

## **UNIT 7: BRINGING TREATIES HOME**

### **Introduction and Overview**

There is great significance in ratifying international human rights treaties and in taking up certain responsibilities that come with it. This unit begins with a call to endorse national commitments to human rights by becoming party to international treaties. It examines the status of treaty ratification, and highlights treaties being ratified in total, without recording reservations that dilute a country's commitment to protect the human rights of its inhabitants. This unit also explains the process by which a country submits its reports to treaty monitoring bodies or committees and how national plans of action may be drawn up.

### **Promoting ratification of treaties**

In many cases the attitude of the regime in power and its key members becomes obvious when, though a country has committed to the general principles on an issue, it steadfastly refuses to sign on to the substantive documents that will create obligations back home.

Parliamentarians may be reluctant to sign on because it would mean displacing well-entrenched power structures or undertaking radical changes at political risk. As many as 24 countries of the Commonwealth have not yet signed on to the Convention Against Torture, and 51 out of 53 nations haven't agreed to the Optional Protocol which allows visits to places of detention. To ratify means the regime would be subject to regular international reporting about the progress the country has made in abolishing the possibility of torture. Ratification would also require that specific systems have been put in place to ensure that the possibility of torture by State agencies is minimized. In many cases, this would require completely overhauling old and infirm criminal justice systems

or at a minimum, prioritizing police reform. Sometimes this is too hard a political decision to take.

In still other cases, countries ratify international treaties and take the credit of bringing others on board but neglect to put in place laws and procedures that will make the substance of the treaty a living reality at home. Parliament therefore has a significant role to play in ensuring that executive intent to become a party to a treaty is backed by substantive national legislation that gives effect to the treaty. In many parts of the Commonwealth, courts are beginning to take notice of moral obligations under international law. The Supreme Court of Canada recognized the obligations of the State under the Convention on the Rights of the Child (CRC) in the Baker case even though it was argued that there was no enabling legislation to make the international treaty principles binding in domestic law.

Early and wholehearted ratification of human rights treaties establishes a country's credentials as a responsible member of the community of nations and builds public trust

### **Bringing Violators to Account: Supporting the International Criminal Court:**

In July 1998, 120 Member States of the United Nations adopted a treaty to establish for the first time in the history of the world a permanent International Criminal Court. This treaty came into force on 1 July 2002, sixty days after sixty States ratified the ICC Statute. The ICC is a major breakthrough for human rights promotion and protection. A permanent court with a mandate to bring to justice individuals who are responsible for the world's most serious crimes, atrocities and mass murders will be able to take action quickly, possibly limit the extent or duration of human rights violations and by its very existence, act as a deterrent. The Court has a mandate to try individuals rather than States and to hold them accountable for the most serious crimes - genocide, war crimes and crimes against humanity, and eventually, the crime of aggression.

Unfortunately, despite the incredible importance of the ICC in protecting the public and punishing violators, only 27 members of the Commonwealth have ratified the ICC Statute.

in law-makers as it assures voters that their representatives are genuinely committed to people-oriented governance. As well as the legal obligations that come with ratifying a treaty, doing so can also be the spur to put in place effective systems to further human rights compliance. It also sends a strong signal down the line that there is assured political will to effectuate human rights at home.

Unfortunately, the status of ratifications of international human rights treaties is mixed and a number of countries have still not signed up to key ones. Nor is it only ratification that is important but also ensuring that the commitment to human rights is not watered down through reservations. Reservations allow States to avoid certain provisions in a treaty – but this goes against the spirit of international cooperation, which is premised on the principle of the universality and indivisibility of human rights and does violence to the ability to bring human rights home.

In order to gear up for international compliance, parliamentarians can ensure programs are in place well in advance on signing up to international obligations to prepare the administration for compliance. This was done in the UK prior to its operationalizing its new human rights law in 2000. It is not, however, just at the time that the final document is open for signing and ratification that parliamentarians can be involved. Parliamentarians can also actively engage in the development process, encouraging national representatives, relevant United Nations representatives and drafters to include the highest standards of human rights protection and promotion.

## **From International to National: The Case of The UK**

The UK enacted its first ever Human Rights Act in October 1998 in order to bring the law and practice in line with the European Convention on Human Rights. It was feared that bringing an Act home that conformed to the European Convention would affect parliamentary sovereignty and hand supremacy over to the judges. But the Act clearly says that judges cannot overrule parliament. Fears that the Human Rights Act would create interpretive chaos where the Convention's provisions did not conform to the practice and precedent at home have also been allayed by well-crafted decisions, which balance competing interests. This has shown that - in Lord Bingham's words: *"human rights defined in the Convention are not a substitute for the processes of democratic government but a complement to them."*

All this could come about because of careful preparation that allowed the smooth harmonization of the Convention and national law. For two years before the Act came into force, the government supported the largest ever program of judges training. All judges, tribunal chairs and some 30,000 lay magistrates, most of whom were unfamiliar with human rights were trained in the Convention and the new Act.

## **Reporting to Treaty Bodies**

Every core treaty has a special human rights committee, Treaty Monitoring Bodies, composed of experts nominated by States, to which each country that has ratified the treaty must report on a regular basis, outlining progress made in implementing treaty obligations. The committee reviews the report and dialogues with the official representative of the State to clarify issues. The committee then prepares its 'Concluding Observations', which contain a list of issues and recommendations for the State to consider in realising the rights guaranteed by the treaty.

In reality however, the work of these treaty monitoring bodies is hampered by delays in submitting reports and a hesitancy to share full and complete details about substantive issues. This, coupled with a tentativeness to implement the recommendations of the treaty monitoring body, is a major impediment to making the rights a reality.

In too many countries, reports are prepared solely by bureaucrats with little reference to elected representatives or effective consultation with the public. Parliamentarians must press upon the executive to make the process more participatory and transparent and therefore ensure that the reports contain a variety of views, including those of civil society. Parliaments can, for instance, hold debates and public hearings, call in ministers and request documents and report from varied departments and citizens. Members of parliament can also be included in the national delegation to the monitoring mechanisms so that they better understand any recommendations that are made. A notable example of parliamentary oversight of country reports to treaty bodies is the UK's Joint Committee on Human Rights which has a responsibility to make sure all key issues are covered and an honest assessment has been captured in the reports.

Several other devices offer themselves in order to ensure more effective compliance with reporting requirements, including simple measures such as an annual list of reports that are due, a timetable for completion and details of how the report will be compiled to ensure inclusion of views from the public and other stakeholders. Involvement of the National Human Rights Institution, one of the country's best-informed sources on the state of human rights protection and any violations, for instance, enables detailed, up-to-date reporting. In Fiji for instance, the Fiji Human Rights Commission advises the government on its reporting obligation and, without derogating from the primacy of the

### **National Support for other UN Mechanisms**

Apart from treaty monitoring bodies or committees, the United Nations also appoints Special Rapporteurs or Special Representatives through the Office of the High Commissioner for Human Rights to report on the condition of human rights in a country. For instance, the United Nations appointed a Special Rapporteur on the situation of human rights in Nigeria from 1997 to 1999. The United Nations also appoints Special Rapporteurs, Independent Experts or Special Working Groups on specific themes such as violence against women, freedom of religion and belief, human rights and extreme poverty, human rights defenders, sale of children, child prostitution and child pornography.

Despite the work of UN representatives being ultimately beneficial to the people living in the country, they often face resistance and sometimes even open hostility from governments. Human rights can be supported by: facilitating UN representatives' free movement within the country; transparency and ready willingness to share information; and paying heed to UN reports.

government's responsibility for preparing those reports, advises on their content. If not satisfied with the report submitted by the state, the Commission prepares a shadow report.

## **Preparing Plans of Action**

Incorporating a suggestion by Australia the Vienna Declaration and Program of Action specifically recommended that "each State consider the desirability of drawing up a national action plan to identify steps whereby that State would improve the promotion and protection of human rights." While relating to a declaration rather than a treaty, this is another example of how documents agreed internationally, can be the impetus for practical change at a national level as well.

National Action Plans on Human Rights aim to identify the series of steps necessary to improve a country's promotion and protection of human rights. Countries all over the world have produced National Action Plans. For example, Malawi, South Africa, Australia, and New Zealand is also finalising its Plan. Developing a national action plan requires a comprehensive look at the current situation, a realistic recognition of priorities and the setting of practical goals for the future. A plan also identifies key challenges and strategies for addressing these priorities. The Office of the High Commissioner on Human Rights has produced a Handbook to guide policy-makers.

### **Unit 7 Questions**

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. After a country has ratified an international treaty, what is required it at a domestic level?
2. What is a reservation to a treaty and why should it be avoided?
3. Who should be consulted in preparing a report to treaty-monitoring bodies?

## Relevant Internet Resources

*Treaty Handbook*, United Nations Office of Legal Affairs:  
[http://untreaty.un.org/ola-internet/Assistance/handbook\\_eng/hbframeset.htm](http://untreaty.un.org/ola-internet/Assistance/handbook_eng/hbframeset.htm)

*Strategy for an Era of Application of International Law – Action Plan*, United Nations Office of Legal Affairs:  
[http://untreaty.un.org/ola-internet/action\\_plan.htm](http://untreaty.un.org/ola-internet/action_plan.htm)

