and shut down by armed special forces. Journalists and staff were forced to leave the studios while the special forces damaged and destroyed equipment. Riot police then used tear gas and rubber bullets to disperse the crowds around the evacuated studio. The use of force was condemned by the opposition and members of the international community, and called for an election to be held immediately. President Saakashvili said that the raid was justified by the threat of a coup d'état led by opposition leaders and the founder of Imedi television.

A report by Human Rights Watch said: 'The raid on and closure of Imedi television was a violation of Georgia's commitments to guaranteeing freedom of expression. ...[T]he raid on Imedi using hundreds of heavily-armed law enforcement officers, which was initiated without warning against hundreds of journalists and other staff, was clearly disproportionate to the threat posed by unarmed Imedi personnel and an act of intimidation unjustified by the actions of Imedi television or any of its staff, leadership, or ownership.'³⁰⁰

300 Human Rights Watch 'Crossing the Line: Georgia's Violent Dispersal of Protestors and Raid on Imedi Television' (19 December 2007), page 3 www.hrw.org/sites/default/files/reports/georgia1207web.pdf.

Censorship

Censorship threatens freedom of expression by preventing the exchange and spread of news and ideas. Censorship may apply to any kind of communication or media by which information can be spread: newspapers, books, broadcasts, speeches and even art. As with the right to be offensive, the simple fact that information or an opinion may oppose the general consensus or a government position, cannot justify derogation from the freedom of expression and warrant censorship. An integral element of ensuring freedom of the media is to provide strong safeguards from censorship.

Case study: *Mwenda and Eastern Africa Media Institute v Attorney-General of Uganda*

Mwenda had been charged with the offences of promoting opposition to the government (sedition) and promoting sectarianism after criticising the President of Uganda on a radio show. Together with the Eastern Africa Media Institute, the respondent asked for a nullification of the parts of the Ugandan Penal Code relating to the offences of sedition, sectarianism and criminal defamation, on the basis that the offences were incompatible with the protection of freedom of expression under the Ugandan constitution.

The Constitutional Court held that the wording of the section of the Penal Code relating to sedition was so broad that it infringed on the enshrined right to freedom of expression, contravened the constitution and that the limits those laws placed on the freedom of expression were not demonstrably justified in a free and democratic society. However, the Court held that the criminalisation of promoting sectarianism by the Penal Code was not unconstitutional. The provisions of the Penal Code relating to sedition were struck off, but promoting sectarianism remained a criminal offence.³⁰¹

301 *Andrew Mujuni Mwenda & Anor v Attorney General* (Consolidated Constitutional Petitions No 12 of 2005 and No 3 of 2006) [2010] UGCC 5, Constitutional Court of Uganda www.ulii.org/ug/cases/UGCC/2010/5.html.

10. Economic, social and cultural rights

When surveys ask people about what human rights they consider most important, the right to food, shelter and good health are often high on the list of human wants and needs.³⁰² These correlate with the core economic and social rights protected by the international human rights legal framework. These and similar rights designed to support human health, security and development are at the core of democratic decision making, budget allocation and social planning for governments.

As we explained in chapter 1 of this section, all economic, social and cultural rights impose a twin-track duty on the State, comprising of a duty to attain a minimum standard of protection for the right guaranteed and a duty of 'progressive realisation' within available resources.³⁰³ The duty of 'progressive realisation' creates an important role for governments and parliaments, who retain primary responsibility for national budgets and the allocation of national resources across competing economic and social needs.

For many decades, as explained above, there has been an active debate around the most effective means of securing economic, social and cultural rights. For most States, the principal responsibility for securing these rights remains with government and parliament. In the slowly increasing number of States where domestic courts play a constitutional role in enforcing the implementation of economic and social rights, the government is frequently allowed a degree or margin of discretion in the implementation of these rights which is not reflected in relation to the implementation of civil and political rights.

The right to an adequate standard of living

'The States Parties to the present Covenant recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".

The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.'

Article 11, ICESCR

302 Joseph Rowntree, 'Trust State of the Nation Survey' (2010, UK) www.jrrt.org.uk/uploads/son-2010-summary-of-findings.pdf; EHRC 'Public Perceptions of Human Rights Survey' (2009) www.equalityhumanrights.com/uploaded_files/public_perceptions_of_human_rights_ipos_mori.pdf.

303 Article 2(1) ICESCR; and CESCR General comment 3 'The nature of States parties obligations (Article 2, paragraph 1)' 5th Session (14 December 1990) [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument).

The right to an adequate standard of living breaks into four clear strands of responsibility:

- Food
- Clothing
- Housing
- The continuous improvement of living conditions.

Freedom from hunger, adequate shelter and the right to health (which we discuss below) are all undermined by poverty. In Part I, we noted the overlap between many development programmes and economic and social rights. The first Millennium Development Goal expressly links poverty reduction and access to food, committing States to halving the proportion of people living on less than a dollar a day and those who suffer from hunger by 2015.³⁰⁴

Food

'The right to food is realised when every woman, man and child, alone or in community with others has physical and economic access at all times to adequate food or to means for its procurement. It does not mean that a Government must hand out free food for all, but it entails a Government duty to respect, to protect and to fulfil and under certain circumstances, to provide for that right.'

IPU Handbook on Human Rights for Parliaments (2005)

The right to food creates a complex web of obligations for States according to the principle of progressive realisation. However, there are some minimum standards which parliaments should bear in mind. Measures which engage any economic and social rights must operate without discrimination;³⁰⁵ must be able to meet a minimum standard (in relation to food, a subsistence standard which ensures freedom from hunger);³⁰⁶ and must not be retrogressive. A State which fails to meet these standards will fall below the international standards required by the ICESCR. Beyond these minimum standards, economic and social rights like the right to food will often be secured through a number of State measures to promote a healthy and stable economy such as programmes and strategies to ensure equality and to implement rights in practice. For example, the right to food might be secured through effective land management designed to protect the

304 UN Millennium Development Goal 1 'Eradicate Extreme Poverty & Hunger' www.un.org/millenniumgoals/poverty.shtml.

305 Article 18 CESCR General Comment 12 'The right to adequate food (Article 11)' 20th Session (12 May 1999) [E/C 12/1999/5].

306 *Ibid*, Article 17.

individual's right to farm land (accompanied by programmes to deal with any drought, flood or conditions likely to undermine effective farming); through market approaches designed to ensure that individuals have access to affordable and varied foods without discrimination; through measures to protect employment and self-employment to ensure that individuals and their families can access work, make money and pay for food; and via programmes to protect the vulnerable and to prevent hunger among those who cannot farm or purchase food for themselves.

The right to food in India: *People's Union for Civil Liberties v Union of India and Others*

This case, which commenced in April 2001, was brought by the People's Union for Civil Liberties (PUCL) who asserted that starvation deaths were occurring in India, in particular in the state of Rajasthan, despite excess grain stocks being held in reserve, and that this constituted a breach of the right to food.

The Supreme Court of India has not yet reached a final decision on the case, but has granted a number of interim orders which have, for the most part, been poorly implemented by national and state governments. In a key order in November 2001, the Court converted the provisions of eight existing food security schemes into entitlements of the poor.

Following this, in 2003, the Court issued a strongly-worded order stating that the right to life was imperilled due to the failure of the various food distribution schemes in place throughout India. It refused to hear any arguments about the non-availability of resources, and ordered various measures including that the Famine Code be implemented for three months, arrangements such as the food for work scheme be doubled and given increased financial support, and the provision of ration cards to vulnerable persons.

The case has not yet been decided, and India continues to struggle with the provision of food to its poorest people. The Court has made 16 further orders in attempts to relieve the worst effects, with varying degrees of success. Despite this, the case is significant, as litigation focusing on the right to food remains rare. The case can be seen as successful in terms of the PUCL's secondary objectives, which included drawing attention to the State's responsibility to people experiencing chronic hunger, and placing the issue on the national agenda.

Food riots in Mozambique

In August 2010, an increase in bread prices in Mozambique sparked three riots in the capital city of Maputo and elsewhere throughout the country. The Mozambique Government initially called the price rise irreversible, resulting from a global rise in the price of wheat following a drought in Russia, and a decline in the value of the Mozambican currency against the South African rand.

However, on 7 September 2010, the planning minister announced that the government would introduce a subsidy to maintain the previous price of bread. Other temporary measures, such as a freeze on wages and allowances for senior state officials, were also introduced to alleviate pressure on households caused by a rising cost of living.

Mozambique had previously adopted various strategies to protect its citizens' right to food, including rights-based food security policy adopted in October 2007. As well as reaffirming the right to food as a basic human right, the strategy called for administrative and legal recourse mechanisms and suggested the development of legislation on the subject.

In January 2010, Mozambique's Food and Nutritional Security Technical Secretariat announced its intention to submit a draft of the Law on the Human Right to Adequate Food to the government by the end of the year. At the time of drafting, no legislation had yet been passed. Food security remains a controversial issue in Mozambique.

Clothing

The right to clothing is less considered in international law and practice, but it is generally accepted that the right to an adequate standard of living includes the right to be clothed to an adequate standard to allow individuals, according to local traditions and environmental conditions, to participate in community and public life. This does not mean the right to the latest fashion, but the right to conduct a life safely and without shame. In practice, parliamentarians may wish to consider whether provision is made in their country for vulnerable individuals living in poverty to access adequate clothing to meet their needs. Vulnerable people particularly at risk include detainees, refugees and displaced persons and children living in poverty.

Basic poverty checklist:

- Is there a national policy aimed at improving living conditions?
- How is this policy enforced?
- How does the obligation to continually improve living conditions affect domestic social policy?
- How can parliamentarians ensure that this obligation is taken into account in forming national social policy?
- Is there a national policy designed to ensure people are free from hunger?
- Is this policy applied in a non-discriminatory way?
- Does this policy prioritise disadvantaged groups and vulnerable people?
- Is the right to food taken into account in drafting other measures such as for land use and management, environmental protection measures or trade policy?
- Is the right to food taken into account in setting any national minimum wage?
- Is provision made for vulnerable individuals living in poverty to access adequate clothing to meet their needs?

The right to housing

The right to housing is also a composite right. It combines the right to human dignity with the principle of non-discrimination and is dependent on the full enjoyment of the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making. The right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence is a very important dimension in defining the right to adequate housing.³⁰⁷

307 Article 9 CESCR General comment 4 'The right to adequate housing (Article 11(1))' 6th Session (13 December 1991) [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument).

The right to housing is applicable to both families and individuals and 'family' is to be understood in a wider sense.³⁰⁸ The right to housing is more extensive than merely having shelter; it requires somewhere to live in security, peace and dignity and housing must be adequate and at a reasonable cost.³⁰⁹ The CESCR defines the elements of adequacy as follows:

- *Legal security of tenure*: Everyone should have a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Forced evictions (the removal of individuals from land which they occupy without the provision of or access to legal or other protection) are prima facie contrary to the obligations set out in the ICESCR.³¹⁰
- *Availability of services, materials, facilities and infrastructure*: An adequate house contains certain facilities which are essential for health, security, comfort and nutrition. This includes sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.
- *Affordability*: The financial costs for housing should not threaten or compromise the attainment and satisfaction of other basic needs. To ensure this, States must take steps to render the percentage of housing-related costs commensurate with income levels. States should also provide housing subsidies for those unable to obtain affordable housing and housing finance which reflects housing needs. States must ensure that tenants are protected against unreasonable rent levels or rent increases and must ensure the availability of natural building materials where natural materials constitute the chief sources of house building materials.
- *Habitability*: Adequate housing must be habitable. This means there must be adequate space for the inhabitants. Habitable housing protects from the cold, damp, heat, rain, wind or other threats to health, structural hazards and causes of disease. The World Health Organization views inadequate and deficient housing and living conditions as invariably associated with higher mortality and morbidity rates.³¹¹
- *Accessibility*: Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources and should be ensured some degree of priority consideration over housing. Housing law and policy must account for the special housing needs of disadvantaged groups. States should aim to increase access to land by landless or impoverished people and should undertake obligations aimed at realising the right of all to a secure place to live in peace and dignity, including access to land.

308 *Ibid.*

309 *Ibid.*

310 CESCR General Comment No 7 'The right to adequate housing (Article 11.1 of the Covenant): forced evictions' 16th Session (20 May 1997) [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument).

311 World Health Organization 'Health Principles of Housing' (1989, Geneva) http://whqlibdoc.who.int/publications/1989/9241561270_eng.pdf.

- *Location*: Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is applicable to both large cities and rural areas. Housing should not be built on polluted sites or too near to pollution sources which threaten the right to health of the inhabitants;
- *Cultural adequacy*: The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. The cultural dimension of housing should not be subsumed by development or modernisation in the housing sphere and modern technological facilities, where appropriate, should be ensured.

These obligations are imposed regardless of the state of development of the country.³¹²

Housing and parliamentarians:

- Is there a national housing policy?
- Does it aim to ensure that housing is available for all members of society?
- Does it include a provision on non-discrimination?
- Does it prioritise disadvantaged members of society?
- How is house building encouraged?
- Is provision made for social housing for vulnerable people who become homeless?
- Are parliamentarians involved in drawing up the national housing policy?
- How can parliamentarians become involved in drawing up the national housing policy?
- Can parliament hold the government accountable for failures to provide adequate housing?

312 See above, note 307.

11. The right to education

The right to education

'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible on the basis of merit.'

Article 26(1) UDHR

'The States Parties to the present Covenant recognize the right of everyone to education.'

Article 13, ICESCR

Articles 13 and 14 of the ICESCR, the second Millennium Goal,³¹³ and Articles 28 and 29 UNCRC³¹⁴ all have at their heart the right to education. This right provides a vivid illustration of the interdependence of all rights. Without education, individuals find it hard to secure work, which may make them reliant on social security and State social programmes designed to secure the right to health, food and housing for those individuals who cannot afford to meet their own needs. Equally, without education, individuals may find it difficult to understand and enforce their economic, social and cultural entitlements and their civil and political rights.

The international human rights framework set a clear series of goals for the full realisation of the right to education:

- Primary education must be compulsory and free for all;³¹⁵
- Secondary education should be generally available and accessible to all through appropriate means. States should work progressively towards free secondary education;³¹⁶
- Higher education should be equally accessible to all on the basis of capacity through appropriate means. States should work progressively towards free higher education;³¹⁷

313 UN Millennium Development Goal 2 'Achieve Universal Primary Education' www.un.org/millenniumgoals/education.shtml.

314 Available at: www2.ohchr.org/english/law/crc.htm.

315 Article 13(2)(a) ICESCR.

316 *Ibid*, Article 13(2)(b).

317 *Ibid*, Article 13(2)(c).

- Schools systems should be developed at all levels and the material conditions of teaching staff should be continuously improved;³¹⁸
- States should ensure freedom of choice in education, including by respecting the liberty of parents and guardians to choose education outside the public system and to provide for their children to be educated in accordance with their beliefs, provided that education meets the standards laid down by the State.³¹⁹

These goals rest on broad principles of access and choice. The Committee on Economic, Social and Cultural Rights has elaborated more broadly on four areas of obligation: availability, accessibility, acceptability and adaptability.³²⁰ It has outlined a number of practical measures and obligations for States:

- *Availability*: Functioning educational institutions and programmes must be available in sufficient quantity within the jurisdiction of the State Party. The materials required for functioning depend upon numerous factors including the developmental context within which they operate. But, for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials and so on. Some will also require facilities such as a library, computer facilities and information technology.
- *Accessibility*: Educational institutions and programmes must be accessible to everyone, without discrimination, within the jurisdiction of the State Party. There are three overlapping dimensions to accessibility:
 - *Non-discrimination*: Education must be accessible to all, especially the most vulnerable groups, both in law and fact and without discrimination on any of the prohibited grounds;
 - *Physical accessibility*: Education must be within safe physical reach either by attendance at some reasonably convenient geographic location or via modern technology; and
 - *Economic accessibility*: Education must be affordable for all. Affordability depends on whether the education is primary, secondary or higher education: primary education should be available 'free to all' and States are required to progressively introduce free secondary and higher education.

318 *Ibid*, Article 13(2)(e).

319 *Ibid*, Article 13(3).

320 Articles 6 and 50, CESCR General Comment No 13 'The right to education (Article 13 of the Covenant)' 21st Session (8 December 1999) [E/C.12/1999/10] [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument).

- *Acceptability*: The form and substance of education, including curricula and teaching methods, must be acceptable to students and, in appropriate cases, parents. For example, education must be relevant, culturally appropriate and of good quality. This is subject to the objectives of full development of the human personality, strengthening respect for human rights and enabling individuals to participate effectively in a free society as set out by Article 13(1) ICESCR and the minimum educational standards set by the State.
- *Adaptability*: Education must be flexible and able to adapt to the needs of changing societies and communities. Education must also be able to respond to the needs of students within their diverse social and cultural settings.

Basic education checklist:

- Does the State have a fully functioning system of primary education which is compulsory and free for all?
- If not, does it have an action plan for the introduction of compulsory, free primary education?
- Has legislation been enacted providing for access to education in general?
- What barriers exist to access to education?
- Are there remedies in domestic law for individuals who have had their access to education denied or limited in some capacity?
- Is the right to education taken into account in policies relating to children?
- Do national policies recognise the right to education as linked to the right to work?
- Do parliamentarians have an input into national education policy?
- Is adequate funding made available for education, particularly to provide for education for vulnerable and disadvantaged groups and in rural areas?

12. The right to work and other labour rights

The right to work and other labour rights

'(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.'

Article 23 UDHR

'The States Parties to the present Convention recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts [...].'

Article 6, ICESCR

A number of labour rights are guaranteed by the ICESCR, including the right to work, to free choice of employment and protection against unemployment and adequate basic working conditions.³²¹ These basic labour rights are supplemented by detailed protections in the treaties of the International Labour Organization (ILO)³²² which provide more structured protection for the right to form and operate in trade unions,³²³ the right to strike³²⁴ and the right to collective bargaining through trade union representatives.³²⁵

321 Articles 6–9 ICESCR.

322 Available at: www.ilo.org/global/lang-en/index.htm.

323 ILO Convention No 27: Convention concerning Freedom of Association and Protection of the Right to Organise, 1948.

324 ILO Convention No 87: Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organization (1957), page 783; Article 8(1)(d) ICESCR.

325 ILO Convention No 154, Collective Bargaining Convention (1981).

As with all economic and social rights, States have a certain margin of appreciation in how they meet the rights guaranteed by international law. However, certain basic standards must be met in order to ensure compatibility and States remain under an obligation to work towards the progressive realisation of the highest standard of labour rights. This implies an obligation to adopt measures aimed at full employment.³²⁶ This includes a presumption against retrogressive measures which undermine rights at work.³²⁷

The right to work is not an absolute right to obtain work but a right to choose whether to accept work or not and the right to benefit from a system which guarantees access to work. The right to work also, therefore, guarantees the right not to be unjustly deprived of work.³²⁸ The ICESCR has also stated that the right to work contains a qualitative element: that the work must be able to be described as decent.³²⁹ Decent work respects the fundamental rights of the individual as well as the rights to safe working conditions and remuneration. Work must provide an income which allows the worker to support himself and his family³³⁰ and must not be forced.³³¹ Forced work is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.³³²

As with other economic, social and cultural rights, the exercise of the right to work depends on the existence of certain conditions. These are availability; accessibility; and acceptability and quality:

- *Availability*: States must have specialised services to assist and support individuals in identifying and finding available employment.
- *Accessibility*: The labour market must be open to everyone under the jurisdiction of States Parties. Accessibility has three dimensions:
 - *Non-discrimination*: The ICESCR prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality. States should pursue a national policy designed to promote equality of opportunity and treatment in relation to work which is aimed at eliminating any work-based discrimination. Most strategies to eliminate employment-related discrimination do not require many resources and can be put into

326 Article 19 CESCR General Comment No 18 'The right to work' 35th Session (24 November 2005) [E/C 12/GC/18] www.unhcr.org/refworld/publisher,CESCR,GENERAL,,4415453b4,0.html.

327 *Ibid*, Article 21.

328 *Ibid*.

329 *Ibid*, at Article 7.

330 *Ibid*, Article 7(a)(ii) ICESCR.

331 Article 8 ICCPR.

332 Article 2(1) ILO Convention No 29: Forced or Compulsory Labour (1930); ILO Convention No 105: Abolition of Forced Labour (1957).

force by adopting, modifying or abrogating legislation or disseminating information. States must protect disadvantaged and marginalised individuals and groups even during periods of severe resource constraints by adopting relatively low-cost targeted programmes;

- *Physical accessibility*: States must take down the physical barriers to employment of persons with disabilities erected by society and adopt policies promoting flexible and alternative working conditions;³³³ and
- Accessibility includes the right to seek, obtain and impart information on the means of gaining access to employment through the establishment of data networks on the employment market at the local, regional, national and international levels.
- *Acceptability and quality*: States must ensure the protection of all components of the right to work, for example, the worker's right to just and favourable conditions of work; specifically safe working conditions, the right to form trade unions and the right freely to choose and accept work.

As with all human rights, the right to work imposes three types of obligations on States: to respect, protect and fulfil. Respecting the right to work requires States to avoid interfering directly or indirectly with the enjoyment of that right. The obligation to protect requires States to take measures preventing third parties from interfering with the enjoyment of the right to work. The obligation to fulfil includes the obligations to provide, facilitate and promote the right to work. This implies that States should adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure its full realisation.³³⁴

Articles 6 and 7 ICESCR provide greater detail on the positive steps which States are required to take to fulfil the right to work. These provide helpful guidance for parliamentarians on the right, including how to facilitate access to work and to protect the rights of workers to fair treatment and conditions while at work:

- In order to facilitate the right to work, States must take a number of steps, including:
 - Provision for technical and vocational guidance and training programmes; and
 - Maintaining programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding the political and economic freedoms of people.³³⁵

333 Article 22 CESCR General comment 5 'Persons with disabilities' 11th Session (9 December 1994) [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument).

334 See above, note 326, at Article 22.

335 Article 6(2), ICESCR.

- In order to protect the rights of people at work, States must also act to ensure minimum standards, including:
 - Ensuring that workers receive remuneration which provides workers with fair wages without discrimination, in particular on the grounds of gender, and at a rate which allows workers to provide a decent living for themselves and their families;
 - Action to secure safe and healthy working conditions;
 - Steps to ensure equal opportunities for performance based progression at work, without discrimination; and
 - Protection of opportunities for leisure and rest away from work, limits on reasonable working hours and periodic holidays, together with remuneration on public holidays.³³⁶

The European Court of Human Rights case law exhibits a trend towards increasing protection for labour rights through the right to freedom of association guaranteed by Article 11 ECHR.

'The Court considers that, having regard to the developments in labour law, both international and national, and to the practice of Contracting States in such matters, the right to bargain collectively with the employer has, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the Convention, it being understood that States remain free to organise their system so as, if appropriate, to grant special status to representative trade unions [...].'

*Demir and Baykara v Turkey*³³⁷

336 *Ibid*, Article 7(a) – (d).

337 See above, note 290.

Basic right to work checklist:

- Has legislation been enacted providing for access to the labour market in general?
- What barriers exist to accessing the labour market?
- What policies are in place at national and regional levels aimed at decreasing barriers to entry to the labour market?
- What facilities exist for the disseminating of information on the labour market and access to it?
- What facilities and policies exist to ensure the access to labour market of disadvantaged groups?
- Are employers encouraged or helped to employ individuals from disadvantaged groups?
- Are there remedies in domestic law for individuals who have had their access to the labour market denied or limited in some capacity?
- Is the right to work taken into account in general social policy?
- Do national policies recognise the link between the right to education and the right to work?
- Do parliamentarians have an input into labour market policies?
- What provision does domestic law, policy and practice make for:
 - A minimum wage;
 - Equality in employment;
 - Health and safety at work; and
 - The rights of trades union and their members?

13. The right to health

The right to the highest attainable standard of health

'[T]he right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the health development of the child;
- b) The improvement of all aspects of environmental and industrial hygiene;
- c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.'

Article 12, ICESCR

The right to health is an inclusive and aspirational right and overlaps significantly with other civil and political, and economic and social rights. The right to health is essential for the protection of the right to life and the right to an adequate standard of living may undermine the right to health in practice.³³⁸

The right to health does not however guarantee the right of everyone to be healthy. By our nature, human beings can suffer from disease, illness and disability. The right to health imposes a minimum obligation on the State to recognise the right of everyone to enjoy the highest standard of health possible and an obligation of progressive realisation to continually work towards the highest possible standard of health achievable within State resources.³³⁹

338 'Jakarta Declaration on Leading Health Promotion into the 21st Century', Fourth International Conference on Health Promotion (1997).

339 Article 8 CESCR General Comment No 14 'The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)' (11 August 2000) [E/C 12/2000/4] <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>.

'Health is... "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".'

World Health Organization (WHO) Constitutional Principles (1946)

The UN Committee on Economic, Social and Cultural Rights has clarified that this right includes both entitlements to minimum standards of health and freedoms relating to healthcare choices.³⁴⁰ So, for example, the State may have a positive obligation to provide accessible, affordable healthcare services, but it is also required to refrain from interfering in an individual's decisions about their own health and to respect the right to give or refuse consent for treatment. The right to health is 'an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.'³⁴¹ In practice, this right will generally require the State to have a programme in place to secure access to primary healthcare for all, without discrimination. Additional strategies, programmes and practices will be required to monitor health and secure higher standards of health in practice; in particular, these will be necessary to meet specific public health problems, including the impact of HIV/AIDS, and to ensure that vulnerable groups of people have access to appropriate healthcare and support to meet their health needs. Some specific obligations recognised by the Committee on Economic and Social Rights, are set out below in Table 7.

340 *Ibid.*

341 *Ibid.*, Article 11.

TABLE 8: EXAMPLES OF STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE RIGHT TO HEALTH

| | Respect | Protect | Fulfil |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The right to health | <ul style="list-style-type: none"> • Refrain from limiting equal access to health services for all. • Individual health choices, including in relation to traditional preventative care, healing and palliative practices. • Refrain from use or marketing of drugs or other products which endanger health. • Refrain from the use of coercion in health services except where necessary and proportionate for the purposes of the treatment of mental health conditions and control of public health risks. • Refrain from limiting access to contraceptives or from censoring access to sexual health services, without discrimination. | <ul style="list-style-type: none"> • Legislate or take other measures to ensure equal access to health care and health care services • Ensure availability, accessibility, acceptability and quality of health services. • Regulate the marketing and provision of private health care services, medicines and medical equipment. • Regulate health care professionals to ensure that their conduct meets appropriate standards of skill, education and ethics. • Prevent traditional practices which have a negative impact on health or which may be viewed as discriminatory (for example, through female genital mutilation). • Prevent third party coercion which limits individual health choices or access to healthcare and health information. | <ul style="list-style-type: none"> • Give sufficient recognition to the right to health in national political and legal systems either through legislation or a national health policy with a detailed plan for securing the right to health. • Ensure provision of primary and preventative healthcare, including immunisation programmes. • Take positive steps to address negative impacts on public health, including by ensuring access to food and drinking water, basic sanitation and housing. • These steps should include appropriate public information campaigns on risks to health, for example, on HIV/AIDS, drugs and alcohol, cigarettes and other harmful substances. These campaigns should include positive information on healthcare, including for example, on healthy eating and exercise. • Provide accessible and quality sexual and reproductive health services. • Programmes and strategies should be introduced to address environmental and other long term threats to human health. |

The work of the UN Special Rapporteur on Health

The mandate of the UN Special Rapporteur on Health was agreed in 2002 and confirmed by the Human Rights Council in 2007. Broadly, the Special Rapporteur works to enhance the protection of the highest attainable standard of health by:

- gathering and exchanging information on the right to health;
- supporting dialogue and cooperation with all relevant actors, including governments, relevant United Nations bodies, specialised agencies and programmes, in particular the WHO and the Joint United Nations Programme on HIV/AIDS, as well as NGOs and international financial institutions;
- reporting on the status, throughout the world, of the right to health, including laws, policies, good practices and obstacles; and
- making recommendations on appropriate measures that promote and protect the right to health.³⁴²

The Special Rapporteur reports annually on the right to health. In his most recent reports, he has highlighted the following issues:

- the negative impact on the right to health of the criminalisation of same-sex conduct and sexual orientation, sex work and HIV transmission (2010);
- the right to health and the scope of the right to informed consent (2009);
- the impact of intellectual property rights in medicines on the right to health (2009);
- health systems and the right to health (2008);
- water, sanitation and the right to health (2007);
- a human rights based approach to health indicators (2006);
- the right to health and the reduction of maternal mortality (2006);
- mental disability and the right to health (2005);
- the right to sexual and reproductive health (2004);
- health and the millennium development goals (2004); and
- right to health indicators (2004).³⁴³

342 Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health www2.ohchr.org/english/issues/health/right/index.htm.

343 *Ibid*, Annual Reports. Available at: www2.ohchr.org/english/issues/health/right/annual.htm.

The Special Rapporteur has conducted missions to numerous countries, including Uganda (2007),³⁴⁴ Lebanon (2006)³⁴⁵ and Mozambique (2005).³⁴⁶ In each of his reports, he makes recommendations to States designed to better protect the right to health in practice. These recommendations may assist national parliaments and parliamentarians in their decisions around health planning and protection.

Case study: Right to health in Uganda

In 2009, the Social Services Committee of the Ugandan Parliament refused to pass the Supplementary Budget of the Ministry of Health, explaining that inadequate provision had been made to support maternal health care in Uganda. The Supplementary Budget was subsequently revised and passed with additional provision for maternal services.

-
- 344 UNCHR 'Missions to the World Bank and the International Monetary Fund in Washington DC (20 October 2006) and Uganda (4–7 February 2007) (5 March 2008) UN Doc A/HRC/7/11/Add 2 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/114/25/PDF/G0811425.pdf?OpenElement>.
- 345 UNCHR 'Report of the Special Rapporteur... Mission to Lebanon and Israel' (2 October 2006) UN Doc A/HRC/2/7 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/141/95/PDF/G0614195.pdf?OpenElement>.
- 346 UNCHR 'Report of the Special Rapporteur... Mission to Mozambique' (4 January 2005) UN Doc E/CN.4/2005/51/Add 2 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/101/64/PDF/G0510164.pdf?OpenElement>.

Basic right to health checklist:

- Has legislation been enacted providing for access to healthcare in general?
- Does domestic law, policies and practice secure access to primary healthcare for all without discrimination?
- Is there a national public health strategy and a plan of action for implementing that strategy?
- What practical barriers exist to limit access to healthcare?
- Does the government monitor the health of the people, including their ability to access healthcare?
- Do effective national health indicators, benchmarks and monitoring mechanisms exist?
- Do specific policies and programmes exist to effectively protect the health of particularly vulnerable groups, including (i) women's access to maternal health services and family planning; (ii) children's health services; (iii) disabled people; and (iv) people living with HIV/AIDS?
- Do parliamentarians have an active input into health policy?
- When did parliamentarians last debate the right to health?
- Who controls the budget for health policies and programmes?
- Are adequate funds available for health policies and programmes, including programmes targeting education and preventative healthcare?
- Are there remedies in domestic law for individuals who have had their access to healthcare denied or limited in some capacity?

Table/case study footnotes (pp 56, 63 and 109)

- xiv Article 6 ICCPR; Article 15 Constitution of Georgia of 1995; Article 22 Constitution of Uganda of 1995; and Article 27 Constitution of Ukraine of 1996. The Lebanese Constitution of 1926, as amended, does not specifically provide the right to life but the Preamble to the Constitution incorporates the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly on 10 December 1948, General Assembly resolution 217 A (III) (UDHR) which provides the right to life at Article 3. Articles 40 and 17(2) Constitution of the Republic of Mozambique of 1990, the latter of which, incorporates the African Charter on Human and Peoples Rights, adopted by the 18th Assembly of Heads of State and Government in June 1981 (ACHPR) which provides for the right to life at Article 4.
- xv Article 11(1) ICESCR; Article 31 Constitution of Georgia; Article 25(1) UDHR for Lebanon; Article 11(c) Constitution of Mozambique; and Article 48 Constitution of Ukraine.
- xvi Article 7 ICCPR; Article 17(2) Constitution of Georgia; Article 5 UDHR for Lebanon; Article 40(1) Constitution of Mozambique and Article 5 ACHPR; Article 24 Constitution of Uganda; and Article 28 Constitution of Ukraine.
- xvii Article 11(1) ICESCR; Article 25(1) UDHR for Lebanon; and Articles 47 and 48 Constitution of Ukraine.
- xviii Article 8 ICCPR; Article 34(1) Constitution of Georgia; Article 4 UDHR for Lebanon; Article 84(3) Constitution of Mozambique and Article 5 ACHPR; Article 25 Constitution of Uganda; and Article 43 Constitution of Ukraine.

- xix Article 12 ICESCR; Article 37 Constitution of Georgia; Article 22 UDHR for Lebanon; Article 89 Constitution of Mozambique and Article 16 ACHPR; Objective XIV Constitution of Uganda; and Article 49 Constitution of Ukraine.
- xx Article 9 ICCPR; Article 18 Constitution of Georgia; Article 8 Constitution of Lebanon and Articles 3 and 9 UDHR; Articles 59(1) and 66 Constitution of Mozambique and Article 6 ACHPR; Article 23 Constitution of Uganda; and Article 29 Constitution of Ukraine.
- xxi Article 13 ICESCR; Article 35 Constitution of Georgia; Article 10 Constitution of Lebanon and Article 26 UDHR; Article 88 Constitution of Mozambique and Article 17(1) ACHPR; Article 30 Constitution of Uganda; and Article 53 Constitution of Ukraine.
- xxii Article 14(1) ICCPR; Article 14 Constitution of Georgia; Article 7 Constitution of Lebanon and Article 7 UDHR; Article 35 Constitution of Mozambique and Article 3 ACHPR; Article 21(1) Constitution of Uganda; and Article 24 Constitution of Ukraine.
- xxiii Article 26 ICCPR; Articles 14 and 38(1) Constitution of Georgia; Preamble C and Article 7 Constitution of Lebanon and Articles 2 and 7 UDHR; Article 35 Constitution of Mozambique and Article 2 ACHPR; Article 21(2) Constitution of Uganda; and Article 26 Constitution of Ukraine.
- xxiv Article 11(2) ICESCR; Article 25(1) UDHR for Lebanon; and Article 48 Constitution of Ukraine.
- xxv Article 14 ICCPR; Articles 40, 41 and 42 Constitution of Georgia; Articles 10 and 11(1) UDHR for Lebanon; Articles 59(2), 59(3), 62, 64(3) and 65 Constitution of Mozambique and Articles 7(1) and 26 ACHPR; Article 23(3), 23(6) and 28 Constitution of Uganda; and Articles 59, 61, 62, and 63 Constitution of Ukraine.
- xxvi Article 15(1)(a) ICESCR; Article 34 Constitution of Georgia; Article 27(1) UDHR for Lebanon; and Article 94(1) Constitution of Mozambique and Article 17(2) ACHPR.
- xxvii Article 15 ICCPR; Article 42(5) Constitution of Georgia; Article 11(2) UDHR for Lebanon; Articles 57 and 60 Constitution of Mozambique and Article 7(2) ACHPR; Articles 28(7) and 28(8) Constitution of Uganda; and Article 58 Constitution of Ukraine.
- xxviii Article 9 ICESCR; Article 25(1) UDHR for Lebanon; and Article 46 Constitution of Ukraine.
- xxix Article 17 ICCPR; Article 20 Constitution of Georgia; Article 14 Constitution of Lebanon and Article 12 UDHR; Articles 41 and 68 Constitution of Mozambique; Article 27 Constitution of Uganda; and Articles 30, 31 and 32 Constitution of Ukraine.
- xxx Article 7 ICESCR; Article 30(4) Constitution of Georgia; Articles 23(2), 23(3) and 24 UDHR for Lebanon; Article 85 Constitution of Mozambique and Article 15 ACHPR; Article 40(1) Constitution of Uganda; and Articles 43 and 45 Constitution of Ukraine.
- xxxi Article 8(1)(d) ICESCR; Article 33 Constitution of Georgia; Article 87 Constitution of Mozambique; and Article 44 Constitution of Ukraine.
- xxxii Article 10 ICESCR; Article 36(3) Constitution of Georgia; Article 25(2) UDHR for Lebanon; Article 18 ACHPR for Mozambique; Article 40(4) Constitution of Uganda; Articles 51 and 52 Constitution of Ukraine.
- xxxiii Article 10(3) ICESCR; Article 34(4) Constitution of Uganda; Articles 43 and 52 Constitution of Ukraine.
- xxxiv Article 18 ICCPR; Article 19 Constitution of Georgia; Preamble C and Article 9 Constitution of Lebanon and Article 18 UDHR; Article 54 Constitution of Mozambique and Article 8 ACHPR; Articles 29(1)(b) and 29(1)(c) Constitution of Uganda; and Articles 34 and 35 Constitution of Ukraine.
- xxxv Articles 19(2), 21 and 22(1) ICCPR; Article 24, 25 and 26 Constitution of Georgia; Article 13 Constitution of Lebanon and Articles 19 and 20 UDHR; Articles 48, 51 and 52 Constitution of Mozambique and Articles 9(2), 10 and 11 ACHPR; Articles 29(1)(a), 29(1)(d) and 29(1)(e) Constitution of Uganda; and Articles 34, 35, 36 and 39 Constitution of Ukraine.
- xxxvi Article 23(2) ICCPR; Article 36 Constitution of Georgia; Article 16 UDHR for Lebanon; Article 31 Constitution of Uganda; and Article 51 Constitution of Ukraine.
- xxxvii Article 25 ICCPR; Article 28 Constitution of Georgia; Article 21 Constitution of Lebanon and Article 21 UDHR; Article 73 Constitution of Mozambique and Articles 13(1) and 19 ACHPR; Articles 38 and 59 Constitution of Uganda; and Article 38 Constitution of Ukraine.
- xxxviii Article 2(3) ICCPR; Article 42(1) Constitution of Georgia; Article 8 UDHR for Lebanon; Article 58 Constitution of Mozambique and Article 26 ACHPR; Article 50 Constitution of Uganda; and Articles 55 and 56 Constitution of Ukraine.
- xxxix See note 99, Article 4(2).
- xl *Ibid*, Article 7.
- xli *Ibid*, Article 6(1).
- xlii *Ibid*, Article 6(2).
- xliii *Ibid*, Article 19(2).
- xliv *Ibid*, Article 19(3).
- xlv *Ibid*, Articles 8(1) and 8(2).

- xlvi *Ibid*, Article 9(1).
- xlvii *Ibid*, Article 21.
- xlviii Committee Against Torture 'Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention, Conclusions and Recommendations of the Committee against Torture, Ukraine' (3 August 2007) [CAT/C/UKR/CO/5] www.adh-geneva.ch/RULAC/pdf_state/G0743365.pdf.
- xlix CAT/C/UKR/Q/5/Rev 1/Add 1 www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.UKR.CO.5.Add.1.pdf.

PART III

This section explores tools, techniques and powers parliamentarians can use to protect, promote and fulfil human rights. It includes guidance for parliamentary staff on effective support for parliamentarians acting as human rights defenders. Global case studies and examples highlight successful strategies to focus greater attention on parliamentary activity to protect individual rights.

1. Parliaments and human rights

Parliamentarians will regularly face human rights issues in their work as representatives of the people and legislators, and in their oversight of government. It is important to acknowledge that structural and operational issues which arise in the running of a parliament can support or undermine the ability of parliamentarians to promote and protect the fundamental rights guaranteed by the national constitution.

Parliaments that represent us all

Parliaments should reflect the national population that they are created to represent. Increasingly national parliaments are taking steps to ensure diversity in their composition, including equal opportunities for women, ethnic minorities, disabled people and those from different political and religious groups. These steps can include the introduction of new measures to make political life more attractive to those groups (for example, the introduction of more predictable working hours) and legislation designed to enable individual parties to promote underrepresented groups in their candidates for election.

Diversity in parliament: UK case study

In 2010, the Speaker's Conference of the UK Parliament published its report on parliamentary representation. Speaker's Conferences are rare. They are Committees of parliamentarians established by the Speaker of the House of Commons in order to consider broad issues of topical concern. This Conference was asked to consider how to better ensure engagement with parliament through increasing its representativeness. The Conference considered representation of women, people from minority groups and disabled people, and it made a number of recommendations for reform.³⁴⁷

347 Final Report from the Speaker's Conference (on Parliamentary Representation) HC (2010) www.publications.parliament.uk/pa/spconf/239/239i.pdf.

Diversity in parliament: Uganda

In Uganda, the Constitution provides that there will be at least one female representative for each district. Uganda has also introduced quotas for persons with disabilities and youth representatives.

Women in parliament: Lebanon

Lebanon reviewed its electoral law ahead of the 2009 parliamentary elections. Among the recommendations of the National Electoral Commission was the introduction of a 30 per cent women quota on electoral lists. The electoral law that was ultimately ratified by the parliament overlooked this recommendation, and the proposal was subsequently dropped.³⁴⁸

In the June 2009 parliamentary elections, 12 women ran for office and four were elected out of 128 seats. Since universal suffrage, only 17 women have ever served in Lebanon's Parliament.³⁴⁹

In 2010, responding to the Universal Periodic Review, the Lebanese Government accepted that further work was needed to 'establish laws and cultivate processes and institutions to protect women's rights, foster women's political participation, and ensure equitable representation of their interests and concerns'.³⁵⁰

348 Arab Parliamentary Bulletin (March 2010) www.arabparliaments.org/publications/newsletter/2010/issue5-e.pdf.

349 Human Rights Watch: 'A Woman's Place, in Lebanon' (July 2009) www.hrw.org/en/news/2009/07/02/womans-place-lebanon.

350 United Nations General Assembly, Human Rights Council Working Group on the Universal Periodic Review, (1-12 November 2010) 9th session, Geneva, 'Draft report of the Working Group on the Universal Periodic Review, Lebanon' http://lib.ohchr.org/HRBodies/UPR/Documents/session9/LB/A_HRC_WG.6_9_L.16_Lebanon.pdf.

Women in parliament: Ukraine

The Law on ensuring equal rights and possibilities for men and women passed in 2005 provides for equal opportunities for men and women during the election process, by encouraging political parties to include female candidates in their election lists. In 2010, 7.5 per cent of Ukrainian members of parliament were women.

A 2004 draft law on introducing quotas for women in parliament was not supported by the parliament. In 2010, the UN encouraged Ukraine to amend legislation in order to establish quotas for female candidates who participate in the election process. Public discussion about how best to secure the representation of women in parliament is ongoing.

Women in parliament: UK

In 2010, the Speaker's Conference reported that with women making up only 19.5 per cent of all members of parliament, the UK Parliament was 69th in the IPU's league table for the representation of women. This compared unfavourably with the best performing nations, notably Rwanda (56.3 per cent) and Sweden (47 per cent).

The Conference reported that the UK does not operate a system of quotas, but permits individual parties to operate 'all-women shortlists' for selection for elections. Evidence provided to the Conference reported that the quota system was particularly effective for securing greater diversity in parliaments, but that the system of 'all-women shortlists' had significantly increased representation. A number of witnesses raised principled objections to quota systems and argued that other methods of increasing diversity were more appropriate. The Conference called on individual parties to take more aggressive action to promote equality, but did not support the immediate introduction of a compulsory quota system. It concluded that if significant progress was not made in the 2010 elections, parliament should give serious consideration to the introduction of a quota based system to increase the representation of both women and ethnic minorities.³⁵¹

Although record numbers of women were elected at the 2010 election, the percentage of women in the UK Parliament remains comparatively low (21 per cent).

351 'Report of the Speaker's Conference on Diversity', Session 2009-10, paragraph 146
www.publications.parliament.uk/pa/spconf/239/239i.pdf.

Parliamentarians and freedom of expression

Parliamentarians can only fulfil their constitutional functions if their right to freedom of expression is guaranteed. Without the power to speak out on behalf of their constituents or to openly criticise the government, a member of parliament's work would be seriously curtailed. International human rights law gives special recognition to political speech and, in particular, the rights of parliamentarians to engage in parliamentary debate without impediment or fear of reprisal. This special degree of protection is often reflected in national laws and constitutions which may provide for special parliamentary privileges or immunities for members in connection with their parliamentary duties. The scope of parliamentary privilege varies from State to State.

Case study: *A v UK*³⁵²

Mrs A was prevented from suing her MP for libel after he referred to her behaviour during a debate on the floor of the House of Commons, due to parliamentary privilege. The European Court of Human Rights dismissed her claim that the operation of parliamentary privilege in this case breached her right to a fair hearing and her right to respect for private life. The Court explained that parliamentary speech attracted particular protection for the purposes of Article 10 ECHR but stressed that parliamentary privilege could not be unlimited.

Parliaments and corruption

'Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish.'

Kofi Annan, Foreword, *UN Convention against Corruption* (2004)

The international community is increasingly aware of the serious impact which corruption has on democracy, development and the protection of individual rights. Measures including the OECD Convention on Combating

352 *A v UK*, (App No 35373/p7) ECHR 17 December 2002.

Bribery of Foreign Officials³⁵³ and the UN Convention against Corruption³⁵⁴ set obligations on States to eradicate corruption at home and abroad, in order to ensure that governments everywhere work to promote the rights of their people and public duties are not undermined by private financial interests.

UN Convention against Corruption: key obligations

Prevention

An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards against corruption.

Criminalisation

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law.

International cooperation

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court.

353 Organization for Economic Co-operation and Development (OECD) homepage http://www.oecd.org/home/0,2987,en_2649_201185_1_1_1_1_1,00.html.

354 United Nations Office on Drugs and Crime 'Background of the United Nations Convention Against Corruption' www.unodc.org/unodc/en/treaties/CAC/index.html.

Asset-recovery

Asset-recovery is stated explicitly as a fundamental principle of the Convention. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the State requesting it. In the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting State. In all other cases, priority consideration would be given to the return of confiscated property to the requesting State, to the return of such property to the prior legitimate owners or to compensation of the victims.

Implementing the UN Convention against Corruption: Ukraine

Ukraine signed the UN Convention against Corruption in December 2005 and ratified it in October 2006. The UN Convention against Corruption has not entered into force yet in Ukraine, as the Law on Ratification requires that appropriate implementing legislation must be adopted. The appropriate legislation was passed by the parliament in June 2009, but was not due to enter into the force until December 2010. In the interim, this legislation was replaced by a new draft law on corruption, which is currently progressing through the Verkhovna Rada.

The Bill includes a number of new provisions. These include a definition of the conflict of interest and the regulation of gifts to public servants. The draft deals with a recent decision of the Constitutional Court of Ukraine and regulates the ability of public servants to engage in the academic and research work. However, the new draft Bill has been subject to some criticism. It does not provide for criminal liability of legal persons. The draft does not require the declaration of assets by close relatives of the public servants, as this provision has been recognised as unconstitutional by the recent decision of the Constitutional Court of Ukraine.

Recent draft laws on conflict of interest and financial disclosure have also been developed and registered at the parliament. These laws received support from the OECD and Council of Europe experts and will help Ukraine to fulfil its obligations under the UN Convention against Corruption. They have not yet been implemented.

Parliamentary resources

In order to perform their functions effectively, parliamentarians are assumed to understand their national constitutions and the international obligations of their State.

This is a big assumption when we acknowledge that parliaments will ideally be composed of a range of people with a variety of backgrounds and interests. Equally, parliamentarians have a number of roles and responsibilities which place heavy demands on their time. Resources for support vary from State to State. However, without adequate resources for parliamentary support, the function of the institution and its individual members may be undermined. In order to understand and grapple with human rights issues, parliamentarians must have access to specialist support and advice, including legal advice, where needed. Adequate research capacity must be supported by easy access to relevant materials, including information on the internet.

Parliamentarians as human rights defenders

The work of Parliamentarians acting as human rights defenders broadly follows the categories of work of parliaments across the world: (i) legislating; (ii) scrutinising government; and (iii) promoting the interests of their constituents (in this case, promoting greater respect for individual rights). This work can be broken into a number of broad stands and activities, some of which are considered in more detail below.

The role of parliamentarians in the protection and promotion of human rights: guidance of the Inter-Parliamentary Union

The IPU handbook on Human Rights for Parliamentarians identifies a number of tasks for parliamentarians engaged in the protection of international human rights standards at home.

- Ratifying human rights treaties.
- Ensuring national implementation of international standards, including:
 - Adopting a budget and ensuring that sufficient funds are provided for human rights implementation;
 - Overseeing the executive branch, subjecting the policies and acts of the executive to scrutiny for compliance with international standards;
 - Following up on recommendations and decisions of UN treaty-monitoring bodies and special procedures;
 - Establishing parliamentary human rights bodies, including committees and ombudsmen; and
 - Adopting enabling legislation to give better effect to international standards in domestic law.
- Creating and supporting a domestic institutional infrastructure for the protection of human rights, including the establishment of an effective national human rights institution and the adoption of a national human rights action plan.
- Mobilising public opinion on important human rights issues through education and promotion activities, including through work with civil society, academia and NGOs.
- Participating in international efforts to improve international protection of human rights and support the work of international human rights bodies.

The working practices of the JCHR

The JCHR in the UK Parliament splits its work into a number of broad strands:

Legislative scrutiny

The JCHR scrutinises every government bill presented to parliament for its compatibility with the human rights obligations of the UK.

Monitoring the government's response to adverse human rights judgments

It monitors the government's response to every adverse judgment of domestic courts and the European Court of Human Rights which identifies that changes to domestic law or practice are necessary to remedy a breach of individual rights and to prevent future violations.

Monitoring the UK's compliance with the international human rights framework

In the past, the Committee has examined the UK's ratification status for a range of international human rights instruments (including the progress of the UK towards ratification of the UNCRPD) and the steps taken by government to meet the criticisms of UN monitoring bodies in their concluding observations on UK compliance with UN human rights standards.

Undertaking thematic or topical inquiries

The Committee regularly undertakes thematic or topical inquiries designed to investigate specific human rights issues in a timely and effective way. Topics previously investigated have included human rights in the private sector; the protection of children's rights; the treatment of asylum seekers; and policing and protest in the UK.³⁵⁵

355 23rd Report from the JCHR, Session 2005-06 (4 August 2006) www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/239/23902.htm, and 2nd Report from the JCHR, Session 2009-10 (15 January 2010) www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/20/2002.htm.

Human rights standards and standard setting

In our introduction to human rights standards, we explained that the first role for parliamentarians seeking to uphold human rights would be to understand the requirements of domestic and international human rights law. While the domestic constitutional position may be clear, parliamentarians may wish to consider the wider human rights framework of obligations which apply in their country. Has the State ratified all of the relevant international human rights standards?

Review of treaty ratifications: Uganda

In July 2009, a Ugandan MP, during oral questions, asked the Minister of Justice and Constitutional affairs to justify why Uganda had not signed the African Charter on Democracy, Elections and Governance. He used this opportunity to urge the government to sign and ratify the treaty with a view to integrating its principles of good governance into Ugandan law, policy and practice prior to the 2011 elections in Uganda.

Parliaments may wish to review existing legislation to examine whether legislative changes are needed to protect individual rights in practice. This review could uncover legislation which appears incompatible with international or domestic human rights standards or could identify gaps in existing legislation where specific protection could enhance respect for human rights in the law.

Members can also play a key role in examining whether domestic constitutional rights implement the State's international human rights obligations effectively. This may include recommending changes to existing constitutional guarantees or reinterpretation to ensure compliance in practice. Members of parliament can play an important part in promoting the recognition of fundamental human rights standards across the State and within public authorities.

The role of the JCHR in monitoring the institutional and constitutional machinery for the protection of human rights at home

'The committee has sought to ensure ongoing parliamentary involvement in the monitoring of the institutional machinery for the protection and fulfilment of human rights. It has examined and reported to Parliament on, for example, the case for a Human Rights Commission and for Children's Commissioners, the need for a human rights commission to be independent of Government and accountable to Parliament, and has also continued to monitor the work of these important national human rights institutions. It has kept the operation of the Human Rights act itself under careful review, reporting on the Government's Review of the Human Rights act, and seeking to uphold the intention of Parliament which enacted the HRA, that its protections should apply to private providers of public services, in the face of judicial emasculatation of that intention. The Committee's work on whether there should be a UK Bill of Rights can also be seen as part of this longstanding attempt to involve Parliament in debates about what institutional machinery best protects human rights. In all of this work, a central theme of the JCHR's reports has been ensuring that parliament is at the heart of those institutional arrangements, and exploring practical ways of enhancing Parliament's role in relation to human rights'

Murray Hunt, Legal Adviser to the JCHR, *The Impact of the Human Rights Act on the Legislature: A Diminution of Democracy or a New Voice for Parliament?* [2010] EHRLR, Special Human Rights Act Issue

Legislative scrutiny

For most parliaments and parliamentarians, their principle role is as legislators. For example, the work of the Verkhovna Rada in Ukraine is dominated by the legislative process, where thousands of pieces of legislation are considered each year.

Many constitutions which give entrenched protection to human rights recognise that legislation which breaches those rights may subsequently be struck down by the courts. In other countries, parliaments retain the sovereignty to legislate without subsequent supervision for compliance with international or domestic human rights law.

In either scenario, parliamentarians conducting legislative scrutiny can significantly enhance the protection of individual rights. In the first, early scrutiny of draft laws for human rights compliance can avoid later violations of rights, litigation and the associated cost. In parliaments with entrenched bills of rights, legislators are often bound to act in a manner which is

compatible with the fundamental rights guaranteed by the constitution. In the latter model, based on parliamentary sovereignty, pre-legislative scrutiny has equal, if not greater, importance. Once in force, legislation cannot be overturned by any judicial authority. While sovereignty remains with parliament, parliament may assume a greater responsibility for ensuring that domestic litigation meets the standards required by international human rights law.

Legislative scrutiny by the JCHR

The JCHR conducts legislative scrutiny of every government bill presented to parliament. It prioritises bills as these are most likely to become law. It aims to report before the final stages of debate on the bill in the first House (the UK has a bicameral parliament) in order to allow members in both Houses to engage in an informed debate on the human rights impact of proposed legislation. Committee reports on legislation are published and available to members of parliament and the public. The government will usually respond to Committee conclusions and recommendations during the progress of debates on the bill. JCHR recommendations can include criticism of a bill, highlighting risks that the bill may breach individual rights; proposed amendments to remove this risk; or praise for measures which will have a human rights enhancing effect.

The JCHR is supported by two legal advisers. At the first stage of legislative scrutiny, they will advise the JCHR of any significant human rights issues arising in connection with the bill. In order to set priorities in their work, the Committee members and staff apply a significance threshold to their analysis of the human rights compatibility of legislation. The JCHR reports only on issues which pass this significance threshold. Important factors considered include: (i) the number and type of rights affected by the proposal; (ii) the number of people affected; (iii) whether any of the people affected are vulnerable; and (iv) whether the issue concerned falls into a pattern of incompatibility which is repeatedly adopted by the State.

After considering the advice of the legal adviser, the Chair will write to the government to ask for any further information considered necessary. On receiving the government's response, the Committee will consider a draft report on the bill, including conclusions and recommendations on the compatibility of the legislation. These reports inform parliamentary debate and may recommend amendments to legislation which can be proposed by members of the Committee or other parliamentarians.

Models for legislative scrutiny will vary from parliament to parliament, depending on its procedures and practices. Effective human rights scrutiny will vary from State to State and it will be key for parliamentarians seeking to influence local debates on human rights issues to understand how best to use local processes to raise awareness of human rights and secure change where necessary. So, for example, in the UK, the JCHR aims to report on every government bill before it leaves the first House of its bicameral parliament. This means that the JCHR expresses an opinion on every piece of legislation likely to become law in time for members in both Houses of Parliament to recommend amendments to the bill to remove any potential threats to human rights or to introduce any human rights enhancing measures which may be necessary. A timely response may require different degrees of expediency according to the parliamentary timetable in other States.

Legislative scrutiny: amending the Georgian Law on Basic Education

In July 2010, the Georgian Government proposed to amend the Law on Basic Education to provide for school guards within all Georgian public schools. School guards would be granted wide-ranging police powers on school premises including the power to conduct full searches of students, teachers or any other person and the power to use force against individuals for the purposes of protecting the life and health of any persons, including school guards. The proposals were widely criticised in the Georgian media and by national NGOs on the basis that it contained inadequate safeguards for the protection of students and teachers' rights to respect for private life, including the right to respect for physical integrity. Notably, the Georgian Constitution provides that compulsory searches without consent can only be conducted subject to judicial supervision (Article 20(2)). The Legal Issues Committee of the Georgian Parliament considered these criticisms and amended the Bill to introduce new safeguards into the Bill, including limiting the power to search to a 'frisk' power (search over the clothes) and then only with the permission and supervision of the school director. The Committee committed to review the issue of the use of force by school guards during the next Parliamentary session.

STATEMENTS OF COMPATIBILITY AND OTHER FEATURES OF LEGISLATIVE SCRUTINY

A number of States have specific triggers for scrutiny of legislation to avoid incompatibility with domestic and international human rights obligations. Some States undertake scrutiny to avoid the gaze of constitutional courts. Other States make express provision for the government to certify that any law it introduces to parliament complies with international and domestic human rights standards. For example, in the UK, the HRA 1998 provides that for every government bill, the minister responsible must certify that the bill is compatible with the Convention rights guaranteed by the HRA 1998. The JCHR has used these 'statements of compatibility' as the starting point for their scrutiny of government legislation, persuading government that these statements should logically be accompanied by the government's reasons for certification (which are now contained in either the explanatory notes accompanying a bill or in a free-standing government human rights memoranda).

SAMPLE STATEMENT OF COMPATIBILITY

Identity Documents Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 19—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Neville-Jones has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Identity Documents Bill are compatible with the Convention rights.

HL Bill 19

55/1

The UK model follows similar practice in New Zealand, where their Bill of Rights Act 1990 requires the Attorney General to publish a statement in relation to any bill which they consider poses a risk of incompatibility with the rights protected by the Act.³⁵⁶ This type of model for 'notification' of human rights risks to parliament is not limited to those States where

³⁵⁶ Section 7 of the New Zealand Bill of Rights Act 1990.

the courts play a more limited role in relation to the protection of human rights. In Canada, the Canadian Charter of Rights permits the Canadian courts to set aside legislation which is incompatible with the constitutional rights guaranteed in the Charter. However, it also permits parliament to pass legislation which may be unconstitutional, despite the opinion of the courts. In these cases, bills must be accompanied by a statement that 'notwithstanding' any violation of the Charter, the government proposes the legislation to parliament to pass.³⁵⁷

Many countries conduct scrutiny of legislation for human rights compatibility without any such 'advance warning system' of the government's views on compatibility. Bills which pose a significant risk to individual rights will often deal with matters of public and political controversy and will be subject to criticism in the press and civil society. In these circumstances, the government (or any member proposing the legislation) may be called on to provide the information which would accompany a certificate of incompatibility during the course of debate in any event.

The Australian experience: legislating for human rights scrutiny of legislation

In 2010, the Australian Government proposed a new federal Human Rights (Parliamentary Scrutiny) Bill designed to create a new Joint Committee on Human Rights for the federal parliament. The Bill proposed that the Committee would be required to report on the compatibility of every bill introduced by the Australian Government with each of the international human rights treaties ratified by Australia. The government would be required to certify whether a bill was compatible with those obligations or not.³⁵⁸

The Committee would be capable of conducting thematic inquiries on human rights issues, but only at the invitation of the Australian Government. In January 2011, the Senate Legal and Constitutional Affairs Committee reported on the Bill and recommended that the remit of the Committee be broadened to ensure its effectiveness. This included permitting it to report on any matters in connection with its function referred to it by parliament.

357 Section 33 of the Canadian Charter of Rights and Freedom, 1982.

358 Human Rights (Parliamentary Scrutiny) Bill 2010 and Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010, Parliament of Australia, Senate (28 January 2010) www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills_43/report/index.htm.

Legislative scrutiny in Ukraine: working together with government

The scrutiny of draft legislation in Ukraine for compliance with international human rights standards is achieved through a number of mechanisms:

- The Committee on Human Rights and National Minorities of the Verkhovna Rada is responsible for drafting, analysis and control over draft legislation for the implementation of the basic human rights laws.
- In addition, the main analytical department of the parliament is required to provide analysis of all draft legislation including their opinion on the compatibility of the legislation with international human rights obligations.
- The government agent on the European Convention on Human Rights at the Ministry of Justice also provides an expert opinion on the compatibility of draft legislation with human rights standards in the ECHR and other Council of Europe human rights standards.

Although both the main analytical department of the Parliament of Ukraine and the Committee on Human Rights and National Minorities may base their recommendations on the opinion provided by the government agent, they also have access to expert advice from legal staff within the parliament.

Key goals of legislative scrutiny

- Ensuring legislation is compatible with the international human rights obligations of the State;
- Allowing parliaments to actively debate human rights issues before they become human rights violations;
- Avoiding violations of individual rights and associated litigation costs;
- Ensuring a key role for the democratically elected arm of government in the implementation of domestic human rights protection.

Some features of legislative scrutiny

- *Speed*: Scrutiny must be integrated into the domestic legislative procedure in order to allow the work of the relevant scrutiny bodies to influence the passage of the relevant legislation. So, for example, the JCHR is not a legislative Committee and cannot slow the progress of legislation, so with this in mind, it always aims to report on the human rights implications of a bill before the last stage when it can be amended in the first House it is presented to.
- *Accuracy and independence*: Legislative scrutiny will often require a clear picture of the government's view on the legality of the legislation and its compatibility with domestic and international human rights standards. However, scrutiny will be at its most effective when parliamentarians are able to call on quality legal advice independent of government. Different parliaments adopt different models. For example, the JCHR has its own dedicated legal advisers. By way of contrast, the Georgian Committee on Human Rights and Civil Integration is capable of calling on an expert panel of advisors on an ad hoc basis. Similarly, most parliamentary committees have the power to ask NGOs, academics and legal professionals for evidence or ad hoc advice on the human rights implications of individual proposals.
- *Accessibility*: Although human rights analysis of legislation may present complex legal problems, it is important that any parliamentary scrutiny is practical, focused and accessible to members of parliament and the public.
- *Practicality*: If human rights problems are clear, where possible legislative scrutiny should propose practical solutions. Is the proposal so offensive that it should never pass? Are additional safeguards needed and if so, what should they look like? What amendments to the bill are required?
- *Follow-up*: Amendments to bills can create new human rights problems – or solutions – during their passage through the legislative process. Parliamentarians should be alive to the possibility that a bill which appears compatible may be completely altered by a late amendment.
- *Post-legislative scrutiny*? The language of a bill may appear consistent with domestic and international human rights standards. However, in many cases where bills create powers or duties which incorporate a broad discretion for public authorities or bodies, the real human rights impact will only become clear after the legislation is implemented. In these circumstances, parliamentarians may wish to commit to follow-up post-legislative scrutiny.

Oversight of government

EXECUTIVE AND ADMINISTRATIVE ACTIVITY

The international human rights framework provides a tool against which parliamentarians can assess executive and administrative action. Programmes, practices, policies and other activities routinely have an impact on individual rights. Parliamentary powers and tools can be used to scrutinise whether these activities meet domestic constitutional standards and the human rights obligations of the State. Inquiries at a strategic level remove the onus from individual victims of human rights abuse to highlight poor practice and violations of individual rights in State practice. In countries where the resources of the courts are limited and where individual access to justice is slow, expensive or otherwise impaired, parliaments can perform an important preventative role, challenging government to proactively design their practices to protect and promote fundamental human rights standards.

Scrutiny of human rights standards in practice: Uganda

In November 2009, a member of the Ugandan Parliament became concerned about the conduct of medical personnel at the Mulago Hospital. He was particularly concerned about poor conditions and falling standards of treatment at Mulago, the national referral hospital. He raised this issue during questions to the Minister of Health and asked for more information on the government's plans to train staff, to refurbish and better equip the hospital in order to raise standards. The government has since committed resources to improve services at the hospital in order to ensure better access to quality healthcare for ordinary Ugandans.

EFFECTIVE PROTECTION OF HUMAN RIGHTS BY EXECUTIVE AND ADMINISTRATIVE BODIES

Where specific executive or administrative bodies perform functions with specific human rights implications, the impetus for parliamentary oversight becomes ever greater. So, for example, oversight of the performance of prisons and bodies exercising police powers for compliance with domestic and international human rights standards could serve to highlight the risk of torture, inhuman and degrading treatment or violations of the right to liberty.

The creation of effective oversight and inspection mechanisms for these bodies could provide a more effective, specialist monitoring mechanism than ongoing parliamentary scrutiny. So for example in the UK, the JCHR monitors the work of the HMIP closely. HMIP is an independent body created for the purposes of inspecting and reporting on prison conditions. It coordinates the national preventative mechanism established under OPCAT. While parliamentary scrutiny serves to promote the effectiveness of the work of HMIP, scrutiny can also be supportive, ensuring that HMIP has the appropriate powers and resources to meet its functions. In the past, for example, the JCHR criticised proposals to amalgamate HMIP with other bodies to create a single inspectorate with numerous powers of inspection. The JCHR and others raised concerns that this change would endanger the ability of HMIP to function with independence. The proposals were dropped.³⁵⁹

359 10th Report of Session 2005-06, Legislative Scrutiny, HL 186/ HC 1138, paragraph 1.57, Appendix 1(a).

UK case study: thematic inquiries – deaths in custody

The JCHR conducted a major, wide-ranging thematic inquiry on the issue of deaths in custody, focusing on the right to life as guaranteed by Article 2 ECHR:

'When the state takes away the liberty of an individual and places him or her in custody, it assumes full responsibility for protecting that person's human rights – the most fundamental of which is the right to life. This right, and other human rights which protect people detained by the State, now form part of our law under the Human Rights Act 1998. Yet at a time when we have finally abolished the death penalty in the United Kingdom and few of our prisoners serve whole-life sentences, too many still die in custody. Some of these die, of course, from natural causes. A few are killed by fellow inmates. Others die as a result of actions of officers of the state, often without charges being brought or an effective remedy being made available to family and friends. Most deaths are "self-inflicted", with yet more people in custody, especially women, inflicting upon themselves life-threatening injuries, but surviving. Each and every death in state custody is a death too many, regardless of the circumstances of the person who dies.'³⁶⁰

One of the central recommendations of this inquiry was that the government establish a cross-government body that would have the power to study deaths in custody and disseminate good practice and make recommendations to central government for changes to law and practice. It was essential that this body was not to be 'just another talking shop'.³⁶¹ Following this recommendation, the government established the Forum on Deaths in Custody. This brought together a number of stakeholders, including the Independent Police Complaints Commission, the prison service, prisoners groups, academics and civil society. A member of the JCHR sat on the Forum as an observer. It was designed to disseminate good practice and learning; it had few powers and met irregularly. In 2008, the government conducted a review of the Forum and decided to review its position. The review decided that the Forum should be replaced with the Ministerial Council on Deaths in Custody, supported by an Independent Advisory Panel on Deaths in Custody.³⁶² The JCHR continues to send a member to sit on the Ministerial Council as an observer. The new arrangements have been in place for too short a time for a full assessment of their value, but the JCHR is likely to continue to scrutinise its work.

360 Third Report from the JCHR (14 December 2004) www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/15/1504.htm#a1.

361 *Ibid*, para 376.

362 'Justice Minister welcomes annual report on deaths in custody' (second annual report of the Forum for Preventing Deaths in Custody) (27 March 2009) www.justice.gov.uk/news/newsrelease270309a.htm.

NATIONAL HUMAN RIGHTS INSTITUTIONS

The role for NHRIs in the domestic protection of international human rights standards is of paramount importance. Parliamentarians can play a number of roles in relation to NHRIs. These include:

- Promoting the creation of effective, independent NHRIs which comply with the Paris Principles;
- Ensuring that NHRIs have adequate powers and resources to meet their mandates;
- Scrutinising the work of NHRIs and ensuring that they perform their functions effectively and maintain their independence;
- Monitoring the relationship between government and NHRIs, including the response of government to recommendations for change made by NHRIs;
- Drawing attention to the work of NHRIs; and
- Responding to the recommendations of NHRIs for changes to legislation to better protect human rights.

However the relationship between parliaments and NHRIs is multifaceted. Parliaments generally act as a critical friend, performing both oversight and support functions to ensure that the NHRI works effectively to achieve its aims. In some countries, NHRIs report directly to parliament, who may have responsibility for reviewing their recommendations. In other countries, NHRIs may be parliamentary bodies. In others, parliamentary bodies may be given responsibility for overseeing the function of the NHRI and monitoring its output. In some States, this work may be conducted by a committee responsible for constitutional or justice affairs and in others, a specific human rights committee may be appointed for this role. Parliamentarians may draw attention to the work of an NHRI by highlighting failures of government to respond effectively to its recommendations or by scrutinising the need for legislative change to meet criticisms made by the NHRI.

The Abuja Guidelines

In 2004, representatives of NHRIs and parliaments from each of the parliaments of the commonwealth met in Abuja, Nigeria to agree a set of guidelines designed to support an effective working relationship between parliaments and their NHRIs.

The guidelines provide that parliamentarians should:

- Produce an appropriate legislative framework for the establishment of NHRIs;
- Ensure that NHRIs have adequate resources;
- Debate reports of NHRIs in parliament;
- Ensure that recommendations for action from NHRIs are followed-up and implemented;
- Establish an all-party parliamentary committee with responsibility for overseeing and supporting the work of NHRIs; and
- Individual parliamentarians should ensure that their constituents are aware of the purpose and work of NHRIs.

NHRIs should:

- Provide parliamentarians with regular expertise and independent advice on national, regional, and international human rights issues;
- Provide on-going training for parliamentarians on human rights issues;
- Advise parliamentarians on the human rights implications or all proposed legislation and constitutional amendments, as well as the compatibility of existing laws; and
- Advise parliaments on the creation of parliamentary human rights committees.

Abuja Guidelines (2004)³⁶³

363 Commonwealth Secretariat 'Abuja Guidelines' www.thecommonwealth.org/Internal/34492/175179/abuja_guidelines.

The Mozambican Human Rights Commission

In May 2009, the Mozambican Parliament passed the final amended version of a law creating a Human Rights Commission (Comissão dos Direitos Humanos).³⁶⁴ According to Mozambique's Deputy Health Minister, Aida Libombo, the government, through its creation of a Human Rights Commission, aims to ensure human rights through informed and prompt action, to be taken along with the involvement of civil society.³⁶⁵ Further aims include strengthening the public confidence in government mechanisms and strengthening the role that the State and society play in the protection of legitimate individual and collective interests. At the time of writing, the Commission had not yet begun its work.

Georgia: parliament and the work of the Ombudsman

In Georgia, the NHRI is the Public Defender (or Ombudsman). The Ombudsman is a parliamentary body, elected for a five-year term by a majority of members of parliament. The Ombudsman reports to parliament and must provide annual reports for review.

The Ombudsman has wide-ranging powers including access to the premises of any public body or enterprise, including military facilities, detention facilities and prisons. He or she has the power to access documents, files and any records necessary to determine a complaint and may interview any public official, officer or employee. The Ombudsman can commission expert support and advice and has access to all civil, criminal and administrative court records (after any final decision has been reached by the relevant court). They have powers to determine individual complaints but also have broad powers of inspection. The Ombudsman acts as the National Preventative Mechanism for the purposes of compliance with the Optional Protocol to the UN Convention against Torture.

364 Portal do Governo Moçambique, 'Responsáveis pelos Direitos Humanos já não são nomeados pelo Chefe do Estado', 28 May 2009 www.portaldogoverno.gov.mz/noticias/governacao/maio2009/responsaveis-pelos-direitos-humanos-ja-nao-sao-nomeados-pelo-chefe-do-estado.

365 Portal do Governo Moçambique, 'Moçambique terá Comissão dos Direitos Humanos', 28 October 2008 www.portaldogoverno.gov.mz/noticias/news_folder_sociedad_cultu/Octubre2008/nots_sc_525_out_00.

Aside from the annual reporting mechanism, the Ombudsman may submit legislative proposals to parliament on amendments necessary for the protection of human rights and freedoms. They may also submit evidence to any criminal investigation or to any disciplinary or administrative bodies in relation to alleged violations of human rights and freedoms.³⁶⁶

Ukraine: Ukrainian Commissioner for Human Rights

The Ukrainian Constitution provides for the creation of a Ukrainian Commissioner for Human Rights (Articles 55, 101). The Commissioner is a parliamentary appointment and reports directly to parliament. Their powers are very broad and are provided in the Constitution and the Law on the Ukrainian Parliament Commissioner for Human Rights. The Commissioner has the power to intervene in policy and legislative decisions, to report on general human rights concerns and to intervene in individual cases, including in cases before the Constitutional Court.³⁶⁷

The Constitution explains that the Commissioner's role serves a number of functions, including to:

- protect human and citizens' rights and freedoms proclaimed by the Constitution of Ukraine, the laws of Ukraine and international agreements of Ukraine;
- ensure observation of human and citizens' rights and freedoms by government agencies;
- prevent acts of violation against human and citizens' rights and freedoms or the facilitation of their renewal;
- facilitate the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;
- improve and further develop international cooperation in the area of the protection of human and citizens' rights and freedoms;
- prevent any forms of discrimination with regard to a person's implementation of his or her rights and freedoms; and
- encourage legal knowledge among the population and protecting confidential information about each person.

366 Georgian Public Defender homepage www.ombudsman.ge/index.php?page=0&lang=1&n=0&id=0.

367 Ukrainian Commissioner homepage www.ombudsman.kiev.ua/om_01_e.htm.

A NATIONAL ACTION PLAN FOR HUMAN RIGHTS?

The Vienna Declaration and Programme of Action (1993) recommended that all States adopt a national human rights action plan. The purpose of these plans is to improve the promotion and protection of human rights. This is achieved by requiring States to assess the current state of human rights protection at home; identify areas which could be improved; and to create plans for action.

An effective plan must be supported and implemented by government but its success depends on ownership by all sectors including civil society and parliamentarians. The Office of the High Commissioner on Human Rights has prepared detailed guidance for States on how to prepare a national human rights action plan. This guidance accepts that a significant amount of reflection and organisation will be required by a State preparing their first plan and that a number of elements will affect its impact. These include:

- The need for strong political support;
- Transparent and collaborative action to set the plan;
- Comprehensive assessment of the human rights base line;
- Realistic prioritisation and a proactive approach to problems;
- Set performance criteria and processes for evaluation of progress; and
- Adequate allocation of resources to meet the plan's objectives.

Clearly parliamentarians can play a range of roles in relation to the success of a national human rights action plan, including:

- Calling for the creation of a plan or an update to an existing plan;
- Mustering political support for a plan;
- Monitoring government action to draw up a plan, including encouraging transparency and open consultation;
- Scrutinising the contents and objectives of any plan;
- Debating the government's steps taken to implement the plan;
- Passing legislation mandated in the plan; and
- Ensuring adequate budgetary allocation for the priority objectives in the plan.

Lebanon: National Action Plan for Human Rights

In November 2010, the Human Rights Council at the Working Group on the Universal Periodic Review for Lebanon, noted that a Lebanese National Action Plan for Human Rights was being elaborated by the Parliamentary Committee on Human Rights with the contribution of relevant ministries, civil society and international organisations. The provisions of the Action Plan included:

- *The establishment of a NHRI in line with the Paris Principles:* A draft bill was under consideration by the Ministry of Justice which included mechanisms for the prevention of terrorism in line with the provisions of the Optional Protocol to the UN Convention against Torture.
- *The creation of an Ombudsman:* A bill had been issued in 2005 and the government was taking steps for an appointment.
- The creation of an Office of Human Rights in the Ministry of Interior and Municipalities, the Directorate General of the Internal Security Forces, and considerations concerning a Department of Human Rights in the Ministry of Interior.
- The establishment of a Directorate General of Human Rights and Public Liberties in the Ministry of Justice.
- The development of effective relationships with international human rights organisations.³⁶⁸

Mozambique: the first draft National Human Rights Action Plan

In August 2010, the Mozambican Government published its first draft National Human Rights Action Plan for consultation. The draft plan was prepared by a group of consultants hired by the Ministry of Justice with the technical and financial support from UNDP, the European Commission and the United Nations Office of the High Commissioner of Human Rights.

The proposed priority areas for the five-year plan included access to water, food, sanitation, education and healthcare; strengthening of civil society; addressing cases of torture and violence by law enforcement agencies; corruption in the judiciary; the rights of prisoners and detainees; alternative sentencing; and outstanding ratifications of international human rights instruments.

368 United Nations General Assembly Human Rights Council Working Group on the Universal Periodic Review (1-12 November 2010) 9th Session, 'Draft report of the Working Group on the Universal Periodic Review, Lebanon' http://lib.ohchr.org/HRBodies/UPR/Documents/session9/LB/A_HRC_WG.6_9_L.16_Lebanon.pdf.

A human rights action plan: questions for parliamentarians

- Does your country have a national human rights action plan?
- If not, why not?
- When did parliament last scrutinise the national human rights action plan?
- Is the government meeting the objectives set in the existing national human rights action plan?
- Are adequate funds available to meet the priority objectives in the national human rights action plan?

BUDGETARY ANALYSIS FOR HUMAN RIGHTS COMPATIBILITY

Often one of the greatest powers granted to parliament is control – or oversight – of the national budget. As explained in Part II, fulfilment of many fundamental rights requires positive action on the part of the State, including effective investment in programmes and practices to support individual rights, such as the rights to health and housing.

A variety of political decisions may be necessary to balance respect for rights within national resources and parliamentarians are perhaps best placed to assess whether the appropriate balance has been drawn in practice between the limits of national resources and the often competing demands of individual rights in practice. Parliamentarians will be in an ideal position to assess whether a national programme of education is adequate to meet the right to education in practice; whether that programme is affordable within national resources; and whether enough funds have been allocated and spent in practice. Parliamentarians are ideally placed to ask the government to justify the effectiveness of any current programmes and whether the use of resources is effective and designed to progressively realise higher standards within the budget available. This role could include withholding funds for ineffective programmes or asking for justification why more money cannot be made available for mechanisms which are successful and enhancing rights in practice.

Increasingly, international organisations and civil society are encouraging parliaments to take a more human rights-based approach to budget scrutiny and international practice is emerging to support the effectiveness of this approach, specifically in terms of increasing parliamentary involvement in rights protection and securing greater respect for rights in practice.³⁶⁹

369 Colin Harvey and Eoin Rooney, *Integrating Human Rights? Socio-Economic Rights and Budget Analysis*, (2010) 3 EHRLR 266.

Is it all about the money?

In 2007, the JCHR undertook a widespread inquiry focusing on the rights of adults with learning disabilities in the UK. During the course of the inquiry, it became clear that support through community care was essential to allow many people with learning disabilities to live their lives with dignity and to play any role in community life. For example, paid carers might be necessary to enable people to live independently in their own homes, rather than in institutions or hospital settings. However, many witnesses told the Committee that funding for community care was scarce and adequate levels of support was impossible for all but those people with the most severe disabilities. The minister acknowledged that funding for social care was in crisis in light of increasing demands on public funds and the increasing number of disabled and elderly people who needed support.

The Committee called on the government to remember the human rights aspects of community care funding and the impact that withdrawal of support could have on the rights of persons with disabilities.³⁷⁰ Funding of social care in the UK is currently under review and the government is exploring mechanisms for better funding in the future.

In early 2011, the JCHR launched a new inquiry on the right to independent living for people with disabilities (Article 19, UNCRPD). The Committee particularly focused on the impact on this right in practice made by cuts in public funding being made to address the national deficit.³⁷¹

370 7th Report from the JCHR (6 March 2008) www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/4007.htm#a26.

371 JCHR 'Inquiry into the implementation of the right of disabled people to independent living' www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/protecting-the-right-of-disabled-people-to-independent-living.

The UK emergency budget 2010

In June 2010, the new coalition government introduced an emergency budget designed to reduce public spending and address the public deficit. On introduction, the government explained that the emergency budget would be followed by a Comprehensive Spending Review where all government departments would be asked to significantly reduce their budgets and spending. During the summer of 2010, numerous criticisms were made of the emergency budget on human rights grounds. These included criticism by the opposition parties that the budget had not been accompanied by the required equality impact assessment and in practice would have discriminatory effects on women. In September 2010, Fawcett, a domestic NGO working on gender equality, launched a challenge to the budget on these grounds before the domestic courts in England and Wales.

In 2011, the Equality and Human Rights Commission launched a formal inquiry into the conduct of the Comprehensive Spending Review by the treasury, with a view to examining the compatibility of proposed cuts with the right to equal treatment.

Scrutiny of human rights judgments

The decisions of domestic and international courts in cases raising human rights concerns may have clear implications for domestic law, policy or practice. Although the decisions of some constitutional courts may have a direct impact on national law, in some cases action may be required to give better effect to judicial decisions in practice. In some States, like the UK, parliamentary action will be the only effective remedy in cases where the courts identify that domestic legislation is incompatible with domestic or international human rights standards.

Parliamentary involvement in scrutinising the response of the executive to adverse human rights judgments becomes more significant in relation to judgments of international human rights courts, for example, by the courts or commissions of regional human rights regimes. The Council of Europe, for example, has recently reinforced the importance of parliamentary involvement in the effective implementation of the ECHR, including through effective action to give national effect to the case law of the European Court of Human Rights.³⁷²

372 In the Interlaken Declaration on the Future of the European Convention on Human Rights (February 2010), the States of the Council of Europe emphasised the importance of subsidiarity in the future of the ECHR. Enhanced responsibility for the domestic implementation of Convention rights was necessary to take pressure off the overburdened European Court of Human Rights and to ensure that the rights in the Convention were practically integrated into domestic law, policy and practice across the jurisdiction of the members of the Council of Europe.

Ukrainian Law No 3477-IV (2006)

In 2006, the Ukrainian Parliament passed a law designed to give fuller effect to the case law of the European Court of Human Rights. This legislation uses a number of mechanisms to give effect to decisions of the Court against Ukraine and other Council of Europe States within Ukrainian law. First, the domestic courts are directed to treat the case law of the Court as a source of law when deciding domestic cases (Article 17). The law provides for the case law of the European Court to be translated into Ukrainian (Article 6 ECHR). Secondly, the government is instructed that every piece of draft legislation it proposes shall be analysed for compatibility with the Convention, as interpreted by the European Court of Human Rights. This work is undertaken by the Office of the Government Agent to the Council of Europe and their opinion is published. The law also requires the office of the agent to conduct a periodic review of all legislation for its compatibility with the case law of the European Court of Human Rights (Article 19).

JCHR: enhancing the role of parliament in relation to human rights judgments

The JCHR produces annual reports on the UK Government's response to adverse human rights judgments of the UK courts and the European Court of Human Rights. It produces these reports after detailed correspondence with the UK Government and has produced detailed guidance for government departments on engaging with parliament in developing policy designed to respond to adverse human rights decisions. In its last report, the JCHR explained:

'[P]arliamentary involvement in the implementation of Court judgments on human rights has many advantages. It not only raises awareness of human rights issues in Parliament, but it increases the political transparency of the Government's response to Court judgments. In so doing it helps both to ensure a genuine democratic input into legal changes following Court judgments and to address the perception that changes in law or policy as a result of Court judgments lack democratic legitimacy. It facilitates the co-ordination of the various actors, raises the political visibility of the issues at stake and provides an opportunity for public scrutiny of the justifications offered by the Government for its proposed response to the judgment or for its delay in bringing such a response forward.'³⁷³

373 JCHR 'Enhancing Parliament's role in relation to human rights judgments' (27 March 2010) para 17 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/85/8504.htm#a4.

Case study: prisoners' voting rights in the UK

In *Hirst v UK* (2005), the Grand Chamber of the European Court of Human Rights held that the current blanket ban on convicted prisoners voting in UK elections was incompatible with the right to participate in free and fair elections, as guaranteed by Article 3, Protocol 1 ECHR.

The JCHR first wrote to the government about this issue in 2006. The government had previously expressed its intention to consult on the issue. A delayed consultation was published in December 2006. In 2007, the JCHR considered the consultation document and criticised the government's decision to consult in two stages and to rule out any possibility of full enfranchisement of prisoners. It concluded that the time for consultation was disproportionate.³⁷⁴ A year later, the JCHR reported again and condemned the continuing delay. The JCHR concluded that this case looked likely to become one of the few longstanding cases of the European Court of Human Rights that were outstanding against the UK for longer than five years. It called on the government to bring forward a remedy before the next UK general election in 2010.³⁷⁵

In its latest report on human rights judgments, the JCHR strongly criticised the UK Government for failing to introduce a remedy before the general election in May 2010. The Committee of Ministers considered the case in December 2010 and expressed their concern that no further progress had been made. The Grand Chamber issued a further pilot judgment on this issue in late 2010, in *Greens v UK*. On 20 December 2010, the UK Government announced that it would introduce a bill extending the right to vote by proxy or by post to all prisoners serving less than four years. The JCHR will consider this proposal in due course.

This issue has proved a particularly controversial one for the UK Government. On 10 February 2010, opposition members of parliament successfully proposed a parliamentary motion calling on the government not to change the law to respond to the judgment of the European Court of Human Rights. During this debate, the Attorney General made it clear that the government considered that this option would be in breach of the UK's obligations under the ECHR. At the time of writing, the JCHR was due to take further public evidence on this issue in March 2011.

374 16th Report of the JCHR (28 June 2008) www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/128/12806.htm#a11.

375 31st Report from the JCHR (31 October 2008) www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/173/17307.htm#a12.

Monitoring compliance with UN and regional treaties

The international community is increasingly focusing on the responsibility of States to give practical effect to their international obligations at home. In particular, UN Treaty Bodies and international NGOs are increasingly focusing on the responsibility of States to respond swiftly and effectively to recommendations of monitoring bodies and UN special procedures for the protection of human rights.

Implementation of the African Charter: enhancing responsiveness to recommendations

In 2010, the African Court and Commission on Human Rights reformed their rules of procedure to establish processes for the Commission to follow up on the implementation of its recommendations and to establish powers for the Commission to refer cases to the Court when it has exhausted its own follow-up activities.³⁷⁶

UK case study: monitoring UK compliance with UNCAT

In 2005, the JCHR undertook a major inquiry regarding the UK's compliance with UNCAT, looking at the latest concluding observations of the UN Committee against Torture and other relevant events, including the treatment of detainees in Iraq and the rendition of people to countries where they may have been subjected to torture.³⁷⁷ Since the publication of its first UNCAT Report, the JCHR has published a further three reports following up on a number of its recommendations:

376 Open Society Justice Initiative 'From Judgment to Justice: Implementing International and Regional Human Rights Decisions' (November 2010) (further discussion of effective domestic responses to recommendations of the African Commission and to each of the UN Treaty Bodies and special procedures).

377 19th Report from the JCHR (27 May 2006) www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/18502.htm.

- After the outcome of the court martial of a number of soldiers alleged to have been involved in the beating and killing of Iraqi detainees, the JCHR reconsidered the evidence given to the UNCAT inquiry by the Ministry of Defence (MOD). The MOD had informed the Committee that five interrogation techniques identified in *Ireland v UK* (1971) had been banned following a commitment to Parliament in 1972 (including hooding, stress-positioning and sleep deprivation). The JCHR had been assured that training of troops was adequate to ensure that these techniques were never used. The evidence before the court martial suggested that the techniques were still in use. The JCHR called the Attorney General to give evidence on the legal advice given to the MOD and invited the Secretary of State for Defence to submit further evidence. It reported that the information provided by the government to the JCHR appeared to be inconsistent and inaccurate in light of the evidence before the court martial.³⁷⁸ A public inquiry is currently ongoing into the conduct of the UK forces in this case (the Gage Inquiry).
- In 2009, Aegis Trust, an NGO, highlighted gaps in UK law in respect of genocide and other international crimes, including the inability of the UK to prosecute individuals living in the UK for acts before 1992. They also raised the difficulties in securing redress for victims of torture. The JCHR conducted a short inquiry into these issues and reported that there were a number of gaps in the law that the government should introduce legislation to fill.³⁷⁹ In July 2009, the government committed to extend the law to ensure that acts prior to 1992 could be prosecuted where the suspect was resident in the UK. The JCHR closely scrutinised the amendments proposed for this purpose.
- The JCHR held an inquiry into allegations that the UK had been complicit in torture – including through its involvement in rendition and through reliance on evidence tainted by torture – in breach of Article 4 UNCAT. This followed widespread allegations of complicity by the UK in the press and in litigation by individuals seeking compensation. The JCHR concluded that the UK had a number of defined questions to answer and called on the government to initiate an independent public inquiry into these issues.³⁸⁰ The then government response to this report ruled out an inquiry. The new UK Government has announced that there will be a public inquiry on the treatment of detainees and allegations of complicity in torture (the Gibson Inquiry). The terms of reference for this inquiry are yet to be set.

It is likely that these issues will interest the UN Committee against Torture during its next examination of the UK.

378 28th Report from the JCHR, Session 2007-08 (27 July 2008) www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/157/15702.htm.

379 24th Report from the JCHR, Session 2008-09 (11 August 2009) www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/153/15302.htm.

380 23rd Report from the JCHR, Session 2008-09 (4 August 2009) www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/152/15202.htm.

2. Parliamentary tools for human rights protection

'Human rights should thoroughly permeate parliamentary activity. Within its area of competence, each parliamentary committee should consistently take into consideration human rights issues and assess the impact of bills and other proposed legal norms on the enjoyment of human rights by the population. To ensure that human rights are duly taken into account in parliamentary work, ever more parliaments set up specialised human rights bodies or entrust existing committees with the task of considering human rights issues. Many parliaments have also established committees for specific human rights issues, such as gender equality or minority rights. Moreover, informal groups of members of parliament are active in the area of human rights.'

IPU Handbook on Human Rights for Parliamentarians (2005)

Individual parliamentarians working on human rights issues

There are numerous case studies and examples of parliamentarians using their power and position to further human rights issues. Other than through participation in debates, asking questions of government and engaging in correspondence on behalf of individuals and specific causes, there are a number of techniques that parliamentarians can use to raise awareness of human rights issues in their country. These include:

PARLIAMENTARY QUESTIONS AND OTHER PROCEDURES

In every parliament, parliamentarians are empowered to ask questions of government ministers, either in writing or orally during business in parliament. These mechanisms can be valuable tools for securing information on human rights issues, for clarifying government policy and for drawing attention to an issue which would otherwise have gone unnoticed by other parliamentarians, the press and public.

Parliamentary motions: UK and under-18s in the Armed Forces

In October 2010, a UK MP and member of the JCHR tabled an 'Early Day Motion' (EDM) in the House of Commons calling on the government to raise the age of recruitment of children into the UK Armed Forces to 18-years-old, to meet its obligations under the UN Convention on the Rights of the Child. The Motion has been signed by 35 other members of parliament. Although this EDM is unlikely to secure a full debate, the JCHR has raised this issue with the government in the context of its scrutiny of the Government's Armed Forces' Bill and this may result in a fuller debate in plenary.³⁸¹

MEMBERS' LEGISLATION

Parliamentarians are generally empowered to introduce their own legislation. The ability of this private members legislation to become law will vary from State to State according to its parliamentary traditions. However, the drafting and production of a draft bill and debate on its provisions in parliament provides an additional powerful tool to highlight important human rights issues, particularly where changes to law are necessary to improve their protection.

Private members' bill and human rights protection

Ugandan Prevention of Female Genital Mutilation Act 2009

In April 2009, a Ugandan MP sought leave to introduce a private members' bill prohibiting the practice of female genital mutilation in Uganda. In November 2009, the Prevention of Female Genital Mutilation Act became law.

381 Early Day Motion 781 (11 October 2010) <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=41747>.

CAUCUSES AND PARLIAMENTARY GROUPS

Most parliaments make provision for the creation of issue-based caucuses or party groups which often exist to express support or concern on a substantive matter across political parties. These groups provide a useful forum for members' with similar interests to meet and formulate proposals for action without a political agenda.

The Uganda Women's Parliamentary Association (UWOPA)

Working together with the Westminster Foundation for Democracy (WFD), one of the TWC partners, UWOPA launched the common women's legislative agenda (CWLA) with the aim of focusing its advocacy in parliament. The CWLA comprised four gender bills: the Sexual Offences Bill, the Marriage and Divorce Bill, the Domestic Violence Bill and the Trafficking in Persons Bill as well as the Maputo protocol, and issues of peace and conflict in maternal health. WFD's programme with UWOPA focused on enhancing links between members of parliament and local leaders which would strengthen the links in local and national advocacy for gender legislation by women parliamentarians and their counterparts at a district level. These four bills have now been enacted: the Trafficking in Persons Act (passed 7 April 2009), the Domestic Violence Act (passed 11 November 2009), the Private Members Bill on the Prohibition of Female Genital Mutilation (passed 2 December 2009) and the long-awaited Marriage and Divorce Bill, which was tabled for first reading on 22 December 2009 and is currently at committee level.³⁸²

UK All-Party Parliamentary Groups

A number of UK All-Party Parliamentary Groups (APPGs) are specifically constituted to focus on raising awareness of human rights issues in the UK.³⁸³ For example, there are APPGs focusing on prison reform, business and human rights, equality, disability and carers. The UK Human Rights APPG focuses on human rights issues outside of the UK.

382 Uganda Women's Parliamentary Association (UWOPA) www.parliament.go.ug/uwopa.

383 Register of All-Party Groups, HC, Session 2010-11 (4 February 2010) www.publications.parliament.uk/pa/cm/cm/llparty/memi01.htm.

THE IPU/CPA

International parliamentary bodies exist in order to foster good international relations between parliaments and to promote good practice. However many of these organisations – like the Inter-Parliamentary Union and the Commonwealth Parliamentary Association – also undertake work on specific issues, including basic standards of human rights and the role of parliaments. Working together across boundaries can help disseminate good practice and promote higher standards internationally.

Parliamentary committees

Parliaments throughout the world use parliamentary committees to enhance the effectiveness of their oversight of government. Parliamentary committees come in various shapes and forms and with different functions and powers but they are generally accepted as a positive mechanism for increasing the power of parliaments to oversee the work of government.

Broadly, parliaments adopt two different approaches to human rights in committee work. Some parliaments have created dedicated standing human rights committees with a mandate specifically dedicated to human rights. Other parliaments expect human rights issues to be considered by each individual parliamentary committee as issues arise in their substantive field of interest. Each of these models has its benefits and its flaws. While a dedicated committee may allow for greater expertise to be developed, it may also lead human rights standards to be divorced from mainstream policy debates. On the other hand, requiring numerous committees to identify human rights concerns and prioritise them in their political or policy work may be unrealistic without access to expert advice and support for each.

Within these models, different committees across parliaments will differ according to their local procedures. Some committees will serve a formal legislative function as part of the legislative process, and may be able to stop legislation progressing through parliament which may be incompatible with domestic and international human rights standards. Other committees perform oversight or scrutiny functions with responsibility for advising parliament and making recommendations to government designed to better protect individual rights. Some committees may be enabled to consider individual complaints and others may be prevented from doing so and consequently they have to take a more strategic approach. Some committees may play a role in the appointment of key public officers who have responsibilities as part of the human rights infrastructure.

*Dedicated human rights committees***Georgia: the Human Rights and Civil Integration Committee**

In Georgia, the Human Rights and Civil Integration Committee has primary responsibility for the consideration of domestic and international human rights issues by the Georgian Parliament. It is an oversight committee established for the duration of each parliament and has express responsibility for the monitoring of prisons, for the consideration of annual reports of the Georgian Public Defender's Office (the National Human Rights Institution) and has the power to intervene in individual cases and complaints when contacted by individual citizens. The Committee has the power to require government ministers to provide evidence in writing or in person. The government is required to respond to reports of the Committee within one month.

Mozambique: Committee on Human Rights, Constitutional and Legal Issues

The Committee on Human Rights, Constitutional and Legal Issues is comprised of 17 members of parliament. It is a multiparty Committee, which is gender balanced, and whose members tend to have a background in law.

Powers and composition of the JCHR

The JCHR is a select Committee of both Houses of the UK Parliament. First established in 2001, the JCHR is a standing oversight Committee comprised of six members from the House of Lords and six members from the House of Commons. The members from each House are appointed by the plenary (after being proposed by their parties) and reflect the political make-up of their respective Houses. This means that the proportion of members reflects the political composition of both Houses, and has representation from the three main political parties in the UK. The Committee also has a 'cross-bench' member from the House of Lords, who has no political affiliation. The Committee is chaired by a senior backbench politician. The Chair can be from any party in the House and there is no requirement that the Chair come from either the governing or opposition party.

Like other select committees of the UK Parliament, the JCHR has the power to 'call for persons and papers' and to make reports. The Committee has broad powers to request written or oral evidence from government and others and may report on any issue relating to human rights in the UK. The government is required to respond to its reports within 60 days unless agreed by the Committee.

The Committee works through a variety of private and public meetings. Evidence can be gathered in public or private hearings. Oral evidence is generally taken in public and a public record is published on the Committee's website within a week. The Committee meets in private for a number of reasons, including to agree their agenda, to consider draft reports and other business, and to meet informally with stakeholders. Meeting in private also allows them to discuss an inquiry with individuals who would not otherwise be able to communicate with the Committee. The Committee has the power to undertake visits as part of any inquiry, either in the UK or overseas, subject to budgetary restraints.

The Committee is supported by two parliamentary clerks, two legal advisers and three administrators. It shares the support of a House of Commons Press Officer with other committees.

Specialist issue-based human rights committees

Uganda

The Ugandan Parliament does not have a Parliamentary Committee dedicated solely to human rights issues. Instead, this duty falls within the mandate of several committees, each comprised of 20 members of parliament, including:

- *The Legal and Parliamentary Affairs Committee:* This Committee oversees the activities and programmes of government departments and institutions, the mandates of which are closely involved with human rights protection, including the Ministry of Justice and Constitutional Affairs, the Law Reform Commission, the Human Rights Commission and the Inspectorate of Government.
- *The Committee on Equal Opportunities:* This Committee monitors and promotes measures designed to enhance equal opportunities, quality of life and the status of all people, including groups marginalised on the basis of gender, age, disability or any other historical reason, with the purpose of redressing these imbalances.
- *The Committee on Defence and Internal Affairs:* This Committee oversees the activities and programmes of the Ministry of Internal Affairs, the police force and the prisons service, all of which have a strong bearing on human rights protection.

Mainstreaming human rights scrutiny?

Georgia

The Parliamentary Legal Issues Committee has responsibility for constitutional law matters including constitutional reform, as well as legislation in criminal, civil, administrative, penitentiary, procedural and international law. The Committee provides statutory regulations for the jurisdiction of the constitutional court, the justice court system, the prosecutor office and for the bar association. It is composed of 12 members of parliament.

The Committee considers bills within its area of responsibility at plenary meetings. The Committee's conclusions on the bill are issued and submitted to the plenary session of parliament or the parliament bureau. The Committee also oversees the implementation of legislation, and identifies gaps in existing legislation and works to eliminate them.

A member of the government, plus an official – elected, appointed or approved by the parliament – shall be entitled and in some cases shall be obliged to attend the Committee hearing, to submit relevant documents and information and to answer any questions raised.

Lebanon

The Committee on Human Rights of the Lebanese Parliament is appointed at the start of each parliamentary session. The Committee has 11 members, including its chairman. The Committee's remit is to scrutinise legislative proposals and other human rights matters referred to it by the Chairman of the Parliament. After a request from the Chairman of the Parliament, the Committee must report within one month (or within two weeks following an urgent request). Legislation will proceed after this time, regardless of whether or not the Committee has reported. However, relevant reports from the Committee will be referred to in the agenda of parliament when any bill is debated in the plenary, to allow parliamentarians to refer to the Committee's views during the bill's passage.

Within its remit, the Committee has the power to call for evidence from the relevant minister or officials, either in person or in writing. Any MP can attend meetings of the Committee, but only members have the right to vote on any reports or other Committee decisions.

*The right tools for the job?***Key powers for effective committee oversight:**

- A broad mandate;
- The right of initiative;
- Power to provide advice and make recommendations to others, including government, parliament and parliamentary bodies;
- The power 'to send for persons or papers' to provide public or private evidence to the Committee; and
- The right to make study visits or on-site inspections.

Individual parliamentarians may need support to integrate human rights scrutiny effectively into their work. In some areas, the requirements of domestic and international human rights law may be unclear and ill-defined. Equally, members who may wish to scrutinise specific policy initiatives will need to call on policy specialists in the field in order to assess whether a government proposal or strategy is effective and compliant with human rights law in practice. We explored some of the generic tools and powers of committees above and will return to the need for effective staff support in chapter 3, page 217, but it is important to acknowledge that human rights scrutiny may require additional support for individual members and committees in practice.

ACCESS TO INDEPENDENT, IMPARTIAL LEGAL ADVICE

Oversight of government and scrutiny of legislation for compatibility with constitutional guarantees of human rights and with the international human rights framework is a political role with an essentially legal character. This work will often involve careful legal argument about the scope of the national constitution and the requirements of international law. Members tasked with undertaking this work will be asked to scrutinise the government's legal position closely and will benefit from access to their own independent legal advice from legal staff with expertise in human rights. Access to independent advice allows members to undertake an informed, objective analysis of the legal arguments provided to parliament by the government or by NGOs and academics. Some parliaments employ their own specialist human rights lawyers to provide legal advice to committees and individual members. Advice can also be 'bought in' on an ad hoc basis or general legal staff can be trained in human rights law.

ACCESS TO OTHER SPECIALIST SUPPORT AS NECESSARY

Specialist advice and support may be necessary where parliamentarians or parliamentary committees undertake scrutiny of complex areas of policy or legislation. For example, undertaking human rights scrutiny of the national budget would not only require the support of a human rights specialist but also the input of an economist capable of advising on the economic impact of budgetary proposals or possible amendments to those proposals.

Many parliaments have their own legal or specialist departments designed to be open to all members who seek advice. Others have specific specialists attached to parliamentary committees or bodies to match their needs. In parliaments where neither of these options are available, parliamentarians may still seek advice on an ad hoc basis from academics and other specialists based outside parliament as resources allow.

However, parliamentary resources are finite. Other sources of advice and information include international and domestic evaluations by civil society, reports by international human rights organisations, intergovernmental bodies and special rapporteurs. Innovative relationships can be developed between national institutions in order to ensure that parliamentarians are well-informed. For example, national audit offices can provide invaluable support when parliaments seek to conduct financial scrutiny of government performance. Equally, publication of the legal advice provided to government by its law officers on controversial issues could enhance the ability of parliamentarians to scrutinise the government's own legal analysis in an informed way, by opening up the advice to public scrutiny by legal academics and practitioners more widely.

Combining tools to increase effectiveness?

UK case study: the scope of the HRA 1998

As explained above, the HRA 1998 incorporates the ECHR into domestic law in the UK. It requires all public authorities to act in a manner compatible with Convention rights. This duty does not apply to private bodies, except when they perform a 'public function'. Parliament had intended the HRA 1998 to apply to any private contractor 'stepping into the shoes' of the State, providing key public services using public money. In 2004, the JCHR concluded that the domestic courts had frustrated the original intention of parliament by reading the definition of 'public function' too narrowly. The JCHR recommended that the government intervene to argue for a broader judicial interpretation of the Act.³⁸⁴ In 2006, the JCHR reported again, calling for a legislative

384 7th Report from JCHR, Session 2003-04 (3 March 2004) www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/39/3902.htm.

solution to clarify the scope of the Act.³⁸⁵ Following this report, the House of Lords decided a leading case involved the politically sensitive issue of the application of Convention rights to the provision of publicly funded care in private residential care homes for the elderly. The House of Lords took the view that this was not a public function. Both civil society and the press put considerable pressure on the government to take action. The JCHR and its members used a number of tools to draw attention to the issue:

- Posing questions to ministers in writing and during oral evidence sessions;
- Proposing amendments to each and every government bill that appeared to empower public authorities to contract out public functions to private providers;
- Committee staff coordinated on an informal basis with civil society and NGOs, including as an observer on civil society campaigns for change;
- Committee staff kept close contact with government officials as they committed to apply the HRA directly to private, publicly funded care in the upcoming Health and Social Care Bill;
- The then Chairman of the JCHR proposed his own private members' bill on the issue, to draw attention to the unduly narrow scope of the HRA, securing a debate on the floor of the House of Commons;
- The JCHR hosted an informal round-table discussion in parliament with civil society, relevant academics and the government to discuss a solution.

The Health and Social Care Bill solved the politically sensitive problem by changing domestic legislation to expressly extend the application of Convention rights to publicly funded residential care. Cases continue to come before UK courts on the meaning of public authority. The JCHR continues to draw attention to the need to revisit the interpretation of 'public function' in the HRA, both by proposing amendments to legislation and by calling attention to the wider issue of the impact of the private sector on human rights, in a major thematic inquiry.³⁸⁶

385 JCHR 'Written Evidence' (27 March 2007) www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/77/7702.htm.

386 Available at www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/business_and_human_rights.cfm.

3. Supporting parliamentarians to protect human rights

Realistically staffing levels and responsibilities will vary across parliaments. However, most parliaments have a core secretariat designed to support parliamentarians in their work. This secretariat is generally required to maintain political neutrality and provide support to members regardless of their political affiliations.

In some parliaments, individual staff are attached to specific departments and committees and tasked with providing procedural, specialist or administrative support, or a combination of all three. For example, in the UK, select committees are served by a combination of clerks, specialist and administrative staff attached to individual committees. In other parliaments, specific departments or 'pools' of staff are created to provide specific support to members as and when required. For example, in Uganda, members are served by a combination of clerks attached to individual committees and services and also a core of specialists working in centralised departments, for example, the legal department.

Regardless of the structures adopted by individual departments to support parliamentarians in their work, access to good quality, politically neutral advice can be invaluable in helping parliamentarians identify matters which may lead to human rights violations, independently of any wider political or policy debate.

Identifying human rights issues

Staff with a specialist human rights background will not always be available. Lay staff and members legitimately ask 'how do I identify a genuine human rights issue?'

There is no substitute for direct advice from a legal adviser with familiarity with local and international law. However, there are a number of practical tools which staff may use to help identify when an issue may raise concerns about compatibility with national or international human rights standards. Many of these are cost effective and simple.

- *Monitoring the national press:* Many human rights issues are also issues of national political controversy. For example, allegations that prison conditions breach minimum standards and are inhumane will probably be an important political issue covered in the press. In the majority of cases, commentators will report on any relevant human rights debate arising, albeit in a simple way. Monitoring the national press can often highlight topics of concern for further investigation.
- *Working effectively with government, academia and civil society:* While parliamentary staff maintain a responsibility for objectivity and political impartiality, good working relationships with government, national human rights institutions, academia and civil society can be invaluable for

ensuring that members remain well-informed and appropriately engaged with human rights issues as they develop. Where a potential rights violation arises from the practical application of the law, civil society and legal practitioners will often have more valuable information than could be gathered from press reports and academic research.

Reports of civil society organisations can provide invaluable information and research which cannot be conducted by parliamentary staff. Those working in civil society can provide a valuable source of easily accessible information to staff willing to communicate while maintaining their professional objectivity.

- *Monitoring the work of NHRIs:* The work of NHRIs can inform and support the scrutiny of parliamentarians, and vice versa. Reports and recommendations of NHRIs (such as human rights commissions or ombudsmen) will often include detailed information prepared after a thorough inquiry. NHRIs may be required by statute to report independently on an issue or series of issues and may be required to report directly to parliament. Their work will be invaluable for parliamentarians who want to integrate human rights issues into their work.
- *Monitoring the work of the national and international courts:* Violations of individual rights may be identified by national, regional and international courts. Where the courts find a violation, this is often an indicator that a change in domestic law, policy or practice may be necessary to remove a breach.
- *Monitoring the work of UN human rights institutions:* The concluding observations of the committees of the UN human rights framework regularly contain valuable recommendations to States about changes necessary to ensure compliance with the international human rights framework. The concluding observations of treaty bodies and reports of special rapporteurs can provide valuable information for parliaments, who may wish to ask the government to explain how they intend to respond (see above).

Increasing awareness of human rights in Parliament

- Do parliamentary staff routinely monitor human rights issues in the press?
- Can they work more effectively to ensure that parliamentarians have early knowledge of likely human rights issues?
- Do they manage effective working relationships with government officials, NGOs, civil society and academia, to ensure that members are aware of relevant human rights debates as they emerge?
- What steps do members of staff take to ensure parliamentarians are aware of human rights issues, including adverse human rights judgments and criticism of UN human rights bodies?
- Could monitoring, and briefing on each of these developments, be improved?

INDICATORS FOR HUMAN RIGHTS COMPLIANCE

The development of 'indicators' or measurement frameworks for human rights compliance is encouraged by the UN and other international organisations and increasingly by domestic NHRIs.³⁸⁷ The purpose of this work is to consider how compliance with human rights standards can be quantitatively and qualitatively assessed in a way which allows failings to be identified quickly and change to be monitored easily. At present, there is no single agreed set of indicators for compliance with international human rights law.³⁸⁸

387 United Nations High Commission on Human Rights 'Report on Indicators for Promoting and Monitoring the Implementation of Human Rights' (June 2008) HRI/MC/2880/3 (Prepared for the Inter-Committee meeting of the UN Treaty Bodies (ICM)).

388 United Nations Development Programme (UNDP) 'Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users Guide' (March 2006).

Broad indicators for human rights

The UNDP identifies three broad questions at the heart of the development of any indicators for human rights monitoring:

- Are the relevant rights established in national and international documents (rights in principle)?
- Are the rights actually enjoyed by individuals and groups in nation States (rights in practice)?
- Do official statistics provide information which may act as 'proxy' measures related to human rights protection (official statistics)?

National and international sources can be identified which are clearly relevant to the identification of effective indicators. Rights in principle can obviously be sourced by reference to existing legal texts. Identifying the practical implementation of individual rights may require more work, relying on qualitative and quantitative data from a number of sources, including national surveys, media reports, academic work and expert judgments.

The UNDP gives an example of the breadth of domestic indicators for the assessment of domestic respect for the prohibition on torture.³⁸⁹ While ratification of UNCAT and the development of domestic legislation and constitutional guarantees against torture will be good indicators of implementation of the right in principle, this will not give a full picture. To assess the implementation of the right in practice, it may be helpful to look at the assessment and recommendations of the UN Special Rapporteur on Torture, State Party Reports to the UNCAT Committee and its concluding observations, as well as IGO and NGO narrative reports on torture within that country plus any academic research or survey information gathered. Relevant official statistics could include the time taken to process allegations of torture or individual criminal cases; the time an individual criminal suspect spends on remand before trial; and the average number of prisoners in a national prison and the number per prison cell.³⁹⁰

389 *Ibid*, part 4.

390 *Ibid*, table 6.

A number of national NHRIs have begun work to identify national indicators. In the UK, for example, the Equality and Human Rights Commission, the Scottish Commission on Human Rights and the Northern Ireland Human Rights Commission are working jointly with academic partners at the London School of Economics to develop a national human rights measurement framework. The commissions are required to report regularly on the protection of human rights in the United Kingdom. It is hoped that the creation of a measurement framework of standard indicators will help support this work and increase transparency.³⁹¹

Are any indicators or means of measurement used to routinely assess compliance with the international human rights framework?

Providing parliamentarians with effective support on human rights issues

Increasingly, parliaments are thinking innovatively about how to best provide support to members to enable them to better fulfil their functions. This includes taking steps to provide greater support, information and education for members and their staff about parliamentary procedures and issues which may arise in their work. For example, after the latest election in the UK, an induction programme was designed for new members to provide information on the procedure of the House and relevant, topical issues which might affect their work, such as judicial review and the work of the courts and the role of the EU. Similar induction programmes or introductory seminars are being adopted in other countries, such as Uganda.

Information for members on human rights standards

- Are induction programmes available for new members of parliament?
- Do new members receive information on the constitution, domestic and international human rights standards?
- If not, what information would help members to protect and promote human rights?

391 The Center for Analysis of Social exclusion' EHRC / SHRC Specialist Consultation on the Human Rights Measurement Framework' (the human rights measurement framework has published a draft list of UK specific human rights indicators for a set number of rights, these may provide a helpful example of the difficulties and challenges involved in effectively identifying key domestic indicators for the effective and practical implementation of rights) <http://personal.lse.ac.uk/prechr>.

Professional parliamentary staff across the world work routinely to improve the service provided for members in order to ensure that they are effectively supported to make effective use of their powers in their work. This includes providing regular research on topics of concern, briefing papers and packs for specific debates, assisting members with the formulation of relevant questions and responding to specific requests for support. Separate training seminars are being provided by the House of Commons and other partners in the TWC programme on effective oversight and by Reuters on effective engagement with the press and public.

Supporting members in their work: useful roles for parliamentary staff

- Preparing neutral, accurate background briefing packs in advance of debates in plenary;
- Advising members on effective formulations for parliamentary questions, topics for debate or drafting of private members' bills;
- Managing committee meetings and business effectively and ensuring that committee members are appropriately briefed and prepared for their work, including public hearings or evidence sessions; and
- Responding to requests for support, information and advice on issues of importance to members and their constituents.

Supporting human rights committees

- Advising on topical human rights issues for inquiry and on individual petitions, if necessary;
- Drafting correspondence and responses to members' queries;
- Providing oral and written briefing to members in advance of meetings and hearings, covering key human rights issues and recommended questions designed to illicit further information about human rights issues and government policy; and
- Preparing draft reports and recommendations to government, advice to parliament and conclusions for members to consider.

Briefing on human rights issues for parliamentarians

A number of considerations may be relevant when advising members of parliament on human rights issues:

- *Accurate*: Information provided to members must be accurate and up to date. This may require staff to conduct original research, or to take advice from external experts. When considering domestic constitutional standards, it is important to consider whether any wider issues of compatibility with international human rights law arise. Basic legal advice on the wider context of political decisions leaves political decision making to members of parliament, but provides full background information before those decisions are made.
- *Timely*: Advice and support is best tailored to local parliamentary practice. There is little value in advice or information provided after a decision has been taken. So, for example, the staff of the JCHR aims to advise its members on the human rights compatibility of any proposed government bills within two weeks of their introduction.
- *Accessible*: Human rights violations often raise an interesting combination of legal, political and ethical issues. Advice can easily devolve into technical legal jargon. It is important to recognise that members must be able to communicate complex ideas quickly during debates and in discussions.
- *Relevant*: Parliaments and parliamentarians are generally extremely busy. Information and advice which is irrelevant will be disregarded and is a waste of resources. Providing parliamentarians with useful information and advice requires a balance. Too much information will not be read. Too little information will leave the member ill-informed and ill-prepared. A balance is required and priorities may need to be set to help members identify relevant issues quickly and without further reading.
- *Politically aware*: Staff can be better equipped to advise members if they are aware of any politically controversial issues which arise in relation to an issue. Advice can be designed to acknowledge and address any specific political issue if there is an answer in human rights law. Understanding any controversy and individual members' views may help staff give advice and allow them to be in a position to design and suggest potential recommendations. While it is important for advice to be politically informed, political neutrality enhances its credibility and usefulness to members.

Typical information provided in a staff briefing for a hearing by the JCHR

- *Details from the agenda:* This information ensures that members have all the relevant information about the timing, location and purpose of the session in one document.
- *An explanation of the purpose of the session:* Acting as an aide memoire, this information helps members set the evidence session in its context. What purpose do members hope to achieve? Is it part of a wider inquiry? Do members need to be aware of earlier evidence already taken?
- *Biographical information about any witnesses:* Although committees often take evidence from very well known individuals, it is important to provide members with biographical information, specifically any biographical information relevant to the evidence which a witness has been asked to produce.
- *Additional copies of any relevant evidence, including written evidence provided by the witnesses:* As relevant, the brief for members may quote from written evidence which the committee has received. However, in order to help members prepare more fully, it may be helpful to provide additional hardcopies of these documents.
- *Copies of any relevant documentation:* Equally, where extracts from speeches, articles, statistical information or other relevant documents are provided, full copies should be made available to members. This may assist any members who wish to prepare alternative lines of questioning to work independently or with the support of their own staff.
- *A basic introduction to any legal standards relevant to the session:* It is useful to provide members with a basic introduction to any relevant standards. If a witness enters into a legal discussion of an issue, or raises any doubts about the current state of the law, it can be helpful for members to have the relevant legal terms and the current legal framework at their command.

- *A list of suggested topics for inquiry and suggested questions for witnesses:* The bulk of the briefing document prepared for all UK Select Committee evidence sessions is formed of a series of topics for inquiry and suggested questions for witnesses. The purpose of this briefing is to suggest an approach to the members of the Committee and briefs are always prefaced with the reminder that members are free to ignore the suggested questions and may ask witnesses any questions they wish. The degree of detail and the length of the briefing will vary according to the committee and the complexity of the issue being covered. The aim of the material is to provide enough suggested questions that members should be able to fill the time allocated for the hearing and achieve the purpose of the session. Ideally staff will (i) determine broadly what subjects need to be covered; (ii) consider how many questions might be usefully covered in the time allotted (for example, perhaps ten questions per hour); (iii) draft the questions proposed, including open questions seeking full information and responses from witnesses and more closed, directed questions where specific information, explanations or justifications are required; and (iv) priorities are set for the proposed questions, for example, presenting more open questions to begin with in order to ensure the session begins smoothly or by leaving less important questions to the end of the session. Once questions are set, staff provide background information to each question to help explain its purpose and to allow members to respond to questions from the witness and to formulate useful follow-up questions. This information is usually brief and limited to the minimum information necessary in order to ensure that an engaged member can easily understand the question and its context.

Briefing documents are provided to members and staff only. They form the basis for the staff briefing provided to witnesses in advance of hearings. In the House of Commons, witnesses are provided with details of broad topics which may be covered by the committee. In the House of Lords, witnesses are routinely provided with copies of the questions in the brief, but not the background material. The JCHR adopts a combination of both practices.

WORKING EFFECTIVELY WITH GOVERNMENT, CIVIL SOCIETY AND INTERNATIONAL ORGANISATIONS

Each of these areas of work may be enhanced by developing effective working relationships with relevant government departments, civil society and NGOs and international organisations. While it is important for parliamentary staff to maintain their independence and their political and substantial neutrality, it is important for members' work to be timely and well-informed. By maintaining a good, informal, but arms-length relationship with a good range of contacts, staff will be able to ensure that parliamentarians rely on up to date and reliable information. For example, a good working relationship with a government department may enable a committee staff member to learn when a particular bill is likely to be presented to parliament. This could allow the committee to better plan its work in order to ensure that it can report on the bill in a swift manner.

Equally, working closely with civil society, NGOs and IGOs can bring an expert and practical perspective to parliamentarians' work which parliamentary officials might otherwise lack. Local expert organisations will often have worked more closely on a substantive issue, for longer and with greater contact with the individuals affected than individual parliamentarians or their staff. For example, an NGO focusing on disability rights may be able to provide a parliamentary committee with direct evidence on the experience of people with disabilities and could help the committee identify useful witnesses to participate in a public hearing on an issue that is affecting people from the disabled community. Local NGOs focusing on human rights issues can often be a source of expertise for individual members keen to increase their knowledge of domestic measures for the protection of human rights.³⁹²

ENHANCING TRANSPARENCY AND PUBLIC ENGAGEMENT

'Parliaments can contribute enormously to raising public awareness of human rights and mobilising public opinion on related issues – all the more so since political debate often focuses on such questions as discrimination against various groups, gender equality, minority rights or social issues.'

IPU Handbook on Human Rights for Parliamentarians (2005)

392 Liberty 'A Parliamentarian's Guide to the Human Rights Act' (September 2010) (Liberty, which is a human rights NGO, has produced in the UK a short guide for parliamentarians on the UK Human Rights Act 1998. Liberty distributed its guide to all members of the House of Commons shortly after the 2010 election in the UK) www.liberty-human-rights.org.uk/policy/reports/parliamentarian-s-guide-to-the-human-rights-act-sept-2010.pdf.

While parliaments working on human rights issues can have an important leadership and education role, working on human rights can also help to increase public engagement with the work of parliaments. Since human rights issues tend to coincide with the popular political issues of the day or with issues which personally affect individuals in a fundamental way, they can be ripe for exposing the work of parliaments to keen public scrutiny and provide opportunities for involving people more closely in the work of the legislature.

As we explained in Part II, the right to access information is an essential component of the right to freedom of expression. Parliaments are increasingly using more techniques to enhance transparency and public engagement in their work. The advent of the internet means that most parliaments will have easily accessible outlets for their information to be published and easily disseminated online. The UK Parliament has begun using e-forums to inform committee inquiries, encouraging members of parliament to establish blogs on their work and committees are encouraged to produce YouTube video to publicise evidence and the conduct of new inquiries. Even in communities where internet access is not widespread, online publishing will enable groups and organisations to access information which can then be disseminated in hardcopy formats and by other means.

Alternative means of engagement with the wider world are increasingly being explored, for example by enabling parliaments to sit and take evidence away from their usual home, such as in regions which may be very remote from the nation's capital. Parliamentary media groups and outreach teams can help facilitate engagement between the press and parliament and between community and other groups who might otherwise be unaware of parliament's work.

Parliaments and alternative means of engagement

- How accessible is information on the parliamentary website?
- Do committees upload information about ongoing inquiries regularly?
- Can committees sit away from parliament to take evidence outside the capital?
- Does your parliament have a strategy on how to use new media projects in its work?

Parliamentarians working on human rights issues should be aware not only of the mechanisms for increasing transparency, but they should be sensitive to alternative methods of engaging with witnesses and stakeholders who may need special assistance in order to effectively engage with the work of parliament. Parliamentarians and parliamentary bodies must use a range of tools, including evolving tools in new media to consider how best to engage with communities which might otherwise be excluded from debate on important questions which affect them directly. For example, some people may not find it easy to engage with a parliamentary committee taking evidence in public. Meeting informally in private with committee members may allow them to convey their perspectives in a way which allows their point of view to educate parliamentarians, although it cannot be recorded formally in evidence. Similarly, some people with disabilities may need support to be able to engage directly with parliament. When planning to ensure equal access for people with disabilities, strategies should consider unseen, non-physical disabilities. Planning should be based on the 'social' model of disability, which recognises that persons with disabilities are not limited by medical limitations but by barriers constructed by society.

Ensuring access to parliament

- Does your parliament have a policy on ensuring equal access to parliamentary business for people with disabilities?

UK case study: rights of people with disabilities and the work of the JCHR

The JCHR conducted a wide-ranging inquiry into the treatment of adults with learning disabilities in 2007. The Committee took a number of steps to increase the accessibility of the inquiry and to ensure that people with learning disabilities played an active part:

- The JCHR employed two specialist advisers: a senior professor in social care and a specialist in discrimination and mental health law. Their expertise informed and shaped the Committee's work.
- JCHR members and staff undertook training on how to communicate more effectively with people with learning disabilities and communication difficulties.
- The Committee took evidence from people with learning disabilities and met with people with higher support needs at their home and informally in parliament.
- Members learnt to change their usual practices by speaking more informally and by removing their jackets to create a more relaxed atmosphere in their evidence sessions.
- Press notices and a summary of the final report in the inquiry was published in Easy Read and audio versions, to increase accessibility.³⁹³

Following up on the inquiry, the then JCHR Chair wrote to the authorities at the House of Commons and asked for further information on how the House promotes the right of disabled people to access its proceedings, and initiated a debate on its findings.

³⁹³ See, for example, www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/40ieasyread.pdf and www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/jtrights.htm.

EFFECTIVE FOLLOW-UP BY PARLIAMENTS: AN ONGOING DIALOGUE ON HUMAN RIGHTS ISSUES?

Taking steps to follow-up on recommendations, inquiries and parliamentary motions can be a challenge for parliaments and individual parliamentarians. Political debate can move quickly and challenges on time and resources are great. However, parliaments and parliamentarians who gain expertise in specific human rights issues do gain institutional knowledge which is valuable and can support an ongoing democratic dialogue between the legislature, other arms of government and the public on important issues of constitutional significance. Tools for effective follow-up include maintaining effective records for institutional memory and setting timetables for routine post-legislative scrutiny. Equally, making time to engage regularly with concluding observations of UN treaty bodies provides an opportunity to revisit earlier recommendations.

Follow-up on specific recommendations can make parliamentary input more effective by exploring formal and informal means of reinforcing recommendations for reform designed to better protect fundamental rights. Parliamentarians may use more formal parliamentary procedures to follow-up recommendations of individual committees (for example, by proposing amendments to government bills or by drafting private members' bills). Equally, more informal means might be more successful in focusing attention on an issue. For example, after two reports on the issue of policing and protest, the JCHR facilitated a round-table discussion between committee members, protest groups and the police to discuss ongoing public order and policing reforms informally. This work informed both the work of the policing inspector, Her Majesty's Inspectorate of Constabulary and the work of the JCHR and individual members working on this issue.

'Parliamentarians can be essential partners in remoulding the world on the basis of fairness, equality and human rights.'

IPU Handbook on Human Rights for Parliamentarians (2005)

Openness and transparency and effective and timely recommendations, combined with effective follow-up by parliaments and individual parliamentarians, have the potential to create a dynamic dialogue between all three arms of government and the public which could better protect, promote and fulfil international human rights standards in practice.

ANNEX

Glossary of acronyms

| | |
|----------|--------------------------------------------------------------------------------|
| ACHR | American Convention on Human Rights |
| APPG | UK All-Party Parliamentary Groups |
| ASEAN | Association of South East Asian Nations |
| BAILII | British and Irish Legal Information Institute |
| CEDAW | Convention on the Elimination of all forms of Discrimination against Women |
| CERD | Convention on the Elimination of all forms of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| CPT | European Committee for the Prevention of Torture |
| CRC | Committee on Rights of the Child |
| CSRT | Combatant Status Review Tribunals |
| CWLA | common women's legislative agenda |
| ECHR | European Convention on the Protection of Human Rights and Fundamental Freedoms |
| EDM | Early Day Motion |
| EHRC | Equality and Human Rights Commission |
| EHRLR | European Human Rights Law Review |
| EU | European Union |
| HMIC | Her Majesty's Inspectorate of Constabulary |
| HMIP | Her Majesty's Inspectorate of Prisons |
| HRA 1998 | Human Rights Act 1998 |
| IBA | International Bar Association |
| IBAHRI | International Bar Association's Human Rights Institute |
| ICC | International Criminal Court |

| | |
|--------|---------------------------------------------------------------------------------------------------------|
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IGO | inter-governmental organisation |
| ILO | International Labour Organization |
| IRA | Irish Republican Army |
| JCHR | UK Joint Committee on Human Rights |
| MCA | Military Commissions Act |
| MOD | Ministry of Defence |
| MOI | Ministry of the Interior |
| NGO | non-governmental organisation |
| NHRI | National Human Rights Institution |
| NIHRC | Northern Ireland Human Rights Commission |
| NPM | National Preventative Mechanism |
| OAU | Organization for African Unity |
| OPCAT | Optional Protocol to UNCAT |
| PUCL | People's Union for Civil Liberties |
| SHRC | Scottish Human Rights Commission |
| TPIM | Terrorism Prevention and Investigation Measures |
| TWC | The Westminster Consortium for Parliaments and Democracy |
| UDHR | Universal Declaration of Human Rights 1948 |
| UN | United Nations |
| UNCAT | United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| UNCMW | United Nations Committee on Migrant Workers |
| UNCRC | United Nations Convention on the Rights of the Child |
| UNCRPD | United Nations Convention on the Rights of Persons with Disabilities |

| | |
|--------|-----------------------------------------------------------------|
| UNDP | United Nations Development Programme |
| UNHCHR | United Nations Office of the High Commissioner for Human Rights |
| UPR | Universal Periodic Review |
| UWOPA | Uganda Women's Parliamentary Association |
| WFD | Westminster Foundation for Democracy |
| WHO | World Health Organization |

SUPPORTING PARLIAMENTARIANS: HUMAN RIGHTS AND THE RULE OF LAW – USEFUL RESOURCES

This Annex highlights useful sources of information on human rights and the rule of law. It refers principally to sources accessible on the internet for free. Other research tools are available on a subscription or 'pay-per-view' basis. It is not intended to be comprehensive and new materials arise as often as the internet expands. These contacts have been compiled with the assistance of our local TWC partners, based on the best current knowledge locally.

Unfortunately, a number of these resources are only available in English or French.

DOMESTIC RESOURCES

Resources on domestic law and practice

The first and principal source of information for lawyers and other staff advising parliamentarians on human rights issues is domestic law. This can often be accessed online or through paper research and can be found in a combination of constitutional documents, domestic legislation and in the decisions of the relevant domestic courts. This section is divided by State and provides a number of useful links to resources on domestic law, including links to some civil society resources.

When working on human rights research, it is often also important to look at secondary sources of information in order to support your analysis. These secondary sources will include reviewing Government documents and available academic research on an issue. However, it can often be important to review the work of domestic institutions working in a particular area in order to ascertain their views on a particular practice or proposal. The Handbook deals in greater detail with the role of NHRIs and other organisations in Part III (page 193).

The work of civil society

The work of civil society on human rights issues, and particularly civil society groups which specialise, can provide valuable information and analysis to support the work of Parliament. The Handbook deals in greater detail with the role of civil society in Part III.

Georgia

Domestic law

The constitution

www.constcourt.gov.ge/index.php?lang_id=ENG&sec_id=19

Decisions of the constitutional court

www.constcourt.gov.ge/index.php?lang_id=ENG&sec_id=74

Domestic legislation

Criminal Code of Georgia, 2000: **www.unhcr.org/refworld/country,,NATLEGBOD,,GEO,,404c5dc11,0.html**

Further legislation

www.legislationline.org/topics/country/29/topic/1

Human rights institutions

Georgian Human Rights Ombudsman

www.ombudsman.ge

Georgia Office of the Public Defender

www.nhri.net/NationalData.asp?ID=148

Parliamentary Committee on Human Rights

www.parliament.ge/index.php?lang_id=ENG&sec_id=602

Work of civil society/NGOs

Amnesty International

www.amnesty.org/en/region/georgia

Business & Human Rights Resource Centre

www.business-humanrights.org/Categories/RegionsCountries/EuropeCentralAsia/Georgia

Tracks the positive and negative impacts of over 5100 companies worldwide, and maintains a country-specific page on Mozambique where links to reports on the business impact on human rights are published.

Coalition to Stop the Use of Child Soldiers

www.child-soldiers.org/regions/country?id=79

Publishes reports and resources related to child soldiers

European Human Rights Advocacy Centre (EHRAC)

www.londonmet.ac.uk/research-units/hrsjehrac

See, in particular, *The Human Rights & Social Justice Research Institute-Report 2008 / 2010*, available at: **www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/reports/HRSJ%20Annual%20Report%202010%20WEB%20FINAL.pdf**

Georgian Young Lawyers Association (GYLA)

<http://gyla.ge/index.php?lang=en>

See, in particular, 'Freedom of Expression in Georgia' available at: **http://gyla.ge/index.php?option=com_content&view=article&id=108&Itemid=159&lang=en**

Human Rights Centre

www.humanrights.ge/index.php?a=main&pid=6&lang=eng

Human Rights Watch

www.hrw.org

See, in particular, *World Report, 2011*. Available at: **www.hrw.org/en/node/95491**

United Nations: Human Rights Council

Working Group on the Universal Periodic Review 10th session (Geneva, 24 January – 4 February 2011): *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1* Georgia*. Available at: **http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/172/00/PDF/G1017200.pdf?OpenElement**

Lebanon

Domestic law

The constitution

www.constcourt.gov.ge/index.php?lang_id=ENG&sec_id=19

Lebanese Constitutional Council (There is no constitutional court in Lebanon)

http://issuu.com/deensharp/docs/constitutional_council_ifes_lebanon_briefing_paper

See, also: **www.aina.org/news/20050125164831.htm**

Domestic legislation

www.lebaneselaws.com

Law No 8 / 70 with its amendments of 11 March 1970: Organising the Profession of Lawyer

Human rights institutions

ALDHOM (Lebanese Association for Human Rights)

145, Tabaris - SNA Building
PO Box 16
6742 Beirut
Lebanon
Phone: +961 (1) 343 211
Fax: +961 (1) 201 354

Foundation for Human and Humanitarian Rights – Lebanon

PO Box 443
Jounieh
Lebanon
Phone: +961 (4) 922 978
Email: dumspirospero@fhhrl.org.lb

See, also, *press release from the 'Foundation for Human and Humanitarian Rights-Lebanon'*, available at: <http://case2769.org/2010/06/09/press-release-from-the-foundation-of-human-and-humanitarian-rights-lebanon>

Institute for Human Rights Lebanon/ Beirut Bar Association's Institute for Human Rights

Beirut Bar Association Court House
PO Box 116/2034
Beirut
Lebanon
Phone: +961 (1) 427 941
Fax: +961 (1) 423 943
Email: indh@inco.com.lb

Taken from: www.law.emory.edu/ihr/leba.html

Lebanese Transparency Association

<http://transparency-lebanon.org>

Presidential Complaints' Office

www.presidency.gov.lb/English/PresidentoftheRepublic/DirectorateGeneralofthePresidencyoftheRepublic/Pages/Secretariat-General%20Division.aspx

The Lebanese Advocacy and Legal Advice Center (LALAC)

http://lalac.org/index.php?option=com_content&view=article&id=1&Itemid=3&lang=en

See, also, the Ombudsman law at: **<http://lalac.org/docs/Law664.pdf>** [Arabic version].

Work of civil society

Amnesty International: Lebanon

www.amnesty.org/en/region/lebanon

See, in particular, *Suggested recommendations to States considered in the ninth round of the Universal Periodic Review, November 2010*, available at: **www.amnesty.org/en/library/asset/IOR41/023/2010/en/4e1d8189-ab5a-4e16-9230-2ed74469cab0/ior410232010en.pdf**

Business & Human Rights Resource Centre

www.business-humanrights.org/Categories/RegionsCountries/MiddleEastNoAfrica/Lebanon

Tracks the positive and negative impacts of over 5100 companies worldwide, and maintains a country-specific page on Mozambique where links to reports on the Business impact on Human Rights are published.

Coalition to Stop the Use of Child Soldiers

www.child-soldiers.org/regions/country?id=118

Publishes reports and resources related to child soldiers.

Front line: Lebanon

www.frontlinedefenders.org/lebanon?gclid=CNK66_Pm5qYCFc0f4QodnmfXzw

Human Rights Watch

www.hrw.org

See, in particular, *World Report, 2011: Lebanon*.

Available at: **www.hrw.org/en/world-report-2011/lebanon**

National Democratic Institute

Final Report on The Lebanese Parliamentary Election, 7 June 2009, available at: **www.ndi.org/files/Lebanese_Elections_Report_2009.pdf**

Pinnacle: The Public Interest Advocacy Centre Lebanon.

http://pinacle.org/index.php?option=com_content&view=section&layout=blog&id=9&Itemid=157

United Nations: Human Rights Council: Special Tribunal for Lebanon.

Available at: **www.stl-tsl.org**

World Health Organization

www.who.int/countries/lbn/en

Publishes information and factsheets related to the right to health worldwide.

Mozambique

Domestic law

The constitution

www.mozambique.mz/pdf/constituicao.pdf (original, Portuguese)

www.chr.up.ac.za/hr_docs/countries/docs/Constitution%20in%20force%2021%2001%2005__English_.pdf (English translation)

Decisions of the supreme court

www.saflii.org/mz/cases/MZTS (selected Supreme Court cases to 2007, Portuguese)

www.ta.gov.mz (Administrative Court website)

*Domestic legislation***www.portaldogoverno.gov.mz/Legisla***Resolutions & regulations***www.portaldogoverno.gov.mz/docs_gov/documento****Work of civil society/NGOs***Amnesty International***www.amnesty.org/en/region/mozambique**

Publishes annual reports on the state of human rights in Mozambique and maintains a country-specific website on human rights in Mozambique.

*APOSEMO*E-mail contact: **aposemo@virconn.com**

Group for social protection in older people.

*Business & Human Rights Resource Centre***[www.business-humanrights.org/ Categories/RegionsCountries/ Africa/Mozambique](http://www.business-humanrights.org/Categories/RegionsCountries/Africa/Mozambique)**

Tracks the positive and negative impacts of over 5100 companies worldwide, and maintains a country-specific page on Mozambique where links to reports on the Business impact on Human Rights are published.

*The Carter Center***www.cartercenter.org/countries/mozambique.html**

Work has included a successful food security programme, election observation, and assistance with a national consensus-building initiative.

*Centro de Integridade Pública***www.integridadepublica.org.mz**

Has published many reports and studies in the area of transparency and accountability of the executive.

Coalition to Stop the Use of Child Soldiers

[www.child-soldiers.org/ regions/country?id=145](http://www.child-soldiers.org/regions/country?id=145)

Publishes reports and resources related to child soldiers.

Danish Institute for Human Rights

[www.humanrights.dk/international/ geographical+regions/africa/ countries/mozambique/mozambique+and+human+rights](http://www.humanrights.dk/international/geographical+regions/africa/countries/mozambique/mozambique+and+human+rights)

Maintains an index measuring States' commitment to human rights.

FORUM MULHER/ Women and Law in Southern Africa (WLSA)

www.wlsa.org.mz

Organisation active in women's rights, putting pressure on parliament to pass bills in areas such as domestic violence.

Fundação para o Desenvolvimento

www.fdc.org.mz

Works in the areas of development and children's rights, with particular focus on access for women to education. Has conducted studies on development, education, state aid and other areas.

Human Rights Watch

www.hrw.org/en/taxonomy/term/113/all

Has published many reports on the state of human rights in Mozambique, and also maintain a website with links to relevant news stories, reports, commentary and letters.

Instituto de Estudos Sociais e Económicos (IESE)

www.iese.ac.mz

Economics and public policy organisation, which has conducted many studies, analyses and public interventions.

Liga dos Direitos Humanos

www.ldh.org.mz

Publishes annual reports on human rights in Mozambique, and is active in the promotion and protection of civil and political rights.

Rede da Criança

www.rededacrianca.org.mz

Children's rights organisation.

Rural Mutual Support Organisation (ORAM)

www.ms.dk/sw160935.asp (partner site)

Also active in access to land and land rights of rural people.

União Nacional de Camponeses Moçambique (UNAC)

www.unac.org.mz

World Health Organization

www.who.int/hhr/activities/factsheets/en/index.html

Publishes information and factsheets related to the right to health worldwide.

Uganda

Domestic law

The constitution

www.ugandaembassy.com/Constitution_of_Uganda.pdf

Amendments (2005): **www.ugandaonlinelawlibrary.com/files/constitution/Constitutional_Amendment_Act,_2005.pdf**

Official abridged version prepared by the Uganda Law Reform Commission (2006): **www.parliament.go.ug/images/abridged_constitution_2006.pdf**

Decisions of the constitutional court

Selected Supreme Court Cases to 2010.

www.ulii.org/ug/cases/UGSC

Website of the Ugandan Judiciary, including links to publications.
www.judicature.go.ug/index.php

Domestic legislation

Law World Guide Index of Uganda's Legislation through 2009.
www.lexadin.nl/wlg/legis/nofr/oeur/lxweuga.htm

The laws of Uganda consolidated 2000.
www.ulii.org/ug/legis/consol_act

International Labour Organization's database of national laws on labor, social security and related human rights.
www.ilo.org/dyn/natlex/natlex_browse.country?p_lang=en&p_country=UGA

Work of relevant domestic human rights institutions

Uganda Human Rights Commission
www.uhrc.ug

Aims to protect and promote human rights as guaranteed by the Constitution and other binding human rights instruments, guided by the requirements of our legislative mandate, by international and regional human rights standards and working through partnerships.

Work of civil society/NGOs

African Prisons Project
www.africanprisons.org

Works to improve prison life in Uganda.

Agency for Cooperation and Research in Development
www.acordinternational.org/index.php/base/uganda

Reports on and promotes the development of human rights in Africa.

Amnesty International
www.amnesty.org/en/region/uganda

Publishes annual reports on the state of human rights in Mozambique and maintains a country-specific website on human rights in Mozambique.

Business & Human Rights Resource Centre

[www.business-humanrights.org/ Categories/RegionsCountries/Africa/Uganda](http://www.business-humanrights.org/Categories/RegionsCountries/Africa/Uganda)

Tracks the positive and negative impacts of over 5100 companies worldwide, and maintains a country-specific page on Uganda where links to reports on the Business impact on Human Rights are published.

The Carter Center

www.cartercenter.org/countries/uganda.html

Work has included a successful food security programme, election observation, and assistance with a national consensus-building initiative.

Center for Women in Governance

www.cewigo.org

Supports and promotes women in elected and government positions, regardless of political party.

Civil Society Coalition on Human Rights and Constitutional Law

www.ugandans4rights.org

Organisation currently dedicated to combatting anti-homosexuality legislation.

Coalition to Stop the Use of Child Soldiers

www.child-soldiers.org/regions/country?id=222

Publishes reports and resources related to child soldiers.

Federation of Women Lawyers – Uganda

www.fidauganda.org

Promotes the dignity and human rights of women and children using law as a tool of social justice.

Gay Rights Uganda

www.gayrightsuganda.org

Publishes news items, reports and other resources related to the human rights situation of LGBTI citizens in Uganda.

*Human Rights Watch***www.hrw.org/africa/uganda**

Has published many reports on the state of human rights in Mozambique, and also maintain a website with links to relevant news stories, reports, commentary, and letters.

*Mifumi***<http://mifumi.org>**

Promotes protection for women and children affected by domestic violence and abuse, as well as bride price violations.

*National Association of Women's Organizations Uganda***www.nawouganda.org**

Indigenous umbrella for women's organisations.

*Platform for Labour Action***www.pla-uganda.org**

Advocates for fair labour practices.

*Raising Voices***www.raisingvoices.org**

Works to prevent violence against women and children.

*Sexual Minorities Uganda***www.sexualminoritiesuganda.org**

Coalition of lesbian, gay, bisexual, transgender & intersex (LGBTI) human rights organisations that works to further the efforts of its member organisation to promote and protect the human rights of LGBTI citizens.

*Spectrum Uganda Initiatives Inc***www.spectrumuganda.org**

LGBTI rights organisation.

World Health Organization

www.who.int/countries/uga/en

Publishes information and factsheets related to the right to health worldwide.

Full list of NGOs in Uganda

www.ugandaonline.net/ngos

Ukraine

Domestic law

The constitution

www.rada.gov.ua/const/conengl.htm

Decisions of the constitutional court

www.ccu.gov.ua/en/doccatalog/list?currDir=12169

Domestic legislation

www.lawukraine.com

Human rights institutions

Ukrainian Parliament Commissioner for Human Rights

www.theioi.com/europe/ukraine/parliament-commissioner or
www.ombudsman.kiev.ua

The Ukrainian Parliament Commissioner for Human Rights exercises his or her parliamentary control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction.

Work of civil society/NGOs

All-Ukrainian non-governmental organisation: Ukranian Bar Association

www.uba.ua/eng/home

Amnesty International

www.amnesty.org.uk/index.asp

See, in particular: *Ukraine needs accountability for human rights violations*, available at: **www.amnesty.org/en/news-and-updates/report/ukraine-needs-accountability-human-rights-violations-2010-04-14**

See also, *Stop harassment of Ukraine human rights defenders*, available at: **www.amnesty.org/en/appeals-for-action/stop-harassment-ukraine-human-rights-defenders**

Business & Human Rights Resource Centre

www.business-humanrights.org/Categories/RegionsCountries/EuropeCentralAsia/Ukraine

Tracks the positive and negative impacts of over 5100 companies worldwide, and maintains a country-specific website on Mozambique where links to reports on the business impact on human rights are published.

Coalition to Stop the Use of Child Soldiers

www.child-soldiers.org/regions/country?id=223

Publishes reports and resources related to child soldiers.

Danish Institute for Human Rights

www.humanrights.dk/international/geographical+regions/europe+and+central+asia/countries/ukraine/partners+and+activities

The Danish Institute for Human Rights cooperates with a number of human rights NGOs in Ukraine within the project: '*Strengthening Human Rights Advocacy in Ukraine*'.

Human Rights Watch

www.hrw.org

See also, *World Report 2011 – Ukraine*, available at: **www.hrw.org/en/world-report-2011/ukraine**

See also, *Ukraine: Stop Harassing Rights Group*, available at: **www.hrw.org/en/news/2010/11/10/ukraine-stop-harassing-rights-group**

Kharkiv Human Rights Protection Group (KhPG)

www.khpg.org/en

Gathers information about human rights abuse and sends this information to the relevant persons, organisations and mass media. Also, the KhPG examines the operating laws and draft bills as to their compliance with international legal rules.

United Nations in Ukraine

www.un.org.ua

See also, 65th General Assembly, Third Committee- 32nd & 33rd Meetings, October 2010: *National Efforts to Protect Human Rights, Effectiveness of Human Rights Council and Special Procedures among Issues, as Third Committee Debate Continues*

www.un.org/News/Press/docs/2010/gashc3989.doc.htm

World Health Organization

www.who.int/countries/ukr/en

Publishes information and factsheets related to the right to health worldwide.

For a list of non-governmental organisations in Ukraine see: **www.unhcr.org.ua/unhcr_ukr/main.php?article_id=12&view=full&start=1**

INTERNATIONAL LAW RESOURCES

International Human Rights Law

The Office of the UN High Commissioner on Human Rights

www2.ohchr.org/english/law

Provides a full list of all UN Human Rights Treaties, and other documents and details of any reservations and declarations made by the parties. (Available in English, French and Spanish).

International Monitoring Bodies

It is important to continue to monitor the work of each of the international treaty monitoring bodies, in particular, any concluding observations or reports made in relation to your State.

The UN Human Rights Council

An inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006 with the main purpose of addressing situations of human rights violations and make recommendations on them. Resolution of the UN Human Rights Council can be accessed online (available in English, French and Spanish).

www2.ohchr.org/english/bodies/hrcouncil

The work of the Advisory Committee to the UN Human Rights Council – an expert panel of advisors to the Council – may also be helpful.

www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm

The Universal Periodic Review is a key part of the work of the UN Human Rights Council. This involves reviewing implementation of human rights standards in all UN Member States on a periodic basis. Georgia will be subject to review in 2011 at the 10th Session of the UN Human Rights Council.

www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx

UN Treaty monitoring bodies

The UN is required to monitor reports from member states on a regular basis. Where the state party has accepted any relevant right of individual petition, the treaty body will also consider individual complaints that the state has failed to protect the rights guaranteed by that treaty.

The concluding observations made by each of these bodies provide a useful oversight of human rights issues in a particular country in relation to specific human rights issues.

General comments issued by these bodies provide useful aids to the interpretation of the UN human rights treaties.

ICCPR

www2.ohchr.org/english/bodies/hrc/index.htm

ICESCR

www2.ohchr.org/english/bodies/cescr/index.htm

CERD

www2.ohchr.org/english/issues/index.htm

CEDAW

www2.ohchr.org/english/bodies/cedaw/index.htm

UNCAT

www2.ohchr.org/english/bodies/cat/index.htm

OPCAT

www2.ohchr.org/english/bodies/cat/opcat/index.htm

(States who have ratified the Optional Protocol are visited by the sub-committee, who can review the implementation of the treaty on the ground in places of detention – for example, prisons and mental health institutions – and make recommendations).

UNCRC

www2.ohchr.org/english/bodies/crc/index.htm

UNCMW

www2.ohchr.org/english/bodies/cmw/index.htm

UNCPRD

www2.ohchr.org/english/bodies/cmw/index.htm

UN Special Rapporteurs

These are appointed by the UN Secretary General and provide expert advice and opinions in respect of particular human rights issues. These issues are varied and include torture, education and business and human rights. The work of UN Special Rapporteurs is useful and is particularly informative when examining state policy in an area where a Rapporteur is currently working or has previously expressed a view.

www2.ohchr.org/english/issues/index.htm

International civil society

Some NGOs operate internationally and some produce helpful annual reports on the state of human rights across the world. These annual reports can provide useful information and insight on human rights issues in your State and on comparative practice. Equally, these organisations publish regular reports on specific issues and campaigns and may produce reports on the work of human rights organisations, such as the UNHRC. The list provided below is not exhaustive and many specialist civil society organisations may be more active on specific human rights issues.

Amnesty International

www.amnesty.org

Article 19 (Freedom of Expression)

www.article19.org

Association for the prevention of torture (Prohibition of torture, victims' rights)

www.apt.ch

Human Rights Watch

www.hrw.org

World Report 2011: **www.hrw.org/en/world-report-2011**

IBAHRI

www.ibanet.org/IBAHRI.aspx

The IBAHRI undertakes numerous projects on a variety of human rights issues, including freedom of expression and the independence of the judiciary and legal professionals.

It also provides a helpful database of organisations working on rule of law issues around the world: **www.roldirectory.org**

International Commission of Jurists

www.icj.org

An international non-governmental organisation that works to improve the rule of law globally. It has conducted numerous inquiries and research on a range of topics, including, for example, global responses to terrorism.

The Open Society Institute

www.soros.org/about

An international non-governmental organisation which works principally on building democracies and promoting human rights. Its research on topical issues, particularly relating to discrimination, can be useful.

The Rule of Law Unit of the OSCE (Organisation for Security and Co-operation in Europe)

Project Co-ordinator in Ukraine: **www.osce.org/ukraine/43365**

Activities in Georgia

www.osce.org/search/apachesolr_search/georgia

Numerous international NGOs focus on specific human rights issues. These are too numerous to list comprehensively. A few examples include:

SAVE THE CHILDREN (*CHILDRENS' RIGHTS*)

www.savethechildren.org

STATEWATCH (*PRIVACY RIGHTS*)

www.statewatch.org

TRANSPARENCY INTERNATIONAL (ANTI-CORRUPTION)**<http://transparency.org>**

Many more examples can be found online and numerous current and lengthy international NGO lists are maintained online by academic institutions, for example, Duke University in the US. These lists change regularly, but can generally be found through major search engines. Thousands of relevant regional and international NGOs registered with the UN can be identified through the UN ECOSOC civil society database: **<http://esango.un.org/civilsociety/login.do>**.

REGIONAL HUMAN RIGHTS LAW RESOURCES**Council of Europe Resources****www.coe.int**

The resources of the Council of Europe are particularly useful for those advising parliamentarians in ECHR member states.

Treaties*European Convention on Human Rights***<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CM=8&DF=07/04/2010&CL=ENG>***European Social Charter (as Revised)***<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=8&DF=07/04/2010&CL=ENG>***Other treaties of the Council of Europe***<http://conventions.coe.int>**

There are currently over 200 treaties of the Council of Europe on numerous topics, from human trafficking, terrorism and the treatment of national minorities to cybercrime and biomedical research. The text of the treaties and the current signatories to the relevant treaty can be found on the Council of Europe Treaty database.

(All accessible in German, French, Spanish, Italian, English and Russian)

European Court of Human Rights

The website of the European Court of Human Rights is a useful source of information. Accessible in French and English.

Rules of Court and Practice Directions

www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights

Annual Reports of the Court and Statistical Information

www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+information+by+year

Parliamentarians may find it useful to understand the statistics relating to cases heard and pending against their State. This information is easily accessed in the Annual Reports of the Court. More up to date information can be obtained by contacting the Court Registry directly.

HUDOC: The case law of the European Court of Human Rights

www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database

HUDOC is a database of cases and decisions by the European Court of Human Rights and the former European Commission of Human Rights.

HUDOC: The communicated cases collection

<http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-cc-en>

Searching this database will give you information about pending cases which have already been communicated to the respondent state. This will include the facts of the case and any questions asked by the Court.

Press Releases

www.echr.coe.int/ECHR/EN/Header/Press/Press/Introduction

Subscribing to the press releases issued by the Court can ensure that you receive timely information about new judgments against your State and others.

Key issues in case law

www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+information/Key+case-law+issues

The Court Registry prepares some summaries of key issues which have arisen in the case law of the Court. These may provide useful background information.

Institutions and Monitoring Bodies of the Council of Europe*Parliamentary Assembly of the Council of Europe (PACE)*

<http://assembly.coe.int/default.asp>

The Committees of PACE often produce relevant information on the work of national parliament on particular issues, including the implementation of key human rights obligations. For example, the Legal and Human Rights Committee of PACE regularly undertakes work on the implementation of adverse judgments of the European Court of Human Rights and the role of national parliaments. See, for example:

http://assembly.coe.int/CommitteeDocs/2008/20080526_ajdoc24_2008.pdf

http://assembly.coe.int/ASP/AssemblyList/Annuaire_03W_Committees.asp?ComID=5

Its Secretariat has recently produced a useful summary document on the role of national parliaments in the implementation of the ECHR:

http://assembly.coe.int/CommitteeDocs/2009/ajinfdoc02_2009.pdf

Committee of Ministers of the Council of Europe

www.coe.int/t/cm/home_en.asp

The work of the Committee of Ministers is particularly important. It retains principal responsibility for securing Member States' compliance with the ECHR.

It has responsibility for ensuring that Member States effectively meet their duty under Article 46 ECHR to respond to judgments of the European Court of Human Rights by removing the breach identified and preventing any future violations of the Convention. More information about this role can be found on the website of the Execution Division:

www.coe.int/t/dghl/monitoring/execution/default_en.asp

The enforcement division maintains a database of information about the cases which are currently being supervised by the Committee of Ministers which is searchable by State. This database provides useful information on these cases, including information compiled by the Secretariat on the judgment of the court, information provided by the respondent state and further information required:

www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp

The Commissioner for Human Rights

www.coe.int/t/commissioner/default_en.asp

The Commissioner performs a general educative and oversight role in relation to the state of human rights in the Council of Europe. His oversight work includes country-based monitoring and reports on a number of thematic issues.

Reports, by country, available at:

www.coe.int/t/commissioner/Activities/visits_en.asp

The Commissioner regularly publishes thematic 'Viewpoints' on topical human rights issues, which can provide an interesting insight into specific human rights concerns:

www.coe.int/t/commissioner/Viewpoints/default_en.asp

Other relevant projects and monitoring bodies

A number of other relevant projects and bodies of the Council of Europe may assist the work of staff advising Parliamentarians. A few are set out below:

European Committee on Social Rights

www.coe.int/T/DGHL/Monitoring/SocialCharter

The Committee monitors the implementation of the European Social Charter and hears individual complaints against States who have accepted the right of individual petition under the Charter.

The Committee for the Prevention of Torture

www.cpt.coe.int/en/about.htm

The CPT are responsible for the implementation of the Council of Europe Convention for the prevention of torture, cruel, inhuman and degrading treatment. The CPT conducts visits to Member States who are party to the Convention and produce reports on the state of implementation of the Convention in those States, particularly in places of detention.

The Venice Commission (the Commission for democracy through law)

www.venice.coe.int/site/main/presentation_E.asp?MenuL=E

Comprised of international experts who are available to provide constitutional assistance on legal issues, including legislation. Its case work and other publications are published online.

European Union Resources

<http://europa.eu>

For members of the EU, resources can provide an additional research tool. The website of the EU is available in all 15 official languages of the EU. Links below are to the English sites.

Legislation and treaties of the EU

http://europa.eu/documentation/legislation/index_en.htm

Case law of the EU

<http://eur-lex.europa.eu/JURISIndex.do?ihmlang=en>

The case law of the EU can be found on the EUR-Lex database.

Searching EUR-Lex

http://eur-lex.europa.eu/RECH_menu.do?ihmlang=en

The EUR-Lex database contains links to all European documents published in the official journal, including legislation and case law of the EU. It can be searched by subject, date and by references or document number if they are available.

Human rights in the EU

The work of the EU on human rights is wide-ranging. The EU reports annually on human rights within the EU and the current human rights action plan for the EU covers 2009 – 2013. Further information can be found at:

http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/index_en.htm

Charter of Fundamental Rights

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/c_303/c_30320071214en00010016.pdf

All member states of the EU are bound by the Charter of Fundamental Rights, which has had legal force since 2007.

More information about the Charter is available at: **http://europa.eu/lisbon_treaty/glance/rights_values/index_en.htm**

EU Fundamental Rights Agency

http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/l14169_en.htm

The EU FRA, based in Vienna, is an institution which exists to provide expertise and assistance to the EU and its member states on the implementation of fundamental rights within the EU. Its research can be informative and helpful:

African Union Resources

Treaties

African Charter on Human and Peoples Rights

www.achpr.org/english/_info/charter_en.html

African Charter on the Rights and Welfare of the Child

www.achpr.org/english/_info/child_en.html

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

www.achpr.org/english/_info/refugee_en.html

Institution and Monitoring bodies of human rights in Africa

African Commission on Human and Peoples' Rights

www.achpr.org/english/_info/news_en.html

The Commission offers a protective role, charged with ensuring the protection of human rights under the conditions laid down by the Charter on Human and Peoples' Rights.

Its Rules of Procedure can be obtained here: **www.achpr.org/english/_info/rules_en.html**

African Court of Justice and Human Rights

www.africa-union.org/organs/orgCourt_of_Justice.htm

In 2008, the Protocol on the Statute of the African Court of Justice and Human Rights merged the African Court on Human and Peoples' Rights and the African Court of Justice.

African Court on Human and Peoples' Rights

Although it was recently superseded by the African Court of Justice and Human Rights, the website of this Court is a useful source of information. It is accessible in English, French, Portuguese and Arabic.

On the Activities Report of the Court: **www.african-court.org/en/court/documents**

Although only available for 2006 and 2007, Parliamentarians may find these Activities Reports useful to realise the cases the Court has heard and how the corresponding State has failed to comply with the judgment.

On the latest judgments: **www.african-court.org/en/cases/latest-judgments**

The African Centre for Democracy and Human Rights

www.acdhrs.org/content/index.php?option=com_content&view=article&id=46&Itemid=1

The African Centre for Democracy and Human Rights is an independent, pan-African NGO. It seeks to uphold Article 25 of the African Charter on Human and Peoples' Rights by promoting and teaching the rights and freedoms in the Charter through education and publications.

Institute for Human Rights and Development in Africa

www.africaninstitute.org

African Women's Development Fund

www.awdf.org

Grant-making foundation which supports local, national and regional organisations in Africa working towards women's empowerment.

East African Community Resources

The EAC is composed of five East African countries: Burundi, Kenya, Rwanda, Tanzania and Uganda. It strives for a prosperous, competitive and stable East Africa. It is one of the pillars of the African Economic Community.

EAC Treaty

www.eac.int/treaty

The Treaty talks about the protection of human rights both in relation to the African Charter and otherwise.

EAC Secretariat

The Secretariat has been involved in agreeing programmes and Memoranda of Understandings in relation to the protection of human rights. Much of their work is detailed in the EAC News section of the website:

www.eac.int/about-eac/eacnews/525-eac-icglr-sign-mou.html

Economic Community of West African States Resources (ECOWAS)

ECOWAS is a group of 15 countries with the aim of promoting economic integration across the Western region. It is one of the pillars of the African Economic Community.

ECOWAS Treaty

www.worldtradelaw.net/fta/agreements/ecowasfta.pdf

ECOWAS Court of Justice

Since 2005, the Court has had jurisdiction to rule on human rights complaints according to the African Charter on Human and Peoples' Rights filed by citizens of ECOWAS member states.

Southern Africa Development Community Resources

The Southern Africa Development Community (SADC) is a collection of 15 Southern African states with the aim of a regional community that can ensure economic well-being, improvement in living standards and freedom and social justice.

SADC Treaty

www.sadc.int/index/browse/page/119#article4

Article 4 of the Treaty requires member states to act in accordance with human rights, democracy and the rule of law.

SADC Tribunal

Whilst the SADC Tribunal does not have a specific human rights jurisdiction, certain provisions of the SADC Treaty allude to human rights. This allows the Tribunal to adjudicate on such matters.

Charter of Fundamental and Social Rights

www.sadc.int/index/browse/page/171

Whilst Member States signed this charter in 2003, it is yet to enter into force.

League of Arab States Resources

www.arableagueonline.org/las/index_en.jsp
www.arableagueonline.org/las/index_en.jsp

The website is currently only accessible in Arabic, although an English version is currently in construction.

Arab Charter of Human Rights

www1.umn.edu/humanrts/instree/arabhrcharter.html

Arab Human Rights Committee

<http://hrlr.oxfordjournals.org/content/10/1/169.full#sec-2>

There is currently no court which protects the rights in the Charter of Human Rights. Instead, the only mechanism for this is by means of seven independent experts which form the Committee.

Non-Governmental Organisations

Arab Centre for the Independence of the Judiciary and Legal Profession (ACIJLP)

www.acijlp.org/about.def.asp

The ACIJLP is an NGO which seeks, inter alia, to reinforce human rights, the status of justice in Arab regions.

Arab Commission for Human Rights

www.achr.nu/achr.en.htm

COMPARATIVE PRACTICE

Often parliamentary oversight will benefit from examining comparative practice in other States. There is no single comprehensive database which can provide easy access to domestic legislation or law in multiple countries. The resources below can provide useful assistance, but are not necessarily comprehensive.

The World Legal Information Institute

www.worldlii.org

The World Legal Information Institute provides a useful source of assistance and catalogues legislation and important judicial decisions from a number of different jurisdictions. It can provide a good general starting point for comparative research and categorises material according to both country and subject matter.

The Government Legal Information Network

www.glin.gov/search.action

Compiled by the Law Library of the US Congress. It provides information on legislation from a number of countries across the world and is searchable by subject. Searching according to particular subject terms identified in their index – or by new terms identified by the user – will identify legislation or case law stored on their database containing those terms.

The International Centre for the Protection of Human Rights

www.interights.org/database-search/index.htm

The International Centre provides a free online database of commonwealth and international judicial decisions on human rights issues.

It also provides a useful, searchable database of online legal resources:

www.interights.org/search/index.htm

Other websites may provide links to relevant information on comparative practice in specific subject areas. It may also be more helpful to search individual country databases for information.

Comparative experience: UK legislation and case law

Legislation

www.opsi.gov.uk/legislation/about_legislation

The Statute Law Database permits advance searches of UK primary legislation by topic.

www.statutelaw.gov.uk

BAILII provides a helpful, searchable database of British and Irish law. It includes both legislation and case law:

www.bailii.org/databases.html#eu

Case law

Decisions of the Supreme Court: **www.supremecourt.gov.uk/decided-cases/index.html**

BAILII provides a helpful, searchable database of British and Irish law. It includes both legislation and case law: **www.bailii.org/databases.html#eu**

More comprehensive information is available on Westlaw, Lexis-Nexis/Butterworths or Lawtel, but each of these sites incurs a subscription charge.

Work of the UK NHRIs

Equality and Human Rights Commission

www.equalityhumanrights.com

Northern Ireland Human Rights Commission

www.nihrc.org

Scottish Human Rights Commission

www.scottishhumanrights.com

Children's Commissioners:

ENGLAND

www.11million.org.uk

NORTHERN IRELAND

www.nickey.org

SCOTLAND

www.sccyp.org.uk

WALES

www.childcom.org.uk

PARLIAMENTS AND HUMAN RIGHTS

The Inter-Parliamentary Union

Conducts work on a number of human rights issues, from freedom of expression to human trafficking.

www.ipu.org/english/whatipu.htm

The IPU outlines a number of human rights projects for parliamentarians and programmes which are designed to increase parliamentary involvement in human rights protection:

www.ipu.org/hr-e/parliaments.htm

It has prepared a number of useful handbooks on these issues, which are all free to view and download from their website.

www.ipu.org/english/pblctns.htm

The IPU Handbook for Parliamentarians on Human Rights (2005)
(Available in English, French, Spanish and Arabic).

An updated version of this Handbook is expected in 2012.

www.ipu.org/PDF/publications/hr_guide_en.pdf

The IPU also maintains a database of parliamentary human rights bodies, which is searchable by country and region. This database provides information on the work of comparative parliaments and may be useful for the purposes of comparing parliamentary structures for the protection of human rights and for considering work undertaken by other parliaments.

www.ipu.org/parline-e/Instance-hr.asp

The Commonwealth Parliamentary Association

www.cpahq.org/cpahq/mem/default.aspx

Undertakes similar work on the rule of law and human rights in Parliament. Details of its work and relevant publications are available on its website.

The Council of Europe

www.coe.int/t/dc/files/events/2010_interlaken_conf/default_EN.asp?

Has issued numerous statements about the role of national parliaments in relation to the implementation of the European Convention on Human Rights. The latest can be found in the Interlaken Declaration, February 2010, which stressed that Governments, national parliaments and courts all have a role to play in implementing the rights guaranteed by the Convention (PP6).



the global voice of
the legal profession[®]

THE WESTMINSTER CONSORTIUM
FOR PARLIAMENTS AND DEMOCRACY
ARTILLERY HOUSE
11/19 ARTILLERY ROW
LONDON SW1P 1RT

INTERNATIONAL BAR ASSOCIATION
10TH FLOOR
1 STEPHEN STREET
LONDON W1T 1AT
UNITED KINGDOM