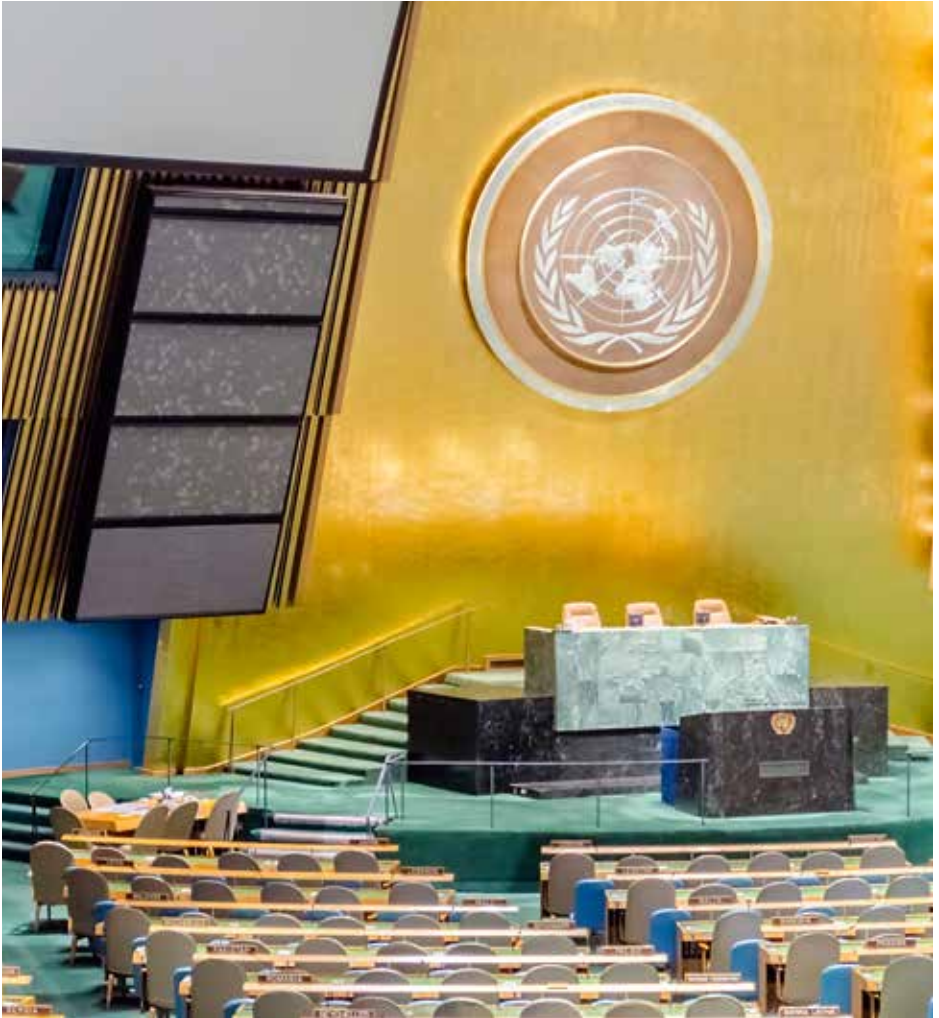


Global developments in the role of  
parliaments in the protection and  
promotion of human rights and the  
rule of law: An Emerging Consensus

Brian Chang



Arts & Humanities  
Research Council

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## About the author



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“Parliamentarians are one of the key stakeholders in the UPR process... We have just concluded a series of regional seminars with the Commonwealth Parliamentary Association across Asia, Africa, the Caribbean and the Pacific, focusing on parliamentarians’ role in the promotion and protection of human rights... We believe there is merit in considering the potential of a set of international principles or standards, such as the Paris Principles, for parliaments.”

*HE Kamallesh Sharma, Secretary-General of the Commonwealth, in the High Level Segment of the UN Human Rights Council, March 2016*



## Murray Hunt

Principal Investigator on the University of Oxford's research project on Parliaments, the Rule of Law and Human Rights

We live in dangerous times for the rule of law and human rights. Across the world, disenchantment with democratic politics has led to the return of populist movements and the resurgence of authoritarian nationalism in many countries and regions, including in mature democracies. In this climate of disaffection and populist nativism, it is now commonplace in mainstream politics to witness virulent attacks on the democratic legitimacy of the institutional machinery on which we have depended to uphold the rule of law and human rights, including courts and other mechanisms, both national and international. Embedding meaningful respect for the rule of law and human rights in democratic institutions is therefore one of the most urgent challenges facing the world today. The purpose of Oxford University's research project on *Parliaments, the Rule of Law and Human Rights*, which has been generously supported by the Arts and Humanities Research Council (AHRC) since 2011, is to carry out and stimulate applied research which is focused on strengthening protection for the rule of law and human rights by finding practical ways of bringing them into the heart of the political process. Further details of the research project can be found here: <https://www.law.ox.ac.uk/research-and-subject-groups/parliaments-rule-law-and-human-rights-project>

This paper, by the project's researcher Brian Chang, presents the results of a worldwide survey of the most significant global developments on this important subject in recent years. The paper draws together significant developments at both the international and regional level. It is being published in anticipation of other publications by organisations

also carrying out important work in this field, and is intended to complement their focus on interesting and significant developments at national level.

The Inter-Parliamentary Union and the UN Office of the High Commissioner for Human Rights, for example, is performing the important service of compiling some examples of best practice from around the world, drawing on the extensive work they have carried out with national parliaments and parliamentarians in a series of regional seminars and other work. The Commonwealth Secretariat, in conjunction with the Universal Rights Group, is preparing a valuable compilation of best practices from Commonwealth countries, focusing in particular on the role of parliaments in the work of the Human Rights Council and its Universal Periodic Review, also drawing on extensive frontline work with national parliaments. The Westminster Foundation for Democracy, which has also carried out important capacity building work with a number of national parliaments, has already produced an extremely useful 'synthesis report', explaining its methodology and drawing together its experience of working with different parliaments to strengthen their capacity.

The particular contribution of this survey of global developments is that it demonstrates, beyond doubt, that there is something very interesting happening right across the world: a distinctive turn to parliaments to promote and protect human rights and strengthen the rule of law, not as an alternative to courts and other institutional means of providing such protection, but to complement and work alongside those other institutions. The worldwide reach of the paper confirms that we are

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witnessing the emergence of a global phenomenon: a new consensus that the protection of the rule of law and human rights cannot simply be left to courts and legal remedies, but that parliaments share responsibility for that protection with those other institutions. This paper shows that this is now happening in every major international organisation and, albeit to varying degrees, in every region of the world. This is important because it provides a global narrative in which we can make better sense of the important work of others, referred to above, which demonstrate how this worldwide movement is now playing out at the national level, as parliaments in many countries begin to devise imaginative new ways of assuming this shared responsibility.

There seem to be two main reasons for this global development, which overlap but warrant articulating. First, there is a familiar instrumental concern with effectiveness. Because of the nature of their constitutional function, parliaments are well placed to close the implementation gap: the gap between a State's commitments in international law and the reality on the ground in that State. Parliaments can both prevent violations of the rule of law and human rights from arising in the first place, and can act to implement recommendations where violations are found to have happened, to prevent them from happening again. Second, and distinctly, there is a growing concern about democratic legitimacy. Elected politicians feel disempowered if guardianship of the rule of law and

human rights is left solely to courts and lawyers. Without undermining or belittling the important role of courts and other institutional machinery, we have to find ways to enable democratically elected politicians to feel that they have a meaningful role in the interpretation and application of rule of law values and human rights standards.

So it seems the world is entering a new age in the protection of both human rights and the rule of law: what has been called in the literature an 'Age of Subsidiarity', in which there is renewed emphasis on the primary responsibility of States to protect human rights and the rule of law, a responsibility which is shared between all the organs of the State, including parliaments. Parliaments are at last emerging as the partners for change for the international human rights and rule of law machinery, whose potential is now widely recognised. The next stage of the task before us is to redouble our efforts to find practical and meaningful ways of unlocking that potential.



"I am really convinced that the Oxford University Project on Parliaments, the Rule of Law and Human Rights is of great value to the Office of the High Commissioner for Human Rights in its ongoing work on enhancing the oversight function of Parliaments with respect to human rights policies and actions of Governments as well as in ensuring international principles on Parliaments and Human Rights are considered and eventually agreed up by the international community."

*Gianni Magazzeni, Chief of the Americas, Europe and Central Asia Branch, Office of the UN High Commissioner for Human Rights, May 2016*

### Global Developments in the Role of Parliaments in the Protection and Promotion of Human Rights and the Rule of Law

This paper presents the findings of a global survey of significant developments in the role of parliaments in the protection and promotion of human rights and the rule of law. Its purpose is to complement other publications focusing more on significant developments at the national level, with a view to informing on-going discussions about the contribution of parliaments to the international machinery for protecting human rights and the rule of law. By drawing together developments at the international and regional level, the paper demonstrates that there is a growing international consensus about the importance of the role of parliaments in the protection and realisation of human rights and the rule of law, and that this role involves parliamentary engagement with the international and regional machinery for protecting them, and other national human rights and rule of law actors. It concludes by discussing a number of possible ways of increasing the role of parliaments, and suggesting that the Council consider the possibility of internationally agreed principles and guidelines on the role of parliaments in the protection and realisation of the rule of law and human rights, in order to distil the essence of the good practices that have been identified to date, to assist parliaments which have a will to do so, and thereby to achieve a step change in parliamentary engagement with human rights and the rule of law and their associated mechanisms.

International human rights mechanisms have historically neglected to address the role of parliaments. And yet, parliaments are the national bodies best placed to prevent violations of human rights and the rule of law. Parliaments can be key partners to help the new UN Secretary-General realise his vision of preventing conflict and other negative impacts on well-being and ensuring sustainable and inclusive development. Parliaments can help to do this by legislating to prevent or remedy human rights or rule of law violations, or by monitoring and acting to improve member states' progress in meeting their obligations under international human rights law, the Paris Agreement on Climate Change and 2030 Agenda for

Sustainable Development. Parliaments' law-making and budgetary functions enable them to help design the national framework for giving effect to human rights and the rule of law, as well as enact legislation and expend funds to provide detailed protection to specific human rights or rule of law values, and to implement the recommendations of the Universal Periodic Review and the UN treaty bodies. Their oversight function means they are also well-placed to act early to identify and address actual or potential violations of human rights or the rule of law, relevant national and international actors. The involvement of parliaments is therefore crucial in helping to fulfil the vision of moving the international community from a pattern of reaction to a culture of prevention of violations of human rights and the rule of law: of ensuring that these important values are 'up front'.

This paper outlines initiatives to increase the role of parliaments by international and regional actors including the UN General Assembly, the Inter-Parliamentary Union, the UN Human Rights Council, the UN Office of the High Commissioner for Human Rights, the Council of Europe, the European Union, the Commonwealth, the Francophonie and the Westminster Foundation for Democracy, amongst others. It finds that there is a growing international consensus about the importance of the role of parliaments in the protection and promotion of human rights and the rule of law, and growing activity towards realising this role. It compares the existing initiatives, finding that their activities tend to be based on capacity building and technical cooperation as well as dissemination of good practices and human rights and rule of law training of parliamentarians, largely done on an ad hoc basis. While these initiatives are valuable and should be continued, this paper finds that more needs to be done to reach the parliaments that do not presently engage with the UPR and human rights treaty mechanisms or other rule of law machinery, and to encourage them to do so. At present, there is very little in the way of concrete guidance to show how this desirable end could be achieved, nor are there any agreed standards about what practices should

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be adopted for such parliamentary involvement to be effective. Moreover, advocacy and capacity building efforts have particularly focused on the implementation of recommendations accepted during the Universal Periodic Review, but could be more broadly focused: parliaments may not be able to take action to implement recommendations without effective parliamentary structures for the protection and realization of human rights and the rule of law.

This paper then sets out a number of ways to further enhance parliaments' contribution to the protection and promotion of the rule of law and human rights, including the work of the Human Rights Council and the human rights treaty bodies:

1. The development of a formal network of relevant parliamentarians, lawyers and academics, who are properly resourced, to facilitate the exchange of relevant information and to provide a forum for sharing good practices, such as practices that encourage the implementation of Universal Periodic Review recommendations;
2. The appointment of a UN Special Rapporteur on increasing the role of parliaments in the protection and realisation of human rights and the rule of law, with a specific mandate to assist national parliaments to find ways to mainstream international and regional standards into the full range of their activities, as well as to increase coordination between parliaments and the Universal Periodic Review, UN Special Procedures and human rights treaty bodies;
3. The possible development of an internationally agreed set of principles and guidelines on the role of parliaments on the role of parliaments in the protection and realisation of the rule of law and human rights, including the contribution of parliaments to the Universal Periodic Review and coordination between parliaments and the UN Special Procedures as well as the human rights treaty bodies.

The paper argues that the third idea may be the most effective way of bringing about a step change in the parliamentary protection and promotion of human rights and the rule of law, and a number of international actors have expressed their interest in exploring it, including the UN Secretary-General (in one of his Reports to the General Assembly),

the UN High Commissioner for Human Rights and the Secretary-General of the Commonwealth. The Westminster Foundation for Democracy has also demonstrated the potential operational value of such principles and guidelines through its parliamentary strengthening work. There is a striking gap here which demonstrates how recently the international human rights machinery has begun to appreciate the importance of the role of parliaments. Internationally agreed principles relating to the Status of National Human Rights Institutions (the 'Paris Principles') have existed since 1991, while those relating to the independence of the judiciary (the 'Bangalore Principles') were adopted in 2002, and a set of principles on the Relationship between National Human Rights Institutions and Parliaments (the 'Belgrade Principles') were agreed in February 2012, but as yet there are no internationally agreed principles for parliaments. The paper therefore asks whether the time has come to consider the desirability of an internationally agreed set of principles and guidelines for parliaments.

The paper concludes by noting that the presentation of the report of the Panel Discussion at the June 2017 session of the Human Rights Council will be an opportunity for Member States on the Council to consider and agree on what further steps they wish to take to increase engagement between the Council and parliaments, especially in light of the commencement of the third cycle of the UPR in May 2017.



# Part I: Introduction



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International human rights law has historically addressed itself to states, individuals and civil society. Over the past few decades, this focus has broadened to include National Human Rights Institutions (NHRIs), underpinned by the Paris Principles Relating to the Status of National Institutions, and the Global Alliance of National Human Rights Institutions (GANHRI).<sup>1</sup> The role of parliaments has been historically neglected, with parliaments not recognised as distinct stakeholders in the 2006 General Assembly resolution establishing the Human Rights Council,<sup>2</sup> nor in the foundation documents of the Universal Periodic Review (UPR),<sup>3</sup> nor in the (2014) human rights treaty body reform process.<sup>4</sup>

The first international human rights body to recognize the potential of including parliaments in its work was the Committee on the Elimination of Discrimination Against Women. In 2008 the CEDAW Committee began to include in its concluding observations to states a paragraph on the need for parliamentary involvement in its reporting cycle, and in 2010 adopted a 'Statement on the Relationship of the Committee on the Elimination of Discrimination against Women with parliamentarians'.<sup>5</sup> Credit for this development must be given to the Inter-Parliamentary Union, which had taken a number of steps to intermediate between the CEDAW Committee and parliaments,<sup>6</sup> and which has since gone on to foster discussion about the ways in which parliaments may contribute to the work of the Human Rights Council and its Universal Periodic Review.<sup>7</sup> These discussions have helped highlight a number of important ways parliaments can contribute to the protection of human rights, although more work needs to be done to help parliaments realize their role in protecting human rights, and to foster greater and more systematic engagement between parliaments and human rights mechanisms, whether international, regional or national.

As one of the primary institutions of the state, parliaments share a responsibility to protect and realise human rights and the rule of law and to implement the state's obligations, alongside the executive and the judiciary. Parliaments have an important and unique role to play in ensuring respect for human rights, because of their unique functions in making law, conducting oversight, ratifying treaties, setting budgets, and representing and shaping the views of constituents. Parliaments'

law making function means that they are well-placed to ensure that effective measures are taken to prevent human rights violations, and to ensure that national law provides practical and effective means by which remedies may be sought for alleged violations of human rights. Parliaments' oversight function means that they are responsible for monitoring the government's performance of its own responsibilities to protect and realise human rights. Parliaments' function of ratifying international treaties serves to commit their countries to international human rights law, voluntarily taking on obligations to protect their people's rights. Parliament's budgetary function enables it to ensure that due priority is given in the setting of national budgets to the fulfilment of the State's human rights and rule of law obligations. Finally, Parliament's representative function means that it has an important role in helping to shape views towards human rights, such as popular attitudes towards torture and international institutions. As an illustration of the importance of the role of parliaments, it is often estimated that 60-70% of recommendations emanating from the Universal Periodic Review require parliaments to pass laws, ratify international human rights instruments, or oversee government action.<sup>8</sup>

While parliaments' role has historically been neglected by the international human rights machinery, this is beginning to change, for two reasons. The first reason is the growing concern about the effectiveness of the international human rights machinery and its national implementation, and the need to address the gap arising when states do not effectively implement the internationally agreed human rights standards to which they have committed themselves. Evidence of this concern can be found in the report of the Glion III human rights dialogue organised by Norway and Switzerland, with the support of the Universal Rights Group, which noted that 'parliamentary involvement and engagement with the implementation of international human rights recommendations remains the exception rather than the rule. Addressing this situation must necessarily be a key aspect of bridging the human rights 'implementation gap'.<sup>9</sup> The second reason is to increase the democratic legitimacy of international human rights standards, by having more debates in parliaments between elected politicians about what the state's human rights obligations require, whether they are found in domestic law (e.g. national constitutions)

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or international law (including international human rights treaties the state has voluntarily signed up to). Such discussion and debate helps to democratise human rights by encouraging elected politicians to take more ownership of these fundamental values, and to properly consider applicable human rights standards in their work, and ultimately encourages domestic implementation of and compliance with human rights standards.

Part II of this paper takes stock of international and regional efforts to encourage greater engagement between parliaments, international and regional human rights mechanisms as well as other national human rights actors. International and regional institutions, including the United Nations General Assembly, the United Nations Human Rights Council, the Inter-Parliamentary Union, the Council of Europe, the European Union, the Francophonie and Commonwealth bodies have recognized the importance of the role of parliaments in a number of outcome documents, and have taken a number of active steps to increase the role of parliaments. These developments demonstrate that, over the past ten years, there has been a growing international consensus about the importance of the role of parliaments in the protection and promotion of human rights and the rule of law.

Nevertheless, despite the growing consensus about the desirability of increasing the role of parliaments, there is very little in the way of concrete guidance to show how this desirable end could be achieved, nor are there any agreed standards about what practices should be adopted for such parliamentary involvement to be effective. Part III of this paper takes a comparative look at four existing approaches towards the strengthening of parliamentary protection of human rights and parliamentary engagement with international and regional human rights mechanisms, and other national human rights actors. It finds that these efforts mainly focus on capacity building and technical assistance, and that none of these approaches can be said to be truly comprehensive in the sense that they provide guidance to all parliaments around the world. It concludes by finding that there would be significant operational value in having an internationally agreed set of principles and guidelines for parliaments and human rights, similar to the Paris Principles and Belgrade Principles.<sup>10</sup>

The idea of developing internationally agreed principles and guidelines was first mooted by the University of Oxford's Parliaments, Rule of Law and Human Rights research project, which included a draft in its 2015 book on parliaments and human rights,<sup>11</sup> not intended to be a complete or final document, but an illustration of what an internationally agreed set of principles and guidelines might contain. The idea of developing some internationally agreed principles and guidelines has been endorsed by Ingeborg Schwarz, former Director of the Human Rights Programme at the Inter-Parliamentary Union,<sup>12</sup> and Dr Josephine Ojiambo, on behalf of the Commonwealth Secretariat,<sup>13</sup> amongst others. It was considered at a 2015 high-level conference on the role of parliaments in the protection and realisation of the rule of law and human rights, which agreed that this was a desirable end worth pursuing,<sup>14</sup> and has since been endorsed by the latest UN Secretary-General's report on the 'Interaction between the United Nations, National Parliaments and the Inter-Parliamentary Union',<sup>15</sup> and, most recently, by a Commonwealth Parliamentary Conference on the Rule of Law and Human Rights.<sup>16</sup> These and other statements of support are collected in Part II.

A case study in Part II also demonstrates the operational value of having internationally agreed principles and guidelines, by showing how the Westminster Foundation for Democracy has used a set of draft principles and guidelines to provide practical guidance to parliaments on how they might improve the way they protect human rights, operating on the principles of reaching agreement with partner parliaments, civil society engagement, and respect for the diversity of democratic models.

Part IV of this paper considers what measures can be taken to further enhance the contribution of parliaments to the work of the human rights mechanisms, focusing on ways in which the Inter-Parliamentary Union and UN bodies can foster greater and more systematic engagement between parliaments and human rights mechanisms, in order to address the historic deficit of such engagement. It situates this discussion within ongoing discussions at the Human Rights Council on the contribution of parliaments to the work of the Council and its Universal Periodic Review, strengthening and enhancing the effective functioning of the treaty body system, and national mechanisms for reporting and follow-up. It recommends that,

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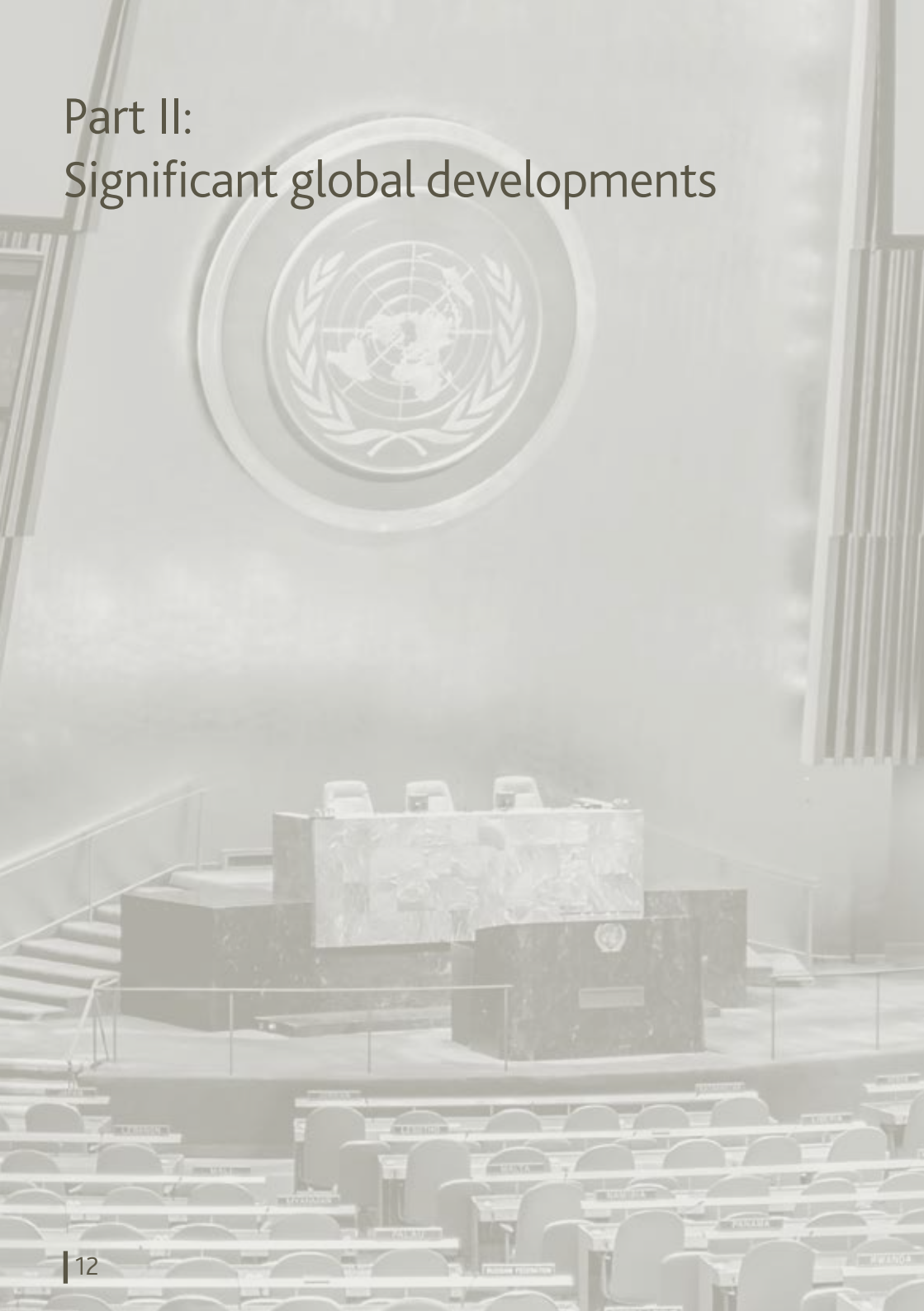
while ad hoc capacity building and technical cooperation with parliaments as well as human rights training of parliamentarians is important and should continue, international agreement on a set of principles and guidelines would help achieve a step change in parliamentary engagement with international human rights mechanisms. It therefore concludes by recommending that the Human Rights Council consider the desirability of a set of principles and guidelines being drawn up in a collaborative process with parliamentarians that includes all relevant stakeholders, and is based on the following principles: inclusivity, universality, basis in international human rights law, respect for diverse democratic arrangements, transparency, and practicality.<sup>17</sup>

At the strategic level, increasing the role of parliaments in the protection and promotion of human rights through parliamentary engagement with international human rights mechanisms would also further the stated visions of the UN High Commissioner for Human Rights and the new UN Secretary-General. The High Commissioner's stated vision for his organisational change initiative 'prioritises working directly and through partners to transform the recommendations of the human rights mechanisms into real changes on the ground',<sup>18</sup> and would be significantly helped by the active participation of parliaments as key partners in ensuring the implementation of recommendations. The UN Secretary-General envisages a renewed focus on prevention of conflicts and of threats that undermine the well-being of populations on the planet. He has called for the UN to bring together its three pillars of action: peace and security, sustainable development, and human rights, and for the world to recognise that the best prevention for conflict and the best prevention for other negative impacts on societies is sustainable and inclusive development. He has called for the world to mobilise to take action to implement the Paris Agreement on Climate Change and the 2030 Agenda for Sustainable Development Goals. To that end, he has called for the world to invest in the resilience of societies, including investing in the strength of state institutions and civil societies, and investing in the protection of human rights.<sup>19</sup> Parliaments could be key partners in helping the UN Secretary-General realise his vision, whether by legislating to prevent or remedy human rights violations, thereby preventing conflicts and mass violations of human rights; or by monitoring and acting to improve member states'

progress in meeting their obligations under the Paris Agreement, the Sustainable Development Goals and the international human rights mechanisms. However, the role of parliaments has yet to be fully acknowledged or realised, and more needs to be done to activate parliaments as key partners in achieving these compelling visions.<sup>20</sup>

This paper concludes by suggesting that an internationally agreed set of principles and guidelines on the role of parliaments in the protection and realisation of the rule of law and human rights will help to increase the democratic legitimacy and national ownership of international human rights standards, as well as enable parliaments to play an intermediary role in bridging the 'implementation gap' arising between states and international human rights mechanisms. Therefore, it recommends that the Human Rights Council consider initiating the process towards the drafting and adoption of such a set of principles and guidelines.

# Part II: Significant global developments



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## Developments at the international level

### *The UN General Assembly*

Although there is a long and rich historical relationship between the Inter-Parliamentary Union and the UN General Assembly,<sup>21</sup> the present relationship is underpinned by the standalone agenda item on the “Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union,” and the biennial reports of the Secretary-General on this agenda item. This agenda item began in 2010 with the adoption of a General Assembly resolution<sup>22</sup> recognising the contributions of the Inter-Parliamentary Union in support of the UN’s activities, and deciding to pursue a more systematic engagement with the Inter-Parliamentary Union in organizing and integrating a parliamentary component of and contribution to major United Nations deliberative processes and the review of international commitments.

The General Assembly has since passed three more resolutions, at its 66th, 68th and 70th sessions,<sup>23</sup> which have encouraged ‘the United Nations and the Inter-Parliamentary Union to continue to work closely in various fields, in particular peace and security, economic and social development, climate change, international law, human rights and gender issues, democracy and good governance’;<sup>24</sup> welcomed ‘the contribution of the Inter-Parliamentary Union to the work of the Human Rights Council, notably by providing a more robust parliamentary contribution to the Universal Periodic Review, and to the work of the United Nations human rights treaty bodies along the lines of the cooperation developed in recent years between the Inter-Parliamentary Union, the Committee on the Elimination of Discrimination against Women and national parliaments whose countries are under review’;<sup>25</sup> and encouraged ‘the United Nations and the Inter-Parliamentary Union to develop closer cooperation with parliaments at the national level, including in terms of strengthening parliamentary capacities, reinforcing the rule of law and helping to align national legislation with international commitments’.<sup>26</sup>

At the September 2012 High-level Meeting on the Rule of Law at the National and International Level, the Heads of State and Government declared that they ‘recognize the essential role of parliaments in the rule of law at the national level, and welcome

the interaction among the United Nations, national parliaments and the Inter-Parliamentary Union’.<sup>27</sup>

It is clear from the supporting documentation and the speeches in the Assembly that the motivation behind these initiatives at the international level include not only instrumental concerns about effectiveness, but democratic concerns about the legitimacy of the international system for the protection of human rights.<sup>28</sup> The UN Secretary-General, for example, said not only that it was clear today that it is only by involving other actors such as national parliaments, as well as governments, that the UN can hope to achieve its goals, but that mobilising parliaments at the national level promotes greater transparency, accountability and participation at the global level, which goes a long way to establishing a more democratic international order’.<sup>29</sup> Indeed, the General Assembly resolutions refer to the need to ‘continue efforts to bridge the democracy gap in international relations’. Enhancing the role played by national parliaments serves the goal of effective implementation, because it is Parliament that adopts the necessary legislation to take international commitments forward, adopts the budget to provide the resources to make it possible and holds governments to account for their commitments at the UN. But it also serves the goal of legitimation, because the representative function of parliaments mean they are best placed to ensure that what is decided at the UN makes sense to citizens at large, and reflects their views and aspirations. The aim is to make sure that parliaments are fully aware of what is taking place at the UN ‘before the deal is sealed’ and that they debate what is being proposed at the UN level, both amongst themselves and with their governments, ‘so that, at the end of the day, there is full national ownership of the process’.<sup>30</sup>

At its 70th session (September 2015), the General Assembly adopted the Sustainable Development Goals, which replaced the Millennium Development Goals as the primary goals of the global development agenda (2030 Agenda). Goal 16, on the promotion of just, peaceful and inclusive societies, includes a number of sub-goals relating to human rights and the rule of law, such as:

‘Promote the rule of law at the national and international levels and ensure equal access to justice for all;

‘Promote and enforce non-discriminatory laws

and policies for sustainable development;

'Develop effective, accountable and transparent institutions at all levels; and

'Ensure responsive, inclusive, participatory and representative decision-making at all levels'.<sup>31</sup>

In its Resolution adopting the Sustainable Development Goals, the General Assembly acknowledged 'the essential role of national parliaments through their enactment of legislation and adoption of budgets and their role in ensuring accountability for the effective implementation of our commitments',<sup>32</sup> recognizing parliaments as key stakeholders in realizing 2030 Agenda. It also encouraged Member States to 'conduct regular and inclusive reviews of progress at the national and subnational levels that are country-led and country-driven' and concluded by recognising that 'national parliaments can support those processes'.<sup>33</sup>

The latest Report of the Secretary-General on the Interaction between the UN, National Parliaments and the Inter-Parliamentary Union, concluded with the following relevant observations:

'The implementation of the 2030 Agenda has emerged as a clear, long-term shared priority for the continued partnership between the United Nations and the parliamentary community. The ambitious 2030 Agenda will put significant demands on public capacities and budgets for all institutions, including the United Nations, parliaments and parliamentary organizations. That will require scaled-up and more effective cooperation, as well as resources to build capacities.

The United Nations partnership with the parliamentary community will continue to grow and include challenges and opportunities that must be managed together there will inevitably be situations in which parliamentarians and their executive branches do not share the same views as the United Nations on specific values enshrined in the Charter or in international law. In the area of human rights and women's rights, divergent views will remain a recurring challenge in some cases. In others, political interests, for example following the party line irrespective of draft legislation going against international standards, may be prioritized, in spite of the efforts of the United Nations. Here, instead of retreat, increased engagement offers the way forward. The continuing discussion between

the United Nations and IPU concerning the development of principles to assist parliaments to fulfil their role in the protection and realization of human rights should be accelerated. Once adopted, the principles should form a solid basis to guide joint United Nations-IPU support to parliaments in the area of human rights.<sup>34</sup>

The Secretary-General also made a number of recommendations, including that 'the United Nations should work with multilateral partners, parliamentary organizations and networks and, in particular, draw on the unique expertise of IPU and its member parliaments to facilitate strengthened collaboration with civil society organizations, including women's groups, and to enhance efforts to further strengthen the capacities of parliaments to perform their legislative, oversight and representative functions. One important goal of that cooperation is to enable parliaments to be more involved in national development planning exercises and reviews of global commitments, including the 2030 Agenda'.<sup>35</sup>

From the foregoing, it may be concluded that the General Assembly has acknowledged 'the essential role of national parliaments' in ensuring the effective implementation of global commitments, including the 2030 Agenda,<sup>36</sup> and in realising the rule of law.<sup>37</sup> The General Assembly has also encouraged efforts to help parliaments align national legislation with international commitments, and contribute to the work of the Human Rights Council, notably by providing a more robust parliamentary contribution to the Universal Periodic Review, and to the work of the United Nations human rights treaty bodies.<sup>38</sup> To this end, the UN Secretary-General's report has encouraged the UN to work together with partners, including the IPU, to help strengthen the capacities of parliaments to perform their legislative, oversight and representative functions, and to consider the 'development of principles to assist parliaments to fulfil their role in the protection and realization of human rights... [which] should form a solid basis to guide joint United Nations-IPU support to parliaments in the area of human rights'.<sup>39</sup>

#### *The UN Human Rights Council*

The UN Human Rights Council has been exploring ways in which parliaments can contribute to the work of the Council and its Universal Periodic Review. At present, the majority of parliaments and

parliamentarians remain unaware of the Human Rights Council and its Universal Periodic Review, and are not involved in the drafting of national reports, the decision on which recommendations of the Universal Periodic Review to accept, and the monitoring of the implementation of recommendations which have been accepted.

The first UNHRC resolution on the topic (22/15) acknowledges 'the crucial role that parliaments play in translating international commitments into national policies and laws, and hence in contributing to the fulfilment by each State Member of the United Nations of its human rights obligations and commitments and to the strengthening of the rule of law,<sup>40</sup> language which has been repeated in every subsequent resolution. The second UNHRC resolution (26/29) went further to acknowledge 'also the leading role that parliaments could play in ensuring the implementation of recommendations made at the sessions of the Universal Periodic Review and by other human rights mechanisms at the national level.'<sup>41</sup>

The Human Rights Council held a panel discussion on this topic in May 2013, which revealed unanimity about the desirability of increasing the role of parliaments in the promotion and protection of human rights, though there were great divergences in current practice. One notable practice emerging from the panel discussion was South Africa's requirement that all national reports to the Universal Periodic Review and international treaty bodies had to be reviewed by parliament before they could be submitted.<sup>42</sup> The discussion demonstrated the urgent need for a better way of sharing best practices between national parliaments.

The Human Rights Council subsequently adopted a resolution<sup>43</sup> in 2014 that made the following recommendations:

1. Encourages States to promote the involvement of parliaments at all stages of the Universal Periodic Review reporting process, in particular through the inclusion of the national parliament as a relevant stakeholder in the consultation process of the national report and in the implementation of recommendations; and to report on such involvement in their national report and voluntary mid-term reports or during the interactive dialogue session of the Universal Periodic Review;

2. Encourages states to include parliamentarians in their national delegations to the Universal Periodic Review;
3. Encourages all relevant stakeholders to promote and enhance cooperation between their national parliaments and national human rights institutions and civil society in the promotion and protection of all human rights and fundamental freedoms.

With the endorsement of the UNHRC, the Inter-Parliamentary Union collaborated with the UNOHCHR to conduct four regional seminars in Central and Eastern Europe (Bucharest, February 2014), South America (Montevideo, July 2014), Africa (Rabat, September 2014), and the Asia-Pacific (Manila, February 2015) on 'translating international human rights commitments into national realities: The contribution of parliaments to the work of the United Nations Human Rights Council', bringing together parliamentarians to discuss the topic, and exchange best practices. The outcome documents of these four seminars are highly recommended reading for those interested in the possible content of any future principles and guidelines on the role of parliaments in the realisation and protection of the rule of law and human rights.<sup>44</sup> In brief, the outcome documents recommend that Parliamentarians should be actively engaged at every point in the Universal Periodic Review cycle, that Parliaments should contribute to human rights protection at the national level, and that further capacity building should take place to enhance parliamentarians' knowledge of human rights and of international human rights mechanisms, and understanding how to engage them.

The regional seminars culminated in a Side Event held at the June 2015 session of the UNHRC, at which the Deputy High Commissioner for Human Rights<sup>45</sup> stressed the leading role of parliaments in the promotion and protection of human rights, which she said was crucial to ensure that States respect and implement their international human rights obligations and voluntary pledges and commitments.

The UNHRC later revisited this topic in resolution 30/14, which authorised a second panel discussion at its June 2016 session 'to take stock of the contribution of parliaments to the work of the Council and its Universal Periodic Review and to

identify ways to enhance further that contribution'. During the panel discussion, the representative of the Office of the High Commissioner for Human Rights noted that 'the first and second cycles of the UPR failed to ensure significant participation of parliaments,' and encouraged a greater role for parliaments worldwide in the promotion and protection of human rights. He also encouraged those 'parliaments that [had] not yet done so, to establish specialized human rights committees and to reinforce the role of parliamentarians in promoting and protecting human rights.'<sup>46</sup> Mr Martin Chungong, Secretary-General of the Inter-Parliamentary Union, emphasised that '[a] genuine partnership between parliaments and the Council also implies strong engagement from the Council with parliaments.' While acknowledging that 'each country is sovereign in deciding how to comply with its human rights obligations and in how its parliament should be involved in the process,' he noted that 'nothing prevents [the Human Rights Council] from taking into account more systematically the role of parliaments,' and called for more systematic engagement between the Council, its special procedures and parliaments. The subsequent discussion presented a number of interesting examples of parliamentary engagement with the UPR process (with notably less discussion of parliamentary engagement with the Council as a whole or its special procedures) but did not culminate in any agreement on what the Council should do to further enhance the contribution of parliaments to the work of the Council. The presentation of the report of the Panel Discussion at the June 2017 session of the Council will be an opportunity for Member States on the Council to consider and agree on what further steps they wish to take to increase engagement between the Council and parliaments, especially in light of the commencement of the third cycle of the UPR in May 2017.

In November 2016, the Council took the unusual step of convening its first inter-sessional panel discussion, on 'international cooperation to support national human rights follow-up systems and processes,' with the goal of fostering the establishment and strengthening of effective national human rights follow-up systems. In her opening remarks, Deputy High Commissioner Kate Gilmore noted that 'the central question was – how best to follow-up on recommendations from UN human rights mechanisms such as the Universal Periodic Review, the treaty bodies and the special procedures.'<sup>47</sup> While

the event and its surrounding publications were focused on national mechanisms for reporting and follow-up (NMRF) on international human rights obligations and commitments, they made notable references to 'the important and constructive role played by parliaments,' alongside 'national human rights institutions (NHRIs) and civil society' with the enabling resolution<sup>48</sup> encouraging 'their continued and unhindered participation in and contribution to [reporting and follow-up] processes.' The Practical Guide produced by the OHCHR provided an answer to the question posed by the Deputy High Commissioner in noting that 'NHRIs and national mechanisms for reporting and follow-up are... complementary elements of the national human rights protection system, which also includes an independent and effective judiciary and a functioning administration of justice, a representative national parliament with parliamentary human rights bodies; and a strong and dynamic civil society.'<sup>49</sup> Conversely, the study produced by the OHCHR concluded that '[NMRFs] that had succeeded in developing their engagement capacity, but neglected coordination with other branches of the State architecture such as parliament and the judiciary, or consultation with NHRIs and civil society, proved to be similarly ineffective in meeting their broad remit,<sup>50</sup> again underscoring the importance of coordination and cooperation with other constituent parts of the national human rights protection system, including parliaments. The Practical Guide provides some valuable advice on how to co-ordinate engagement between parliaments and NMRFs, but because NMRFs are a relatively new phenomenon, more work needs to be done to foster effective coordination and engagement between parliaments and NMRFs, as well as other constituent parts of the national human rights protection system, including NHRIs, the judiciary and civil society.

#### *The UN Committee on the Elimination of Discrimination Against Women*

The UN Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) issued a statement in 2010<sup>51</sup> recommending that States, parties ensure the full participation of Parliament and its members in the reporting process and the full implementation of the Convention and its Protocol. It also set out a number of ways in which States can do so, such as Parliamentary involvement in the drafting



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of reports and following up on the concluding observations, which could considerably enhance the implementation of the recommendations of the Committee. This built on the practice adopted by the CEDAW Committee in 2008 of including a standard paragraph in its concluding observations to States on the need for parliamentary involvement in its reporting cycle.

The CEDAW Committee has also received considerable support from the Inter-Parliamentary Union, including an established practice in which the Secretary-General of IPU writes to the presidents of the legislative assemblies to inform them about the upcoming consideration of the report of their country by the Committee, and brings to their attention the recommendations adopted once the Committee's concluding observations are available. The IPU has also published a practical guide for the use of parliamentarians on the Convention and its Optional Protocol, regularly organises briefings on the Convention (addressed to women parliamentarians in particular), and collaborates with UNOHCHR to provide technical assistance programmes in order to build the capacities of parliaments and helps them fulfil their role regarding the implementation of the Convention and its Optional Protocol.

#### *The UN High Commissioner for Human Rights*

The UN High Commissioner for Human Rights has directly addressed the topic of the role of parliaments in the protection and realisation of the rule of law and human rights, on the occasion of his visit to the Westminster Parliament on 29th October 2015. In response to a question from Lord Purvis, the High Commissioner made the following points:

- He welcomed the recent September 2015 conference organised by the Arts and Humanities Research Council and the University of Oxford's Parliaments, the Rule of Law and Human Rights project, and indicated that the UNHRC adopted a resolution on the 'Contribution of Parliaments to the work of the HRC and its Universal Periodic Review' later that month.
- He also flagged that OHCHR has been asked to organize a panel discussion on this matter at its 32nd session – in cooperation with the IPU and to report on the results of that discussion prior to the 35th session of the HRC.
- Finally, he pointed out the importance of

considering, as part of that discussion, draft international principles on the role of Parliaments in the protection and promotion of human rights similar to those principles already adopted by the General Assembly on the autonomy and effectiveness of NHRIs or on the independence of the judiciary.

The High Commissioner's organisational change initiative, announced in March 2015, also has a bearing on the present discussion. The High Commissioner's 'vision for change is focused on making full use of the position of OHCHR as the principal reference point and advocate for international human rights standards and mechanisms, and placing a premium on strategic coordination, internal integration and consolidated partnerships within the United Nations and across the broader international system.'<sup>52</sup> The High Commissioner has also emphasised that the change initiative 'prioritises working directly and through partners to transform the recommendations of the human rights mechanisms into real changes on the ground.'<sup>53</sup> The High Commissioner's vision and priorities in his organisational change initiative should be seen in the context of his subsequent endorsement of efforts to improve the partnership between parliaments and the international human rights system (including the Human Rights Council and its Universal Periodic Review, Treaty bodies, special procedures and UNOHCHR itself) in order to improve the protection and promotion of human rights on the ground.

#### *The Office of the United Nations High Commissioner for Human Rights*

The Office of the United Nations High Commissioner for Human Rights has worked with national parliaments in three main ways: by providing technical assistance, building capacity and undertaking advocacy initiatives. OHCHR has also played a strategic role in facilitating cooperation with civil society organizations and other key partners. Thematically, its work with national parliaments has typically included women's rights and gender issues, discrimination, the rights of indigenous peoples, natural resources and land management, military justice, transitional justice and the rights of victims. A key engagement has been advising parliaments on their role in preparing for examination by human rights mechanisms and in following up on their recommendations.<sup>54</sup>

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### *The United Nations Development Program*

The United Nations Development Program is one of the largest providers of technical assistance to parliaments worldwide, supporting one in three parliaments through some 70 current programmes, as it sees strengthening the capacities of national parliaments as a priority, in order to deliver good governance and in turn, development. UNDP activities tend to be co-ordinated with the IPU and/or OHCHR, and agreed between country teams and national parliaments. It has conducted capacity building in numerous countries, including Myanmar, the Niger and Tunisia, such as by providing training on human rights to newly elected parliamentarians.<sup>55</sup>

UNDP has also worked with national parliaments on human right issues. In Madagascar and Vietnam, it helped to strengthen parliamentary capacity to review and adopt laws, in accordance with the recommendations of the Universal Periodic Review. In Iraq, it helped to establish the first human rights civil society advisory board for the parliament, which includes 19 members of civil society organizations, including minorities, and represents all parts of Iraq.<sup>56</sup> In Georgia, UNDP worked together with the EU and the parliamentary human rights committee to create a national action plan, and UNDP country teams have helped other parliaments (e.g. the Ukrainian Rada)<sup>57</sup> and parliamentary human rights committees around the world create similar national action plans.

### *The Inter-Parliamentary Union*

The role of the Inter-Parliamentary Union in promoting parliamentary protection of human rights and parliamentary engagement with international human rights mechanisms cannot be overstated. Apart from taking a leading role in the aforementioned efforts at the UN General Assembly and the UN Human Rights Council, as well as fostering parliamentary engagement with the CEDAW Committee, the IPU works together with OHCHR and the UN Development Program to provide human rights training, technical cooperation and capacity building to partner parliaments.<sup>58</sup>

Ingeborg Schwarz, former Director of the Human Rights Unit of the IPU provides a comprehensive overview of the work of the IPU until 2014 in her chapter in the 2015 book of the University

of Oxford's research project on Parliaments, Rule of Law and Human Rights.<sup>59</sup> In her chapter, she traces the origin of the IPU's Human Rights Program to its Committee on the Human Rights of Parliamentarians, founded in 1976 with a mandate to examine cases of human rights violations of MPs which are brought to its attention, which led to its members becoming aware of the jurisprudence and recommendations of international and regional human rights bodies and UN special procedures. The IPU first encouraged parliaments to set up specific bodies to promote and protect human rights at its Centenary Conference in 1989, and published the first World Directory on Parliamentary Human Rights Bodies<sup>60</sup> in 1990, which was intended as an information tool for all human rights actors, encouraging them to cooperate with such bodies and create partnerships, and to serve parliamentary human rights committees themselves by facilitating networking among them.

The IPU's work to strengthen the human rights competence of MPs by bringing together MPs with a particular interest in human rights began with a symposium on 'Parliament: Guardian of Human Rights', held in 1993 shortly before the Vienna World Conference on Human Rights.<sup>61</sup> The first capacity building events for members of parliamentary human rights committees began in 2004, and were jointly organised with OHCHR. One of the results of these seminars was the joint IPU-OHCHR Human Rights Handbook for Parliamentarians in 2005, a second edition of which was recently published in 2016.<sup>62</sup>

Since 2012, the IPU has conducted a second set of capacity building events on the contribution of parliaments to the work of the Human Rights Council, in particular its UPR with OHCHR, beginning with a joint seminar in November 2012 together with the Commonwealth Secretariat on 'Strengthening the Role of Parliamentarians in the Implementation of Universal Periodic Review Recommendations',<sup>63</sup> and collaborating with OHCHR to organise the four regional seminars, side events and panel discussions mentioned in the above section on the UN Human Rights Council.

The IPU has also conducted a number of capacity-building workshops in individual parliaments since 2008, when it received funding from the UN Democracy Fund to conduct a 'Treaty Body Project' with francophone parliaments (Togo, Mauritania,

Mali, the Republic of Congo and Gabon). This project examined their treaty ratification and reporting status, together with their implementation status of concluding observations, and then worked with parliaments to develop a short-term strategy to address some of the more urgent issues and a medium- to long-term strategy to ensure the future involvement of the parliament concerned in the treaty body process. The project was quite successful in achieving concrete results, such as obtaining the release of over 100 detainees in Togo who had been held in long term preventive detention, and concluded with a regional seminar held in Libreville, where parliamentarians adopted a Declaration which recommended the continuation of the project and the creation of a human rights observatory in the region. Unfortunately, because of a lack of funding, these recommendations have not been implemented, and no follow-up activity has been conducted to determine whether the project has had the desired long-term effects.<sup>64</sup> The latest IPU Survey (2012/3) on the involvement of parliaments in treaty-monitoring bodies and the UPR show that, while parliaments remain largely absent from the process, up to 30 percent seem to be involved in at least one cycle of the process.<sup>65</sup>

### The Commonwealth (52 Member States)

At the last Commonwealth Heads of Government Meeting (CHOGM) in 2015, the Heads reaffirmed their belief that all human rights are equal, indivisible, interdependent, interrelated and universal, and that good governance and respect for the rule of law are vital for stable and prosperous societies. They encouraged continued efforts by member states to ensure responsive, inclusive, participatory and representative decision-making at all levels, and took note of best practice and capacity-building in the Universal Periodic Review process; parliamentary oversight, including of public finance management and accountability.<sup>66</sup> The previous outcome document (in 2013) had also committed to building the capacity of member states to work with the UPR and implement the accepted recommendations, and noted the work being done by the Commonwealth Secretariat in this regard, particularly with small states, and encouraged these efforts to continue.<sup>67</sup> The previous Commonwealth Secretary-General<sup>68</sup> and present Deputy Secretary-General<sup>69</sup> have also both expressed their interest in considering the potential of a set of international principles or standards, such

as the Paris Principles, for parliaments.

Over the last four years, as part of its on-going efforts to support countries to prepare for the UN's Universal Periodic Review process,<sup>70</sup> the Commonwealth Secretariat and Commonwealth Parliamentary Association have organised four regional seminars for members of parliament on the role of parliamentarians in the promotion and protection of human rights in Trinidad and Tobago (2013), the Seychelles (2014), New Zealand (August 2015), and Colombo (February 2016). This led to the establishment of a number of Commonwealth Parliamentary Human Rights Groups, including the Commonwealth Caribbean Parliamentary Human Rights Group and Commonwealth African Parliamentary Human Rights Group, with similar Pacific and Asian groupings expected in the future.

The aims of the Commonwealth Parliamentary Human Rights Groups are generally: to promote inter-parliamentary co-operation with a view to ensuring better practices and strengthened parliamentary engagement with the Universal Periodic Review, Treaty Bodies and Special Procedures and the effective and sustainable implementation of their recommendations; enhanced interaction between parliaments and NHRIs; operationalisation of the relevant regional declaration; and strengthened efforts to promote and protect human rights.

The Commonwealth regional seminars for parliamentarians have also resulted in the adoption of the Mahe Declaration,<sup>71</sup> the Pipitea Declaration,<sup>72</sup> and the Kotte Declaration,<sup>73</sup> which make recommendations addressing the role of Parliaments in the realisation and protection of human rights at the national level, the regional level and the international level. They are recommended reading for those interested in the possible content of draft principles and guidelines on the role of parliaments in the realisation and protection of the rule of law and human rights.

In January 2017, the Commonwealth (together with the Commonwealth Parliamentary Association UK, the Commonwealth Human Rights Initiative, and the Westminster Foundation for Democracy) organised a Commonwealth Parliamentary Conference on the Rule of Law and Human Rights, bringing together members and staff of fifteen Commonwealth as well as non-Commonwealth

parliaments with the aim of developing the capacity of parliamentary human rights committees and similar committees in order to strengthen the rule of law and human rights within the Commonwealth and beyond. Participating members of Parliaments from Australia, Bangladesh, Bosnia and Herzegovina, Canada, Kenya, Lebanon, Malaysia, Morocco, Pakistan, Serbia, Seychelles, Sierra Leone, Solomon Islands, Tonga, and Uganda adopted an outcome statement that included twelve commitments on strengthening the parliamentary protection of human rights and the rule of law, encouraging engagement with international and regional human rights mechanisms as well as national partners, and concluding with a commitment to “consider and explore the potential for a set of international principles and standards, comparable to the Paris Principles for national human rights institutions, to help parliaments develop their role in protecting and promoting human rights and the rule of law.”<sup>74</sup>

#### *La Francophonie (Francophone Parliaments)*<sup>75</sup>

#### **Organisation Internationale de la Francophonie (56 Member States)**

In 2000, Francophone States adopted the Bamako Declaration at the International Symposium on the Assessment of the Practices of Democracy, Rights and Freedoms in the Francophone World, which enshrines the values that States and Governments must respect while providing the Organisation with the means to act.<sup>76</sup>

The Organisation Internationale de la Francophonie (OIF) has a Directorate for Peace, Democracy and Human Rights, which aims to support parliaments, advocate for the ratification and implementation of key international human rights instruments, providing technical assistance to States for the implementation of the Universal Periodic Review, and strengthen national human rights institutions, and which works with partner parliaments as well as the Assemblée Parlementaire de la Francophonie, amongst others.<sup>77</sup> The Directorate for Peace, Democracy and Human Rights has worked together with the Assemblée Parlementaire de la Francophonie to organize a number of technical assistance and capacity building workshops on the role of parliamentarians in the protection and promotion of human rights, particularly in the context of supporting its Member States in the Universal Periodic Review.<sup>78</sup>

The Organisation Internationale de la Francophonie has produced a ‘practice guide on the implementation of UPR recommendations and commitments’ that recognizes that Parliaments have an important role to play at all stages of the UPR process, particularly in the follow-up and implementation of UPR recommendations and commitments, and that makes a number of recommendations for engaging parliaments in the UPR process, including the following:

- Holding an information workshop on the UPR and on the role of Parliament in monitoring and Implementation of the recommendations and commitments of the UPR;
- Involve representatives of relevant parliamentary commissions or committees in the workshops for the development, validation and evaluation of implementation plan;
- Hold a working session to establish the legislative timetable for the implementation of the recommendations and commitments of the UPR;
- Present and take into account the Belgrade Principles on the relationship between NHRIs and parliaments in the follow-up and implementation of the recommendations and commitments from the UPR.<sup>79</sup>

#### **Assemblée Parlementaire de la Francophonie (52 Member Sections)**

In 2015, the Assemblée Parlementaire de la Francophonie and International Organisation Internationale de la Francophonie and the National Assembly of the Republic of Madagascar organized a parliamentary seminar on ‘Parliamentary oversight of security systems and follow-up to the Universal Periodic Review’ in Antananarivo for MPs from Madagascar. This was organized in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the African Union.<sup>80</sup>

The Assemblée Parlementaire de la Francophonie also has a Parliamentary Affairs Committee, which meets annually to review various reports that concern human rights in the Francophone world, including ‘national human rights institutions (NHRIs) in the Francophone world’, ‘parliamentary oversight in the French-speaking world’, and ‘parliament, press, media and democratization’.<sup>81</sup>

The Assemblée Parlementaire de la Francophonie

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has a very active network of APF women parliamentarians who have been organising annual information and awareness-raising seminars on the Convention on the Elimination of All Forms of Discrimination against Women since 2004, in partnership with the International Organization de la Francophonie.<sup>82</sup>

### *The Westminster Foundation for Democracy*

The Westminster Foundation for Democracy (WFD) is the UK's leading democracy-building foundation, which was established in 1992 to assist the development of inclusive democracies by working with overseas parliaments, political parties and civil society. It is a non-departmental public body funded by the UK's Department for International Development and Foreign and Commonwealth Office, and is uniquely able to draw on the experience of the world's oldest parliament (the UK's Westminster Parliament) to support its work. WFD has worked to strengthen parliamentary protection of the rule of law and human rights since 2008, when it launched The Westminster Consortium (TWC) Rule of Law and Human Rights programme together with a number of partners, including the International Bar Association Human Rights Institute, the staff of the Joint Committee on Human Rights in the Westminster Parliament, and local partners. This programme was designed to increase the responsibility of parliaments in upholding international standards on human rights, by:

- *Assisting parliaments in improving the rules of procedure to make human rights scrutiny more effective, in particular the rules governing the functioning of committees, including dedicated human rights committees.*
- *Exploring how single committees can scrutinise compliance with human rights standards and investigate issues which may not be prioritised by committees tasked with other political responsibilities.*
- *Addressing how the availability of independent legal advice and the input of civil society may inform MPs and committees on compliance with international legal norms.*
- *Deploying UK parliamentary experience in the protection of human rights, including the cross-party Joint Committee on Human Rights, established in 2001.*<sup>83</sup>

The TWC programme conducted regular workshops

and provided follow-up training and support that were tailored to individual parliaments' needs, and produced a manual on *Human Rights and Parliaments: Handbook for Members and Staff*, which is available online.<sup>84</sup>

The project leads on the TWC programme have reflected on two of the lessons learnt from their programme. First, the need to bear in mind the important relationship between human rights, the rule of law, and development in emerging democracies. Improvements to human rights protection are closely aligned with improvements in development more widely. Without investment in improving the democratic infrastructure of government more broadly, the role of parliaments taking responsibility for human rights protection will be fundamentally restricted. Equally, in countries which had a priority focus on implementing the MDGs (e.g. Mozambique and Uganda), the link between the MDGs and the wider international human rights framework (i.e. the International Covenant on Economic, Social and Cultural Rights and domestic constitutional commitments) can often be lost. International partners and national parliaments need to consider this link more closely, particularly when working on the achievement of economic and social rights. The second lesson learned is that, projects that engage both national parliaments and local civil society are likely to be the most sustainable. In emerging democracies without a long history of civil society engagement, distrust of external influence can stifle the development of constructive civil debate and the proper oversight of national institutions. Hence, there needs to be investment to build capacity and mutual trust for both civil society and parliaments, in order for there to be sustainable engagement over the long term.<sup>85</sup>

Since 2015, the Westminster Foundation for Democracy and the University of Oxford's Parliaments, Rule of Law and Human Rights research project have collaborated with national parliaments and local civil society partners in six countries (Georgia, Macedonia, Serbia, Uganda, Ukraine and Tunisia), on a capacity building program aimed at strengthening parliamentary capacity in protecting and promoting human rights. This capacity building program sought to operationalize a set of draft principles and guidelines which the Oxford research project had previously generated in its research (the Oxford draft principles and guidelines), turning them into an assessment tool comprising a set

of questions which were then used to interview parliamentarians and staff. These included questions about each parliament's engagement with the Universal Periodic Review process and international human rights mechanisms, as well as questions about the structure of parliamentary human rights mechanisms, their working methods, and their relationships with other parts of the national system for human rights protection. The results of the study as well as carefully tailored recommendations based on the parliaments' needs were then presented to the partner parliaments in workshops, which provided an opportunity for discussion and follow-up action.

The WFD parliamentary human rights capacity building program has been extremely well-received by its partner parliaments. The Georgian (Parliamentary) Committee on Human Rights and Civil Integration found the tailored report and recommendations to be useful, and has enacted legislative reforms to implement these recommendations.<sup>86</sup> The then-Chairperson of the Committee, Ms Eka Beselia, has praised the program's methodology for being 'well-considered',<sup>87</sup> while the Chairperson of the Tunisian National Assembly's Committee on Rights, Civil Liberties and External Relations welcomed the Tunisian workshop and its recommendations, saying that it provided a good basis for discussing Committee reforms in a systematic/well-structured manner, and committed to convene a formal session of the Committee to discuss the recommendations, as well as to form a working group to study their implementation. Similar workshops have been held in Serbia and Morocco, with next steps presently under discussion. The program demonstrates the utility of having an internationally agreed set of principles and guidelines on the role of parliaments in the protection and promotion of the rule of law and human rights, which could then be operationalised in the form of a 'checklist' for parliaments and other actors to measure and improve their effectiveness in protecting and promoting human rights. A short extract of the synthesis report is appended below in the 'Case Study' at the end of Part III, and the full report may be viewed online.<sup>88</sup>

## Developments at the regional level

### *Europe*

#### **Council of Europe (47 Member States)**

The European Convention on Human Rights (ECHR) is widely recognised as one of the world's most successful regional systems for the protection of human rights in the world, yet it is only relatively recently that the role of national parliaments in this system has become the subject of serious consideration. This has largely been due to the work of the Parliamentary Assembly of the Council of Europe (PACE), and in particular, the Assembly's Committee on Legal Affairs and Human Rights, which has worked assiduously to draw attention generally to the importance of the parliamentary dimension of human rights protection, and specifically, to increase the role of national parliaments in relation to the ECHR. The most significant initiatives have been designed to encourage national parliaments to take a more active role in supervising the implementation of judgments of the European Court of Human Rights, but they have also sought to encourage national parliaments to scrutinise systematically all draft legislation to ensure it is compatible with the ECHR.<sup>89</sup>

Progress towards recognising the importance of the role of national parliaments in the Convention system has been slow, however. It should never be forgotten that stewardship of the Convention system rests with an essentially intergovernmental process, and governments are not always the best champions of national parliaments, which can sometimes obstruct or slow down the implementation of a government's will. Until recently, parliaments have generally not been mentioned in the outcome documents of the high-level conferences held to consider reform of the ECHR system. In the 2012 Brighton Declaration<sup>90</sup>, however, the Council of Europe agreed to take a number of practical measures designed to achieve better national implementation of the Convention, including by providing national parliaments with information about the compatibility with the Convention of draft legislation, which should facilitate better parliamentary scrutiny of laws for ECHR compatibility. The 2015 Brussels Declaration<sup>91</sup> continues to stress the importance of national parliaments in the implementation of judgments

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and scrutiny of draft legislation, and calls on States to provide parliaments with the information necessary to fulfil its role.

The main impetus for this recent breakthrough in recognising the role of national parliaments in the ECHR system has come from the growing realisation that better national implementation of the Convention is the key to its long-term effectiveness. The urgent need to take effective action to reduce the huge backlog of cases awaiting determination by the European Court of Human Rights has led to renewed attention to ways of preventing so many cases from reaching it. At the same time, there has been growing concern in some states, including but not confined to the UK, that the Court has exceeded its jurisdiction in some decisions, interfering excessively with the democratic decisions of national authorities.

The confluence of these concerns about effectiveness and legitimacy has brought about a renewed interest in the concepts of 'subsidiarity' and the 'margin of appreciation', culminating in the agreement of a new Protocol<sup>92</sup> amending the Convention which will add a reference to both concepts to the Preamble of the Convention. This Protocol, when it comes into force, will provide an opportunity for the Court to embed its recent refinements of the principle of 'subsidiarity' and the doctrine of 'margin of appreciation' within the Convention system.<sup>93</sup>

The main body providing capacity building and technical assistance to national parliaments within the Council of Europe system is PACE's Parliamentary Project Support Division (PPSD)<sup>94</sup>, which was created in 2012, with the intention of ensuring that PACE's key recommendations are better known by national parliaments of Member States (of the Council of Europe) and beyond. The PSD prefers operating through the modalities of peer-to-peer seminars, capacity building workshops and exchange of good practices, involving a limited number of countries, instead of large-scale conferences, and has conducted activities with the national parliaments of Member States (of the Council of Europe) and a number of parliaments in its near abroad, including Algeria, Egypt, Jordan, Lebanon, Morocco, the Palestinian National Council and Tunisia. The PSD is also providing assistance to Eastern European countries, South Eastern European countries and South Mediterranean countries within

the framework of joint programmes by the Council of Europe and European Union.<sup>95</sup>

### European Union (28 Member States)

The Treaty on European Union states that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, and is committed to uphold these values in its relations with the wider world, and to promote the rule of law and human rights in its external action policy.<sup>96</sup> Because of this, the European Parliament seeks to mainstream human rights in its work, including by ensuring internal/external coherence in human rights policy, as well as ensuring that human rights compliance is reflected in its other policies such as trade, migration and interactions with strategic partners. This is regarded as a priority task which has many dimensions within the European Parliament, covering the work of parliamentary committees and inter-parliamentary delegations.<sup>97</sup> The European Parliament also has a specialised parliamentary Committee on Civil Liberties, Justice and Home Affairs, which is responsible for the vast majority of the legislation and democratic oversight of Justice and Home Affairs policies, and seeks to ensure respect for human rights through its work.<sup>98</sup> The European Parliament also receives independent human rights expertise from the EU Fundamental Rights Agency, which provides fundamental rights expertise to assist ongoing policy and legislative debates, as well as an annual report on fundamental rights protection in the EU, which informs the European Parliament's own annual report on fundamental rights.<sup>99</sup>

In 2016, the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) conducted a survey of EU Member States' parliaments as well as the European Parliament on the rule of law and the role of Parliaments and their tasks with regard to the rule of law and human rights, publishing a report presenting its findings on the following: (1) which committees/bodies are involved in these activities; (2) different forms of debate present in parliaments/chambers; (3) the use of expertise and information by parliaments; (4) parliaments' cooperation with third parties; and (5) national Parliaments' attention to European and international bodies and mechanisms. The report concluded by identifying

some best practices and possible trends on the role of law and the role of Parliaments.<sup>100</sup> The report was presented at the 25th COSAC conference in June 2016, and attendees spent a significant amount of time discussing the role of parliaments in relation to the protection and promotion of the rule of law and human rights.

The European Parliament's Sub-Committee on Human Rights, which scrutinises issues relating to human rights outside the EU, commissioned a set of policy studies on the role of regional human rights mechanisms between 2010 and 2012, which recognised that national parliaments are a key institution for the development of regional human rights protection systems, and recommended that the European Parliament advocate for the strengthening of regional human rights protection systems using the modalities of parliamentary cooperation arrangements such as the ACP-EU, AIPA, ASEP, EUROMED and EUROLAT Parliamentary Assemblies<sup>101</sup> as well as parliamentary delegations to third states.<sup>102</sup> The study on regional human rights mechanisms also recognised the importance of the IPU as a forum for promoting the role of parliaments in the implementation of international and regional human rights instruments, and recommended that an approach to regional human rights protection mechanisms through the IPU will likely foster agreement among national legislators of the need to bring their legislations in harmony with the regional system mechanisms.

The Council of the European Union has also recently adopted a new EU Action Plan on Human Rights and Democracy (for 2015-2019), which reaffirms the EU's commitment to promote and protect human rights and to support democracy worldwide, and which commits the EU, its institutions and Member States to support the capacity-building of Parliamentary institutions, strengthen cooperation with the UN and regional Human Rights and Democracy mechanisms, and promote stronger partnership with third countries' Civil Society Organisations (CSO), including by facilitating and supporting structured exchanged between governments, parliaments and CSOs.<sup>103</sup> The EU's new Action Plan could therefore be an opportunity to promote a greater role for parliaments in relation to the rule of law and human rights.

The EU's present parliamentary assistance and capacity building activities tend to take place under

a number of frameworks. The European Parliament's Directorate for Democracy Support has organised a number of conferences, study visits and training events for members of parliaments and staff in non-EU countries.<sup>104</sup> The European Union also funds capacity building activities in pre-accession countries, such as the EU-UNDP 'Strengthening Parliamentary Democracy in Georgia' project, which, *inter alia*, funded a consultation and action plan for the Georgian Parliament's Committee on Human Rights and Civil Integration.<sup>105</sup>

### *The Americas*

#### **Organization of American States (35 Member States)**

The Inter-American Court of Human Rights, in an Advisory Opinion<sup>106</sup> on the scope of the word 'laws' in Article 30 of the American Convention of Human Rights, has affirmed the role of parliaments in ensuring that laws are compliant with human rights and preventing the arbitrary exercise of power, although it acknowledged that this did not always prevent laws being passed that could be in violation of human rights, hence underlining the need for a system of subsequent control. The Inter-American Court concluded that the principles of legality and the requirement of law under democratic constitutionalism, required that 'laws', used in Article 30, can have no meaning other than that of law in the formal sense – legal norms passed by the Legislature and promulgated by the Executive Branch in the manner prescribed by the Constitution. Pinto *et al.* state that the rule of law expresses itself here through the role of Parliament as guardian of human rights because of its plural composition, because of the debate that is intrinsic to it and also because of the representation of political minorities.<sup>107</sup>

The Inter-American Court of Human Rights and Inter-American Commission on Human Rights have faced difficulty achieving the full implementation of their reparations decisions and recommendations respectively.<sup>108</sup> This may have been hindered by the lack of systematic engagement between parliamentarians and the regional human rights mechanisms in the Americas, the minimal involvement of parliamentary human rights committees in monitoring implementation, and the lack of an American analogue to the Parliamentary Assembly of the Council of Europe (PACE), which



plays a leading role in monitoring compliance with the judgments of the European Court of Human Rights. The Open Society Justice Initiative has published a report recommending that regional parliamentary bodies, such as the Latin American Parliament, should consider forging a similar practice to PACE.<sup>109</sup>

The Organization of American States (OAS) General Assembly, the supreme organ of the OAS, recently adopted a new 'Strategic Vision' including a 'Vision Statement' committing the OAS to the strengthening of democracy and the promotion and protection of human rights,<sup>110</sup> in 2014. Since then, it has committed to consolidating the inter-American system for the promotion and protection of human rights, and to providing specialized technical assistance to member states in strengthening their national capabilities in the regulatory, institutional, and public policy areas in terms of promotion, observance, and protection of human rights.<sup>111</sup> Efforts are presently underway to re-organise the OAS Secretariat to align it with the new strategic vision<sup>112</sup>, and this could present an opportunity for the OAS Secretariat to promote an increased role of legislatures in the protection and promotion of human rights.

## *Africa*

### **African Union (54 Member States)**

While 53 African States have ratified the African Charter on Human and Peoples' Rights (with the exception of South Sudan), only 29 have so far ratified the optional Protocol establishing the African Court on Human and Peoples' Rights. The African Court has adopted a practice of sending its judgments to the parties, to the Member States of the African Union and the African Commission on Human and Peoples' Rights, but does not yet engage national parliaments on the implementation of its judgments.

While the African Commission on Human and Peoples' Rights has been encouraged to 'reflect on ways and means to establish formal relationships with African national Parliaments in the human rights areas, including the domestication of human rights instruments',<sup>113</sup> it is not common practice for the African Commission on Human and Peoples' Rights to inform national legislatures of its findings, and in particular its decisions on individual

communications. This is therefore dependent on the government or civil society organisations. Overall, there are few occasions on which African Commission findings are debated in domestic legislatures.<sup>114</sup>

A Pan-African Parliament, composed of parliamentarians from each of the Member States of the African Union (AU), was established in 2001. It has a mandate including facilitating 'the effective implementation of the policies and objectives of the AU' (which include the protection and promotion of human rights) and 'promot[ing] the principles of democracy and human rights in Africa' and will eventually have legislative powers.<sup>115</sup> The Open Society Justice Initiative,<sup>116</sup> as well as the authors of a new seminal work on the African Commission of Human and Peoples' Rights,<sup>117</sup> have recommended that the Pan-African Parliament should consider emulating PACE in engaging with regional human rights mechanisms to monitor the implementation of their decisions and recommendations, and to facilitate their dissemination at the national level in order to engage parliamentarians and thereby 'provide a common platform for African peoples and their grass-roots organisations to be more involved in discussions and decision-making on the problems and challenges facing the continent.'<sup>118</sup>

## *Asia-Pacific*

Because there are no regional bodies with human rights mechanisms for the Asia-Pacific region as a whole, it is necessary to consider the region from the perspective of its sub-regional bodies. Due to constraints of space, this background paper will only consider the sub-regions with specific human rights mechanisms. While it is not possible to cover all the other sub-regions in detail, including those within the Asia-Pacific region as well as those outside, their sub-regional bodies and parliamentary assemblies should not be forgotten in any discussion of the role of parliaments.

### **Association of Southeast Asian Nations (10 States parties to the ASEAN Charter)**

The impetus to establish a regional human rights mechanism at the Association of Southeast Asian Nations (ASEAN) level started with the 1993 Vienna Declaration and Programme of Action, and was partly driven by the Working Group for an ASEAN Human Rights Mechanism, an informal coalition

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of parliamentary human rights committees, representatives of government institutions, the academy and NGOs formed in the mid-1990s.<sup>119</sup> Nevertheless, it was only in 2009 that the ASEAN Intergovernmental Commission on Human Rights was set up, a consultative body with a mandate to promote and protect human rights but no power to receive individual complaints from victims of human rights abuses or to undertake fact-finding missions.<sup>120</sup> The role of national parliaments has not featured in its Five Year Work Plans yet.

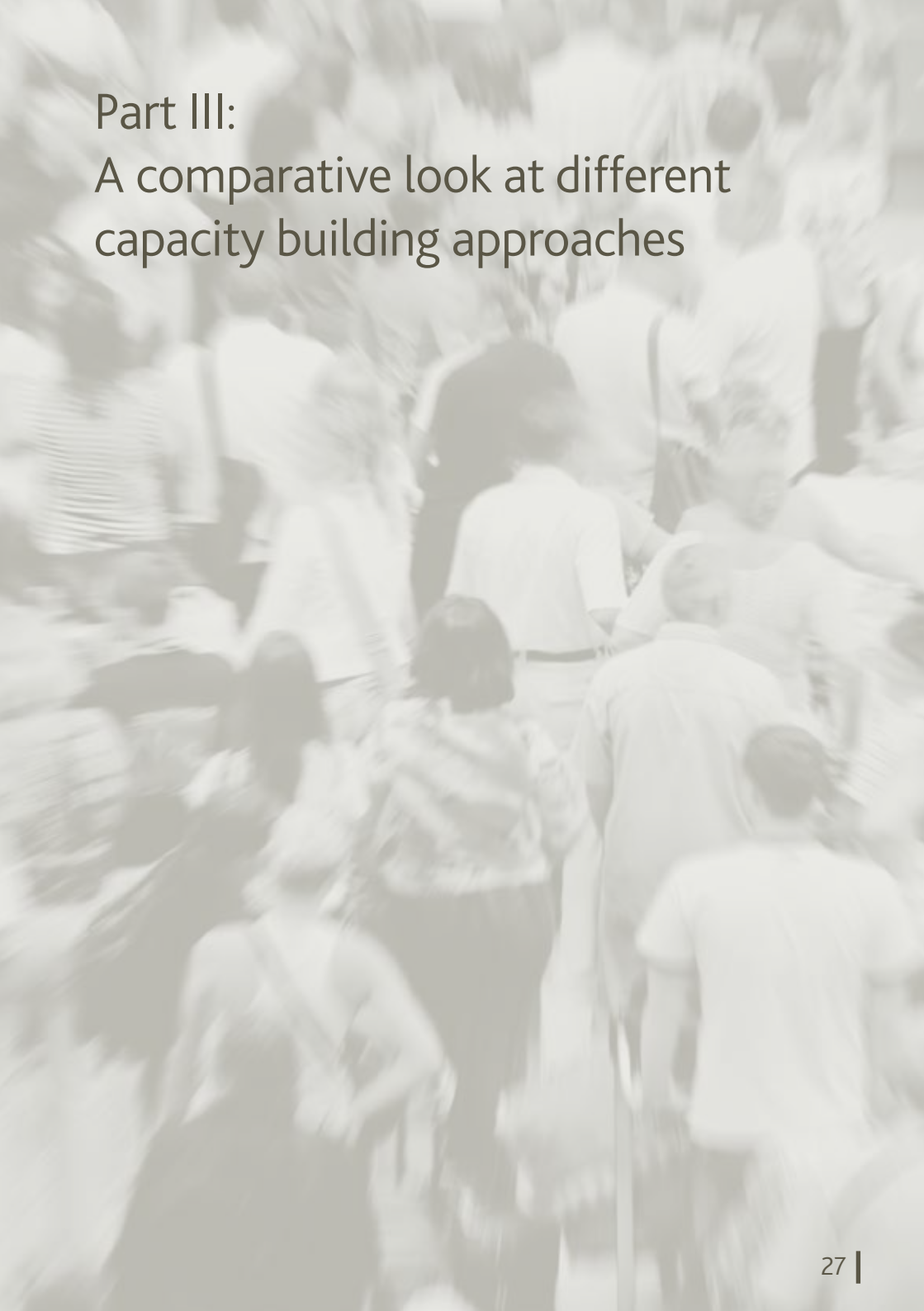
The ASEAN Inter-Parliamentary Assembly (AIPA), whose aims and purposes include the promotion of the principles of human rights, democracy, peace, security and prosperity<sup>121</sup>, is not a formal regional parliament for ASEAN, but a regional assembly of national parliamentarians from the ten member countries of ASEAN, which has a long history of association and cooperation with ASEAN<sup>122</sup>. AIPA passed resolutions on strengthening of democracy and promotion of human rights in its 2008 and 2009 sessions, the 2008 resolution stressing the important roles of AIPA Member Parliaments as legitimate representatives of the ASEAN people in strengthening democratization in regional institutions and furthering the promotion and protection of human rights.<sup>123</sup> An informal grouping of ASEAN Parliamentarians for Human Rights has also been formed since 2013, and it includes many of the region's most progressive parliamentarians with a proven track record of human rights advocacy work.<sup>124</sup>

### Arab States (22 States parties to the Charter of the Arab League)

The League of Arab States (LAS) adopted an Arab Charter of Human Rights in 2004, which entered into force on 15 March 2008, two months after being ratified by 7 nations. The Charter has since been ratified by 13 out of the 22 Member States of the LAS, and created an Arab Human Rights Committee charged with reviewing Reports submitted by ratifying states.

The Baghdad Summit in March 2012 established a permanent Arab Parliament under the auspices of the LAS, which is mandated, amongst other things, to develop Arab cooperation in the field of human rights and present recommendations accordingly.<sup>125</sup> The Arab Parliament does not have the mandate to draft agreements, but can approve agreements referred to it, and can also issue recommendations that have to be approved by a Ministerial Council or a Summit. It is composed of four parliamentarians for each member state of LAS, who are either elected directly from their national parliament, or otherwise chosen or appointed from their own national parliament. The Arab Parliament now has a Committee on Legal and Human Rights Affairs, and has met six times since its inception.<sup>126</sup>

Because neither the Arab Human Rights Committee nor the Arab Parliament make their outcome documents available on their websites, it is not possible to conclusively set out their interactions with national parliaments, although the academic literature suggests that this is nascent.



Part III:  
A comparative look at different  
capacity building approaches

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This section draws on some of the developments described above to take a comparative look at some different capacity building approaches towards the strengthening of parliamentary protection of human rights and the rule of law and parliamentary engagement with international and regional human rights mechanisms, and other national human rights actors. Four approaches have been identified and outlined above in Part II.<sup>127</sup>

1. The first approach is the collaborative approach between national parliaments, the Inter-Parliamentary Union and the UN Office of the High Commissioner for Human Rights, and is documented in Ingeborg Schwarz's chapter on the Work of the Inter-Parliamentary Union in the Oxford research project's book on Parliaments and Human Rights,<sup>128</sup> as well as the UN Secretary-General's reports on Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union.<sup>129</sup>
2. The second approach is the capacity building approach of the UN Development Program, which may involve OHCHR and/or the IPU, but is ultimately grounded in the relationship between UNDP country teams and national parliaments, and is documented in the UN Secretary-General's reports on Interaction between the United Nations, National Parliaments and the IPU.<sup>130</sup>
3. The third approach is that of the Commonwealth, including the work of the Commonwealth Secretariat and the Commonwealth Parliamentary Association, and is based on speeches by the former Commonwealth Secretary-General and Deputy Secretary-General<sup>131</sup> as well as publicly available material online.<sup>132</sup>
4. The fourth approach is that of the Westminster Foundation for Democracy's program with the University of Oxford's Parliaments, Rule of Law and Human Rights research project, and is documented above, in the case study below, as well as in the project's synthesis report.<sup>133</sup>

The purpose behind this comparison is to begin to construct a coherent, global narrative of the different actions being taken, and to identify ways in which more systematic action can be taken to

improve the parliamentary protection of human rights and the rule of law and parliamentary engagement with other human rights and rule of law actors.

The four approaches share a number of similarities. As a starting point, all four approaches are grounded in the consent of partner parliaments, and seek to meet the needs of partner parliaments. This is consistent with the Common Principles for Support to Parliaments developed by the IPU,<sup>134</sup> of which Specific Principle 1 states that parliamentary support partners should be guided by the needs of parliaments. All four approaches are inclusive in the sense that they seek to support parliaments or parliamentary institutions as a whole, and do not seek to support a specific political party to the exclusion of others. This is consistent with Specific Principle 4 of the Common Principles. All four approaches are also based on similar models that seek to share external or specialist expertise in order to build parliamentary capacity to protect human rights and the rule of law or parliamentary engagement with other human rights or rule of law actors, although there are slight differences in each approach.

The IPU-OHCHR and Commonwealth approaches generally make use of regional workshops to build capacity, and to foster sharing of good practices within regions as well as the development of networks of regional parliamentarians interested in human rights. The Commonwealth has also been particularly focused on building regional networks by fostering sustained and repeated interactions between parliamentarians within their regions. WFD, on the other hand, has focused more on workshops at the national level, which enable the development of tailored, country-specific reports and recommendations, and discussion of potential reforms by a wider group of parliamentarians. UNDP also tends to operate at the national level, conducting human rights training or activities on the basis of agreement between country teams and partner parliaments, and its national approach generally enables the training of a larger number of parliamentarians and staff than would a regional approach.

The IPU-OHCHR and Commonwealth approaches can be said to be systematic in the sense that they aim to cover the entire world/Commonwealth, although not all partner parliaments would have

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members attending the regional workshops and some partner parliaments may not receive workshops or targeted assistance at the national level. By contrast, the WFD and UNDP approaches are more *ad hoc* in nature, and only engage a small number of all their partner parliaments with human rights capacity building initiatives, depending on a confluence of political will, good timing and funding. None of the approaches would claim to be truly comprehensive in the sense that they provide guidance to all parliaments around the world. The approach that is closest to providing comprehensive guidance is the work of the IPU and OHCHR at the UN Human Rights Council to advocate for greater engagement between parliaments and the Universal Periodic Review, but such advocacy is limited by the fact that it is directed at governments rather than parliaments, and few parliaments will be aware of or be able to take action on this, without greater advocacy at the regional level, and especially at the national level. Thus, there remains at present a need for comprehensive and systematic guidance, tools and resources that will be able to help all parliaments around the world achieve greater parliamentary protection of human rights and greater parliamentary engagement with international, regional and national human rights actors.

While the other approaches have tended to focus on specific aspects of parliamentary engagement with human rights mechanisms (e.g. on the UPR or human rights treaty bodies) or on strengthening parliamentary protection through specific capacity building activities (e.g. human rights training of new parliamentarians), the WFD approach is distinctive in that it begins with a comprehensive and systematic survey of parliamentary capacity to protect human rights and parliamentary engagement with human rights mechanisms, makes targeted recommendations for improvement and shares good practices with partner parliaments, before discussing and agreeing on possible follow-up actions. This approach is able to identify and facilitate action on areas for improvement, because it is underpinned by a draft set of principles and guidelines, providing a baseline for the identification of parliamentary needs and areas where support could be provided. The case study right emphasises the potential operational value of such principles and guidelines.

It should be emphasised that the draft principles and guidelines produced by the University of Oxford's

Parliaments, Rule of Law and Human Rights research project (the Oxford draft principles and guidelines) are simply a draft, and intended to facilitate discussion as well as demonstrate the operational case for internationally-agreed standards developed through an inclusive process, and eventually adopted by consensus. The experience of the WFD-University of Oxford collaboration has shown that there are a number of areas in which the Oxford draft principles and guidelines could be improved, including: the engagement between parliaments and the UPR process, human rights treaty bodies and special procedures (drawing on the work of the OHCHR, IPU and Commonwealth Secretariat on this area); the relationship between parliaments and national mechanisms for reporting and follow-up (where more work needs to be done to foster effective coordination and engagement between parliaments and NMRFs and other constituent parts of the national human rights protection system); as well as in the area of ensuring adequate budgetary spending on human rights. Another possible area of development of the draft principles and guidelines, would be to include specific guidance on how to ensure adequate representation of and input from women, minorities, children and disabled persons, amongst other rights holders.

## Case study: The WFD-University of Oxford study<sup>135</sup>

As can be seen from Table 1 below, most of the six parliaments studied had no engagement or minimal engagement with the UPR process,<sup>136</sup> human rights treaty bodies or UN special procedures. Only the Serbian parliamentary human rights committee presently has parliamentary discussion of the national report and the recommendations contained within the outcome document of the UPR (the Working Group report),

while none of the parliamentary human rights committees monitor the implementation of and follow-up on the recommendations accepted by the State during its UPR. The results are not unexpected given that the topic of parliamentary contributions to the UPR process is extremely new, and, as stated before, a majority of parliaments and parliamentarians are not yet involved in the UPR process.

Table 1: Selected results from the WFD-University of Oxford study

	Georgia	Macedonia	Serbia	Tunisia	Uganda	Ukraine
<b>Contribution to the Universal Periodic Review process</b>						
Does the parliamentary human rights committee monitor the implementation of and follow-up on the recommendations accepted by the State during its Universal Periodic Review (UPR)?	No	No	No	No	No	No
Does the parliament consider or debate national reports submitted to the UPR of the UN Human Rights Council, the recommendations made by the Council in its Working Group reports, or the Government's response to them?	No	No	Yes	No	No	Yes
Does the parliament have a mechanism to enhance its contribution to the preparation of the national report to the UN Human Rights Council, to be represented during the presentation of the national report and its examination by the Council, and above all, to be closely involved in monitoring the implementation of the recommendations which come out of the review?	No	No	No	No	No	Yes
<b>Scrutiny of state compliance with existing international treaties</b>						
Does the parliamentary human rights committee						
1. scrutinise the State's report to the UN treaty bodies, and any other compliance reports provided by the executive to any other international human rights mechanisms;	No	No	No	No	No	No
2. consider sending any relevant report it has published directly to the monitoring bodies, and in appropriate cases sending a representative of the committee to attend any relevant hearing before the monitoring bodies; and						
3. monitor the Executive's response to the Concluding Observations of the UN treaty bodies and seek opportunities to follow up the most significant of the recommendations contained in them?						
<b>Scrutiny of international human rights treaties prior to ratification</b>						
Does the parliamentary human rights committee scrutinise proposed human rights treaties, and other international treaties with implications for human rights, and report to parliament thereon, prior to their ratification?	No	No	No	Yes	No	Yes
Does the parliamentary human rights committee in its pre-ratification scrutiny of treaties, scrutinise the Government's justification for any proposed reservations or interpretative declarations?	No	No	No	Yes	No	Yes
<b>Scrutiny of state of accessions/ratifications</b>						
Does the parliamentary human rights committee ascertain and keep under review the Government's reasons for not acceding to or ratifying existing international human rights treaties?	No	No	No	Yes	No	Yes
<b>Relationship with international human rights machinery</b>						
Does the parliament have a mechanism which engages the UN's Special Rapporteurs on human rights issues, or the UN's human rights treaty bodies?	No	No	No	No	No	No
<b>Training</b>						
Does parliament arrange regular, periodic training for members of parliament and staff to enhance their understanding of and engagement with international human rights mechanisms such as the UPR and human rights treaty bodies?	No	No	No	Yes	No	No

## Extract from Synthesis Report of the WFD-University of Oxford study

*'Beyond domestic and regional human rights mechanisms, another function of the parliamentary human rights committee could be to monitor the state's compliance with and implementation of its international human rights obligations. This would help bridge the 'implementation gap' arising when states do not comply with or implement the international human rights obligations they have committed themselves to, by drawing parliamentary and broader public attention to the question of whether government policy is in accordance with the human rights treaties and the recommendations of the treaty monitoring bodies. It would also increase the democratic legitimacy of these standards, by having more debates in parliaments between elected politicians about what the state's international obligations require. Such discussion and debate will help to democratise human rights by encouraging other parliamentarians to take more ownership of these fundamental values, and to properly consider applicable international human rights standards in their work. For example, in the UK, the State's international obligations under the UN Convention on the Right of the Child (UNCRC) are now considered in parliamentary debate so frequently that the language of Article 3 of the UNCRC ('in all actions concerning children...*

*the best interest of the child shall be a primary consideration') is often used without the need for introduction, as parliamentarians have a high degree of familiarity with it.*

*The parliamentary human rights committee could therefore play a crucial intermediary role in introducing two 'ships passing in the night', in this case, the work of international human rights mechanisms and domestic parliamentary debates. It could also play a monitoring/oversight role in scrutinising state compliance with and implementation of international human rights obligations. The latter would also have the advantage of drawing the parliamentary human rights committee's attention to situations of violations/non-compliance with international human rights obligations, and learning what the relevant international standards are. In addition, by drawing parliamentary and broader public attention to the question of whether government policy is in accordance with the human treaties and the recommendations of the treaty monitoring bodies, the parliamentary human rights committee may ultimately be able to influence the government's policy position taken in its reports to the treaty monitoring bodies.'*

### Follow-up

Based on these findings, tailored workshops were prepared for the parliamentary human rights committees of Georgia and Tunisia, and recommendations made for them to engage with the UPR and treaty body processes as well as monitor the implementation of UPR and treaty body recommendations.

The Georgian Committee on Human Rights and Civil Integration accepted the recommendations and the Georgian Parliament subsequently passed legislation to enable its committee to review UPR reports as well as reports to human rights treaty bodies, and to monitor the implementation of recommendations. Following these changes, two draft reports to the UN Committee on the Rights of the Child were submitted to the Georgian Parliament, and were considered by the Committee on Human Rights and Civil Integration, the Committee on Legal Issues, the Foreign Relations Committee and the issues and the

Defence & Security Committee (with the leading committee being the Committee on Human Rights and Civil Integration\*). This was the first precedent implementing the legislative changes. It is also anticipated that when the government prepares a draft mid-term report on the implementation of recommendations accepted during the Universal Periodic Review process, this document will be submitted to the Parliament and reviewed according to the newly established Rules of Procedure of Parliament, and that the report will be debated in Parliament.

The Tunisian committee was in favour of the recommendations, and is in the process of taking action on them.

\* Parliament of Georgia, The Committees discussed the initial draft reports on the Optional Protocols to the Convention on the Rights of the Child (26 December 2016) <<http://www.parliament.ge/en/saparlamento-saqmianoba/komitetebi/tavdacvsa-dashishroebis-komiteti-144/axali-ambebi-tavdava/komitetebis-gaertianebul-sxdomaze-bavshvta-uflebata-konvencis-fakultaturi-oqms-pirvelad-angarisheze-imsdjeles.page>>



## Part IV:

Practical ways to further increase the role of parliaments in the protection and promotion of human rights and the rule of law



The various initiatives and developments outlined in this paper demonstrate the growing global consensus about the importance of the role of parliaments in the protection and realisation of human rights and the rule of law, and that this role involves parliamentary engagement with the international human rights system, regional human rights mechanisms and national human rights actors, as well as a variety of bodies including the IPU, the OHCHR, the UNDP, the Council of Europe, the Commonwealth, the Francophonie and the Westminster Foundation for Democracy. To date, however, these initiatives have been largely uncoordinated, and the on-going discussion at the UN Human Rights Council on the contribution of parliaments to its work provides a welcome opportunity for international discussion and agreement on how these initiatives may be co-ordinated by the HRC, the IPU, and other parliamentary support partners.

As seen in Parts II and III, most of the parliamentary support work to date has focused on the provision of technical assistance and capacity building workshops, which has occurred in a largely ad hoc manner and has not reached all parliaments. While the provision of such technical assistance and capacity building workshops is important and has been requested by a number of member states in the HRC's Panel Discussions on the contribution of parliaments to the work of the Council, more can be done to reach the parliaments that do not presently engage with the UPR and human rights treaty mechanisms (which appears to be more than 70% of all parliaments around the world)<sup>137</sup> and to encourage them to do so.

The HRC has repeatedly called for greater engagement between parliaments and the Universal Periodic Review,<sup>138</sup> and organised panel discussions focused on the sharing of good practices. However, such advocacy is limited by the fact that it is directed at governments (specifically, permanent missions in Geneva) rather than parliaments, and few parliaments will be aware of or be able to take action on this advocacy, without greater advocacy at the regional level, and especially at the national level. This advocacy also tends to be particularly focused on the implementation of recommendations accepted during the Universal Periodic Review, but could be more broadly focused: parliaments may not be able to take action to implement recommendations without effective

parliamentary structures for the protection and realization of human rights. As a recent paper written at the Graduate Institute of International and Development Studies in collaboration with the IPU notes, 'several crucial enabling factors that allow parliaments to play a meaningful role in the UPR process. These include the existence of a parliamentary committee dedicated specifically to human rights protection and with a strong mandate; the existence of good and effective working relationships between the parliament, the government, and the National Human Rights Commission; the advocacy work and pressure of civil society organizations; the existence of inter-institutional structures that facilitate a specific role for the parliament during the UPR process; and the strong commitment of individual MPs to enhance the protection and promotion of human rights in their countries.'<sup>139</sup>

Thus, there remains at present a need for comprehensive and systematic guidance, tools and resources that will be able to help all parliaments around the world achieve greater parliamentary protection of human rights and greater parliamentary engagement with international, regional and national human rights actors.

Beyond conducting ad hoc technical assistance and capacity building workshops, human rights training for parliamentarians and sharing sessions to disseminate good practices, there are many possible ways to enhance parliaments' contribution to the work of the Human Rights Council, including the Universal Periodic Review and the UN Special Procedures, as well as the human rights treaty bodies, including:<sup>140</sup>

1. The development of a formal network of relevant parliamentarians, lawyers and academics, who are properly resourced, to facilitate the exchange of relevant information and to provide a forum for sharing good practices, such as practices that encourage the implementation of Universal Periodic Review recommendations;<sup>141</sup>
2. The appointment of a UN Special Rapporteur on increasing the role of parliaments in the protection and realisation of human rights, with a specific mandate to assist national parliaments to find ways to mainstream international and regional human rights standards into the full range of their activities, as well as to increase coordination between parliaments and the

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Universal Periodic Review, UN Special Procedures and human rights treaty bodies;

3. The development of an internationally agreed set of principles and guidelines on the role of parliaments on the role of parliaments in the protection and realisation of the rule of law and human rights, including the contribution of parliaments to the Universal Periodic Review and coordination between parliaments and the UN Special Procedures as well as the human rights treaty bodies.

Perhaps the most effective way to bring about a step change, would be the third idea of developing an internationally agreed set of principles and guidelines on the role of parliaments in the protection and realisation of the rule of law and human rights.<sup>142</sup> There is a striking gap here which demonstrates how recently the international human rights machinery has begun to appreciate the importance of the role of parliaments. Internationally agreed principles relating to the Status of National Human Rights Institutions (the 'Paris Principles')<sup>143</sup> have existed since 1991, while a set of principles on the Relationship between National Human Rights Institutions and Parliaments (the 'Belgrade Principles')<sup>144</sup> were agreed in February 2012. The Bangalore Principles of Judicial Conduct were agreed in 2002.<sup>145</sup> To date, however, there is no internationally agreed set of principles and guidelines on the role of parliaments in the protection and realisation of the rule of law and human rights, despite the steadily growing interest in the subject. Notwithstanding the increasing amount of interest and discussion, and the steadily accumulating experience of legislative rights review in some jurisdictions, there has been no attempt to date to distil from those discussions and from good practices around the world a set of principles or guidelines that might assist parliaments everywhere to devise the appropriate structures, mechanisms and practices which are required in order for them to discharge their important obligations and responsibilities in relation to human rights. The forthcoming report to the Human Rights Council of last June's Panel discussion about the contribution of parliaments to its work, may present an opportunity to initiate a discussion about the desirability of such an agreed set of principles and guidelines, and what they might cover in order to be of real practical benefit to parliaments and parliamentarians everywhere.

Any such set of principles and guidelines could have a number of purposes. They could be intended to include a small set of minimum core standards which should apply to any parliament and any parliamentary human rights body. They could also contain guidance to parliaments about how they can increase their capacity to protect and realise human rights and the rule of law, including how parliaments can contribute to the Universal Periodic Review and co-ordinate their activities with the UN human rights treaty bodies. The aim could be both to prescribe some minimum standards if parliaments are to be able to fulfil their responsibility to protect and promote human rights and the rule of law, and to provide some helpful suggestions about ways in which parliaments can increase their capacity to do so, if they so wish. Such objectives would be consistent with Specific Principle 5 of the Common Principles for Support to Parliaments, which states that parliamentary support should be grounded in emerging international democratic parliamentary standards, and that 'those involved in parliamentary support, led by parliaments themselves, should promote the emerging international norms and standards for democratic parliaments, based on universal parliamentary practice and support their further development'.<sup>146</sup>

Any such set of principles and guidelines intended for international discussion and eventual agreement faces the very real difficulty that the institutional arrangements which underpin democracy, human rights and the rule of law vary enormously from country to country. But this diversity of practice ought not to deter us from seeking to identify some principles and guidelines which are capable of being relevant to every country. Of course, there can be no 'one size fits all' set of institutional arrangements: human rights and rule of law machinery must always be developed with great sensitivity to local cultural, legal and political traditions. Indeed, this is the approach which has been taken, over a number of decades now, to building and strengthening both national parliaments and national human rights institutions. Inevitably, not all of the principles and guidelines will be relevant to every country, and some will be more relevant than others for particular countries. But this fact does not render the exercise redundant, as the proven value of the Paris Principles has demonstrated. As the Paris Principles have shown with regards to national human rights institutions, guidelines can contribute hugely to the effectiveness and hence credibility of national

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human rights bodies.<sup>147</sup> The universal commitment to human rights, democracy and the rule of law requires us to take seriously the responsibility to devise arrangements in every country which makes it more likely that those abstract ideals can be made into a concrete reality for every one of the world's seven billion people.

#### *Work by the Oxford research project*

In September 2015, the University of Oxford's Parliaments, Rule of Law and Human Rights research project, supported by the UK Arts and Humanities Research Council organised a high-level international conference on the role of parliaments in the protection and realisation of the rule of law and human rights. This conference was the first attempt to help parliaments to develop their role further, by considering the desirability of a set of internationally agreed principles and guidelines, distilling the essence of the good practices that have grown up and the standards that have begun to emerge. At the conference, participants from the UN Office of the High Commissioner for Human Rights, the Inter-Parliamentary Union, the Commonwealth Secretariat, the Westminster Foundation for Democracy, a number of Parliaments around the world including in the Asia Pacific, Africa and Europe, inter-governmental organisations, non-governmental organisations and academia, agreed about the importance of parliaments' role in relation to the rule of law and human rights, that parliaments should be more involved than they currently are, and that developing guidelines in some form or other, to assist parliaments, is a good idea in principle. While there was a range of views about the scope and substance of any principles and guidelines, and about the best process for reaching international agreement, there was a strong consensus that some such agreement was a desirable end well worth pursuing.

A draft set of principles and guidelines was discussed at the 2015 conference. The purpose of the draft (the Oxford draft principles and guidelines) was to demonstrate the practical feasibility of such an exercise, and to stimulate initial discussion about what such a set of internationally agreed principles and guidelines might look like. Its content was distilled from the research of the Oxford research project and from practices in different parliaments which were publicly known at the time it was drafted, but it does not present a comprehensive or

complete set of standards, as experience has shown (see the final paragraph of Part III). Nevertheless, it is striking how the Graduate Institute of International and Development Studies study, which was conducted independently, found a number of 'crucial enabling factors that allow parliaments to play a meaningful role in the UPR process' (mentioned in the section above) that overlapped with the content of the Oxford draft principles and guidelines. The operationalization of the Oxford draft by the Westminster Foundation for Democracy (see the section on WFD in Part II) demonstrates the potential value of having internationally agreed principles and guidelines, which could be operationalised in the form of a 'checklist' for parliaments and other actors to measure and improve their effectiveness in protecting and promoting human rights.

#### *Process towards internationally-agreed principles and guidelines*

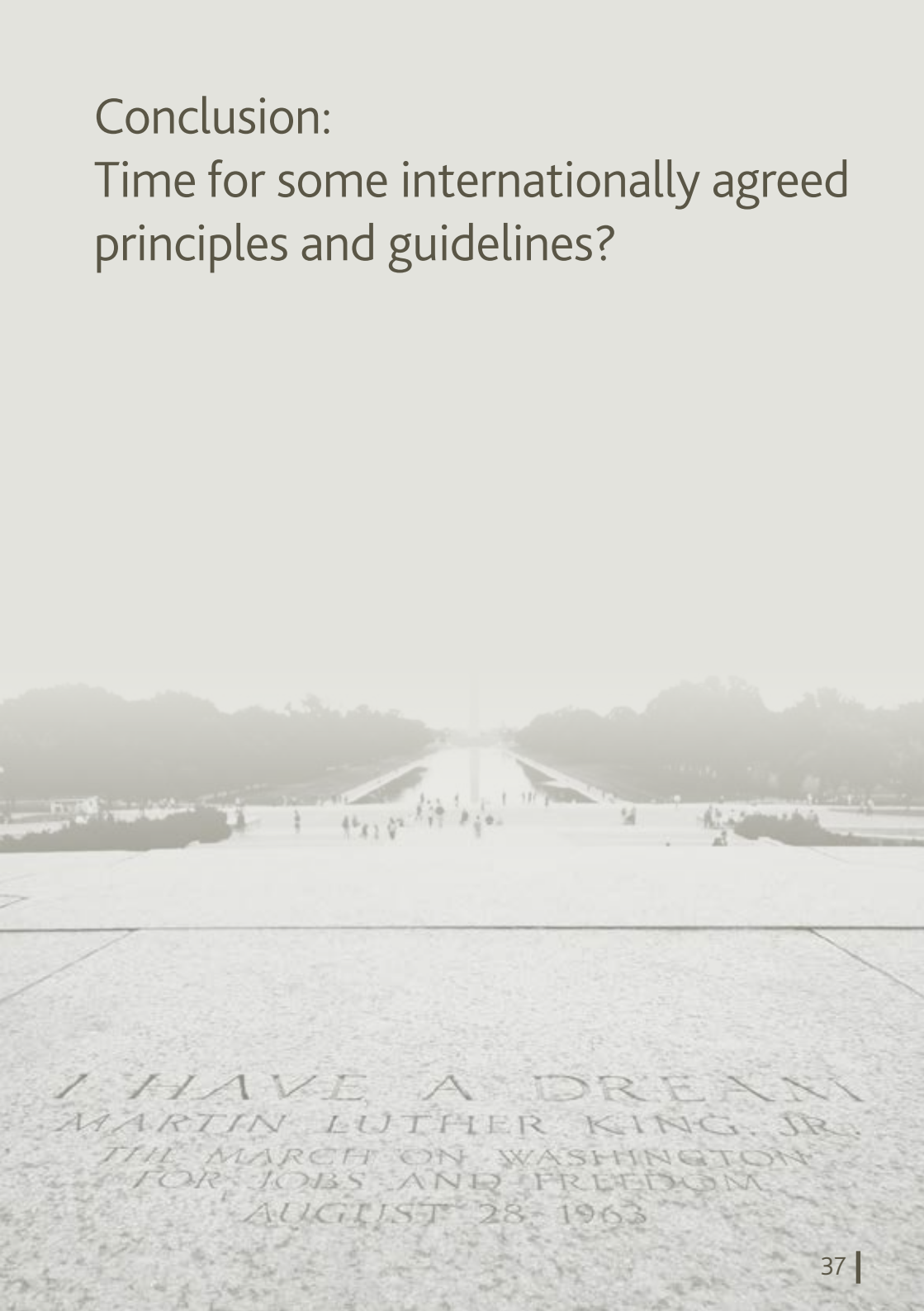
While the exact process of drafting and adopting internationally-agreed principles and guidelines remains to be decided, there is broad agreement that the process should be designed with a view towards maximising the legitimacy and practical effectiveness of the outcome. In designing this process, the following principles have been emphasised by our partners:<sup>148</sup>

1. **Inclusivity:** Any process towards internationally-agreed principles and guidelines should include all relevant stakeholders, such as: parliamentarians (especially Speakers and chairpersons of parliamentary human rights committees) and parliamentary staff with an interest in the protection of human rights; members of the national system of human rights and rule of law protection, including governments, NHRIs, NMRFs, civil society and academia; parliamentary support partners and parliamentary associations, such as the Commonwealth, the Council of Europe, La Francophonie, the European Union, the Westminster Foundation for Democracy and the National Democratic Institute, the IPU, OHCHR and UNDP; as well as stakeholders within the regional and international human rights mechanisms, such as the UN special procedures and human rights treaty bodies. Discussion should also include representatives of specific groups, such as women, minorities and youth.

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2. Universality (respectful for diversity in democratic structures): It is important that in the conceptualization of any set of principles or guidelines, different legal systems and traditions be taken into consideration. While parliaments around the world share many similarities, they also have different structures and methods of work, and this should be considered in the drafting process.
  3. Basis in international human rights law: In order to ensure that the principles on parliaments and human rights fulfil their purpose, it is crucial that international human rights law is fully taken into account in their development. Firmly anchoring the document in international human rights law, will not only provide it with a solid legal basis, but will also guarantee that key human rights principles, such as the principle of non-discrimination and equality, are incorporated into the outcome document.<sup>149</sup>
  4. Practicality: The outcome document should be practical in orientation, and not be too abstract,<sup>150</sup> so that it is useful to parliaments and parliamentary support partners, and can be operationalised easily. In this respect, the Paris Principles and Belgrade Principles may be seen as examples of practical documents.
  5. Respectful of the separation of powers: There is understandable concern that governments (the executive) or executive-led processes (such as diplomacy at the UN Human Rights Council) should not impose their views on parliaments, as this may not be consistent with the principle of separation of powers. To address this concern, it may be suggested that parliamentarians (such as chairpersons of parliamentary human rights committees and their advisers) take the lead role in drafting and agreeing on the text of the outcome document.
  6. Adoption by consensus: In order to enhance its legitimacy, the final outcome document should be adopted by consensus.

Conclusion:

Time for some internationally agreed principles and guidelines?



*I HAVE A DREAM  
MARTIN LUTHER KING, JR.  
THE MARCH ON WASHINGTON  
FOR JOBS AND FREEDOM  
AUGUST 28, 1963*

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As can be seen from the above discussion, while there is growing worldwide consensus about the desirability of increasing the role of parliaments in upholding the rule of law and human rights, there is not yet a set of agreed standards or guidance about what practices could be adopted for such parliamentary involvement to be effective. While there has been some sharing of good practice, there has to date been no systematic attempt to provide a coherent narrative to these disparate developments, or to help parliaments to develop their role further by identifying and drawing together examples of good practices in one accessible document, distilling the essence of the good practices that have grown and the standards that have begun to emerge. Most of the capacity building and technical assistance work to date has primarily focused on the contribution of parliaments to the Universal Periodic Review, and may not provide sufficient impetus for institutional reforms without a sustained effort to co-ordinate initiatives at the international, regional and national levels. This impetus for institutional reforms is necessary, as it will be difficult for the Council to succeed in encouraging greater engagement between parliaments and its work without it. There is much more work that remains to be done on how parliaments can contribute to the work of the international and regional human rights mechanisms, and how parliaments can do more to protect and promote the rule of law and human rights at the domestic level.

An internationally agreed set of principles and guidelines on the role of parliaments in the protection and realisation of the rule of law and human rights will help to increase the democratic legitimacy and national ownership of international human rights standards, as well as enable parliaments to play an intermediary role in bridging the 'implementation gap' arising between states and international human rights mechanisms. If the Human Rights Council fosters greater engagement between parliaments and international human rights mechanisms, parliaments could play a valuable role in helping the new UN Secretary-General and High Commissioner for Human Rights realise their vision for change, by activating parliaments as key partners in the prevention agenda as well as the implementation of 2030 Agenda, the Paris Climate Agreement and international human rights and rule of law obligations, transforming the recommendations of the human rights mechanisms into real changes on the ground.

## Annex I: Summary of key developments at the international and regional level

Although parliaments were not recognised as distinct stakeholders by international and regional human rights bodies until relatively recently, there has been a growing international recognition of the important role that parliaments play in implementing the human rights obligations voluntarily assumed by States and imbuing these obligations with democratic legitimacy. International and regional human rights organisations have increasingly recognised this role, and have taken steps to foster greater parliamentary engagement with human rights mechanisms. This section provides some brief 'highlights' of the actions taken by international and regional human rights organisations (summarising Part II of this paper), demonstrating how the UN bodies have taken steps to encourage greater parliamentary engagement with their work, and how both the UN Secretary-General and the UN High Commissioner for Human Rights have called for consideration of the idea of principles and guidelines for parliaments. International organisations, led by the Council of Europe, the Commonwealth, the Francophonie and the European Union have also sought to encourage greater parliamentary engagement with human rights, and the latest Commonwealth Parliamentary Conference on the Rule of Law and Human Rights concluded by echoing the call for consideration of the idea of principles and guidelines for parliaments.

### Key developments at the international level

- i. The UN General Assembly committed, in a resolution passed in December 2010, to taking a more systematic approach to integrating a parliamentary contribution to major UN deliberative processes and to its review of states' international commitments. Since then, the UN General Assembly has acknowledged "the essential role of national parliaments" both in ensuring the effective implementation of global commitments, including the 2030 Agenda (for Sustainable Development), and in realising the rule of law. The General Assembly has also encouraged efforts to help parliaments align national legislation with international commitments, and contribute to the work of the Human Rights Council, notably by providing a more robust parliamentary contribution to the Universal Periodic Review, and to the work of the United Nations human rights treaty bodies.
- ii. The latest (2016) UN Secretary-General's report on the 'Interaction between the United Nations, National Parliaments and the Inter-Parliamentary Union' (IPU) has encouraged the UN to work together with partners, including the IPU, to help strengthen the capacities of parliaments to perform their legislative, oversight and representative functions, in order to enable parliaments to be more involved in national development planning exercises and reviews of global commitments, including the 2030 Agenda; and to consider the 'development of principles to assist parliaments to fulfil their role in the protection and realization of human rights... [which] should form a solid basis to guide joint United Nations-IPU support to parliaments in the area of human rights.'
- iii. The UN Human Rights Council (UNHRC) has convened two panel discussions on the contribution of parliaments to the work of the Council and its Universal Periodic Review, in May 2013 and June 2016. The IPU collaborated with the Office of the High Commissioner for Human Rights (OHCHR) to conduct four regional seminars in Bucharest, Rabat, Montevideo and Manila between 2013 and 2015 to build parliaments' capacities to contribute, before organising a side event on this topic at the UNHRC's June 2015 session. The presentation of the report of the June 2016 panel discussion on 'the contribution of Parliaments to the work of the Human Rights Council and its Universal Periodic Review and to identify ways to enhance further that contribution' at the June 2017 Council session will present an opportunity for Member States on the Council to consider and agree on what further steps they wish to take to increase engagement between the Council and parliaments.
- iv. The UNHRC has recently begun encouraging the establishment and strengthening of

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- National Mechanisms for Reporting and Follow-up (NMRFs) on international human rights obligations and commitments. NMRFs are welcome additions to the national human rights protection system that aim to co-ordinate reports and engagement with international and regional human rights mechanisms, and track follow-up and implementation of international human rights obligations including recommendations of treaty bodies. OHCHR has set out in its Practical Guidance a number of ways in which NMRFs should co-ordinate with parliaments and other constituent parts of the national human rights protection system, including NHRIs, the judiciary and civil society, and has also warned that discussions about NMRFs should not lose sight of the importance of such co-ordination. Because NMRFs are a relatively new phenomenon, more work needs to be done to foster effective co-ordination and engagement between parliaments and NMRFs and other constituent parts of the national human rights protection system.
- v. The UN Committee on the Elimination of Discrimination Against Women issued a statement in 2010 recommending that States ensure the full participation of Parliament and its members in the reporting process and the full implementation of the Convention and its Protocol, and setting out a number of ways in which States can do so. This builds upon that Committee's longstanding cooperation with the IPU directed at engaging parliamentarians with its work. The Committee previously adopted, in 2008, a systematic practice of including a paragraph in its concluding observations to states on the need for parliamentary involvement in its reporting cycle. The CEDAW Committee is still, at present, the only human rights treaty body that seeks to foster systematic parliamentary engagement with its work.
- vi. The UN High Commissioner for Human Rights has welcomed efforts to strengthen the role of parliaments in the protection and promotion of human rights, and has emphasised the importance of considering draft international principles on the role of parliaments, similar to the Paris Principles on national human rights institutions and the Bangalore Principles on judicial independence.
- vii. The importance of the role of the Inter-Parliamentary Union in promoting parliamentary protection of human rights and parliamentary engagement with international human rights mechanisms cannot be overstated. Apart from taking a leading role in the aforementioned efforts at the UN General Assembly and the UN Human Rights Council, as well as fostering parliamentary engagement with the CEDAW Committee, the IPU works together with OHCHR and the UN Development Program to provide human rights training, technical cooperation and capacity building to partner parliaments. The IPU has recently worked together with OHCHR to produce a new Human Rights Handbook for Parliamentarians (in 2016), updating the first edition which was published in 2005.
- viii. The Westminster Foundation for Democracy has worked to strengthen parliamentary protection of the rule of law and human rights in a number of emerging democracies around the world since 2008. Its present collaboration with the University of Oxford's Parliaments, the Rule of Law and Human Rights project demonstrates the potential utility of internationally agreed principles and guidelines in parliamentary capacity building work, including by strengthening parliamentary engagement with the Universal Periodic Review, UN treaty bodies and UN special procedures.
- ix. The Commonwealth Secretariat and Commonwealth Parliamentary Association have facilitated the establishment of a number of Parliamentary Human Rights Groups, including the Commonwealth Caribbean Parliamentary Human Rights Group, the Commonwealth African Parliamentary Human Rights Group, and they are now in the process of establishing a Commonwealth Pacific Parliamentary Human Rights Group and an Asia Commonwealth Parliamentary Human Rights Group. The Commonwealth Deputy Secretary-General has also spoken of her Secretariat's support for principles and guidelines agreed on the basis of consensus.
- x. Three regional meetings of Commonwealth Parliamentarians have also led to the adoption of the Mahe Declaration in 2014, the Pipitea Declaration in August 2015, and the Kotte Declaration in February 2016 which commits



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the participating parliamentarians to the protection and promotion of human rights; increased engagement with international and regional human rights mechanisms, including the Universal Periodic Review, UN treaty bodies and UN special procedures; and to seek international technical assistance in the field of human rights.

- xi. A recent (Jan 2017) Commonwealth Parliamentary Conference on the Rule of Law and Human Rights brought together members and staff of fifteen Commonwealth as well as non-Commonwealth parliaments to build their capacity to protect and promote the rule of law and human rights within the Commonwealth and beyond. Participating members of Parliaments adopted an outcome statement that included twelve commitments to strengthen the parliamentary protection of human rights and the rule of law, encourage engagement with international and regional human rights mechanisms as well as national partners, and to 'consider and explore the potential for a set of international principles and standards, comparable to the Paris Principles for national human rights institutions, to help parliaments develop their role in protecting and promoting human rights and the rule of law.'
- xii. The International Organisation de la Francophonie and Assemblée Parlementaire de la Francophonie have organised a number of capacity building workshops on the role of parliamentarians in the protection and promotion of human rights, particularly in the context of the Universal Periodic Review. The Organisation Internationale de la Francophonie has also produced a 'practice guide on the implementation of UPR recommendations and commitments' that recognizes that Parliaments have an important role to play at all stages of the UPR process, particularly in the follow-up and implementation of UPR recommendations and commitments.

### **Key developments at the regional level**

- xiii. The European Convention on Human Rights is being amended in a way which makes the role of national parliaments more important and the case-law of the European Court of Human Rights has developed to require courts

throughout the Council of Europe's 47 Member States to pay closer attention to parliamentary consideration of human rights. The Court has also elaborated doctrines of 'subsidiarity' and 'margin of appreciation' that enables it to defer to a decision of national governments or parliaments, if it is demonstrated to the Court's satisfaction that there has been consideration of all the relevant human rights issues in the deliberative process, and the decision is in substance defensible in a democracy.

- xiv. The Parliamentary Assembly of the Council of Europe has also worked assiduously to encourage national parliaments to take a more active role in supervising the implementation of judgments of the European Court of Human Rights, and also to systematically scrutinise all draft legislation to ensure their compatibility with the European Convention.
- xv. The Council of the European Union has passed a new Action Plan on Human Rights and Democracy 2015-2019 which commits the EU, its institutions and Member States to support the development of legislative, budgetary and oversight prerogatives of parliaments of third states, to assist these parliaments in organising public debates on key reform issues with due account being taken of relevant international human rights obligations and standards, and to include a parliamentary dimension in EU and EU Member States' good governance programmes and budget support.
- xvi. The Inter-American Court on Human Rights was an early recogniser of the role of parliaments in the realisation and protection of the rule of law and human rights, in its 1986 Advisory Opinion on the scope of the word 'laws' in the American Convention on Human Rights. While both the Inter-American Commission on Human Rights and Inter-American Court of Human Rights have not hitherto included national parliaments in their work, there is a current opportunity to do so, and to strengthen their links with regional assemblies such as the Latin American Parliament during the on-going re-organisation of the Organization of American States in line with its new strategic vision.

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- 149 G Magazzeni, Keynote Address at the international conference on 'The Role of Parliaments in the Protection and Realisation of the Rule of Law and Human Rights' (Westminster, 7 September 2015) <[https://www.law.ox.ac.uk/sites/files/oxlaw/gianni\\_magazzeni\\_keynote\\_speech\\_07\\_09\\_15.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/gianni_magazzeni_keynote_speech_07_09_15.pdf)>
- 150 N Shrijvers, 'Remarks in Session 4: Process: how to get from here to international agreement?' in B Chang, Conference Report on the Role of Parliaments in the Protection and Realisation of the Rule of Law and Human Rights (Westminster, 7 September 2015) <[https://www.law.ox.ac.uk/sites/files/oxlaw/conference\\_report\\_on\\_the\\_role\\_of\\_parliaments\\_in\\_the\\_protection.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/conference_report_on_the_role_of_parliaments_in_the_protection.pdf)>

“It is important to consider, as part of the forthcoming discussion by the Human Rights Council of the contribution of parliaments to the work of the Council, draft international principles on the role of parliaments in the protection and promotion of human rights, similar to those principles already adopted by the General Assembly on the autonomy and effectiveness of NHRIs or on the independence of the judiciary.”

*Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights, in remarks to a meeting of UK parliamentarians, October 2015.*

“ ... instead of retreat, increased engagement offers the way forward. The continuing discussion between the United Nations and IPU concerning the development of principles to assist parliaments to fulfil their role in the protection and realization of human rights should be accelerated. Once adopted, the principles should form a solid basis to guide joint United Nations-IPU support to parliaments in the area of human rights.”

*UN Secretary-General's Report on Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union, June 2016*

“The IPU, the global organisation of parliaments, encompasses the diversity of parliaments and parliamentary systems that can bring more legitimacy to international governance, including in the area of human rights. ... We welcome the essential role the Sustainable Development Goals Declaration assigns to parliaments in translating the goals into action, through legislation, resource allocation and oversight of government action. ... The IPU has embarked on an ambitious programme to help parliaments become fit for purpose in delivering on the goals and in a way that is firmly grounded in human rights.”

*Martin Chungong, Secretary-General of the Inter-Parliamentary Union, in his contribution to the Panel Discussion on the contribution of parliaments to the work of the Human Rights Council and its UPR, June 2016*



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