

## UNIT 9: USING THE PARLIAMENTARY COMMITTEE SYSTEM

### Learning Objectives

#### Committees Guide Human Rights Practices

After studying this unit, you should be able to:

- Understand how to use parliamentary committees to promote human rights friendly law-making;
- Reflect on initiatives taken in different countries to develop parliamentary committees vested with mandates to bring laws and policies in line with international human rights standards.

### **Introduction and Overview**

Parliamentary committees can enhance levels of human rights protection in-country. This unit describes how committee systems in various countries have broadened their remit to ensure adherence to international human rights standards and treaty commitments. In showing how a range of parliaments have established committees to promote and protect human rights - several with exclusive human rights mandates. This unit lists the different types of committees and the impact they can have. As such, this unit is an easy reference for collecting various replicable examples of good practice.

### **Commentary**

Parliamentary committees are the workhorses of parliament. Recognising that it is not practical for parliament as a whole to undertake detailed oversight tasks, much of the close examination and careful work of parliament is done in committees: reviewing

legislative proposals, scrutinising budgets, examining the policies and programmes of departments, and keeping an effective surveillance over government. Additionally, parliamentary committees are usually empowered to recommend amendments to legislation as appropriate - including improvements to make laws more human rights friendly. Committees with human rights mandates may be set up as long-term 'standing' committees, as sub-committees of standing committees or on an ad hoc basis, sessionally or for a specific purpose like fact finding or investigation. Standing committees or permanent committees are usually set up from one term of parliament to the next and operate on a continuing basis. Sub-committees also operate from one parliament term to another and assist the standing committees. Other types of committees have limited duration and cease to exist on the completion of their objectives or on presentation of their final recommendations or report.

Committees provide an opportunity for parliamentarians to really engage with a specific subject in detail in an environment conducive to a deeper consideration of the implications of the proposed legislation. They address a diverse range of human rights issues such as the existence of cruel and inhuman punishments in penal laws, lack of adherence to human rights standards in custodial institutions; incidence of human trafficking; child rights issues; outlawing of the death penalty; and domestic violence among other things. Committees play an important role in ensuring international treaties are entered into, effectively drafted and in legislation for compliance with human rights principles.

The composition of the committee itself is important and there are usually rules to ensure that a variety of political perspectives are equitably represented on the committee. In Canada, for instance, certain committees, such as the Standing Committee on Access to Information, Privacy and Ethics, must be chaired by a member of the official Opposition, while one vice chair must be from the ruling party, the other vice chair must be a member of an opposition party other than the official Opposition. More than diversity of political views, the composition of committees provides an opportunity for parliament to demonstrate its commitment to human rights principles by,

where possible, ensuring a membership that is gender-balanced and includes diverse backgrounds.

Committees offer a practical means to incorporate the aspirations of the people into parliamentary processes. At the same time, committees can enable individual parliamentarians to make a contribution to human rights, with less pressure of party politics. Members of the public can usually make submissions and sometimes even presentations to the committee to draw their attention to key human rights issues that may have been overlooked or underestimated. In this context, committees can provide a useful mechanism for taking into account the interests of special groups, like minorities or indigenous peoples. Routinely making final committee reports provides transparency and heightens their impact.

An effective committee is one that will take care to encourage effective public participation, by publicising reviews, holding public hearings, and inviting members of the public to give evidence or to make written submissions. After all, it is not just *what* law is made, but also *how* it is made – and this includes participation of the people. Committees are becoming increasingly open – New Zealand’s system is an example of this as soon after the first reading of a bill, it is publicised in the media. Committee members travel throughout the country where public hearings are held. Respondents are invited to give evidence, and the public is invited to make written submissions. In Zambia as well, reforms to the Committee system in 1999 have enabled increased public participation. The public and the media can now attend committee sittings and the public can make submissions. This is made more accessible by a parliament’s website, which gives information on committee sittings, items to be discussed and guidelines for submissions.

### **Committees which Scrutinize Treaties**

As noted above, there is an increasing tendency by domestic courts to take international obligations into account even if they have not been incorporated into national law via specific legislation. Consequently, in some jurisdictions parliaments have responded by

trying to implement procedures to enable parliamentary engagement in the treaty by making process, in recognition of the fact that it is increasingly untenable for treaty-making to take place in the absence of greater legislative oversight.

In Jamaica, for instance, the Internal and External Affairs Committee is charged with examining treaties and other international agreements and advising parliament on their likely impact on the country. The Australian Parliament has established a Treaties Committee, which is mandated to review and report on all treaty actions proposed by the government before action is taken. All treaty actions proposed by the government are tabled in parliament for a period of at least 15 sitting days (although if a treaty is urgent or sensitive this process can be moderated). When tabled, the proposed treaty is accompanied by a National Interest Analysis (NIA) that explains why the government considers it appropriate to enter into the treaty. The Committee advertises its reviews, inviting comments, and routinely holds public hearings. At the completion of its inquiries, the Committee presents a report to parliament with advice to be taken. In New Zealand, the new Parliamentary Treaty Examination process is incorporated in Standing Orders of Parliament which now require the government to present and refer key treaties to the House of Representatives prior to ratification, together with an NIA. It also provides for consideration of such treaties by the Foreign Affairs Committee, which is required to report back to the House.

It is not just committee members who play a crucial role, but also ordinary MPs who can make recommendations for consideration. They can usefully encourage parliament and the executive to ensure that all human rights treaties are ratified promptly and comprehensively, and that other international agreements are drafted in accordance with universal standards.

### **General Committees which Scrutinize Legislation**

Standing Committees dedicated to reviewing legislation before it is passed by parliament include within their mandate the power to examine whether proposed legislation conforms to human rights standards. It is preferable for such scrutiny to take place as

early in the process as possible and not to be overlooked in the desire to quickly pass legislation. With legislation in response to 'emergencies' such as terrorist threats there can be a concerning tendency to rush legislation through and either avoid the committees altogether or give them so little time that they cannot operate effectively. When time is tight, experts with a background in human rights can be very useful to over-burdened politicians.

One example of these committees from Australia is the Scrutiny of Acts and Regulations Committee of the State of Victoria, which is specifically charged with reporting on whether any Bill directly or indirectly trespasses unduly upon rights or freedoms. This Committee has used this mandate to actively promote and enforce international human rights standards. In 1993, the Committee's adverse findings in respect of the Crimes Amendment Bill 1993 – based primarily on conflicts with the International Covenant on Civil and Political Rights and Convention on the Rights of the Child – led to the withdrawal and redrafting of the legislation.

The mandate of Canada's Standing Joint Committee for the Scrutiny of Regulations (established under the Rules of the Senate and the Standing Orders of the House of Commons) specifically includes examining whether all government regulations' conform with the Canadian *Charter of Rights and Freedoms*. This is particularly significant because it recognises that Committees: (a) should have a role in reviewing subordinate legislation and, (b) such reviews should be alert to ensuring that regulations do not undermine pro-human rights provisions in primary legislation. The value of such a committee can be seen in a report tabled by the Committee in November 1991 which proposed the disallowance of provisions of the *Indian Health Regulations* as the Committee argued this infringed on constitutionally protected rights and freedoms. The House of Commons agreed without debate, and the government complied by revoking the provisions.

Parliamentarians are encouraged to ensure that the mandates of existing parliamentary review committees include a specific requirement to examine whether Bills and Regulations conform to human rights standards. MPs who sit as members of review committees can, in any case, encourage their committee to recognize an implied duty to

ensure all proposed laws comply with human rights standards. This should be a relatively straightforward matter for committees operating in jurisdictions with a constitutional Bill of Rights. As the constitution is the supreme law of the land, parliamentarians have a clear duty to make sure that any laws that parliament enacts are in accordance with the constitution.

### **Specific Human Rights Committees**

A number of parliaments in the Commonwealth have created specific committees to deal with human rights issues. The creation of a dedicated parliamentary human rights committee, or at the very least, the expansion of the mandate of an existing committee, with a standing remit to review all legislation for compliance with universal human rights standards is a key means of institutionalizing the role of parliamentarians as human rights protectors. These can be enhanced by preparing clear instructions on their remit, as vague terms of reference can undermine the workings of committees.

Such committees reduce the likelihood of legislation inadvertently breaching standards and can work to ensure that the government discharges all of its obligations to international treaty monitoring bodies. The UK Joint Committee on Human Rights performs this role, scrutinising all bills with a human rights lens and overseeing the government's treaty obligations. It has also used its power to prepare reports on key issues such as how the gaps in the enforcement of economic, social and cultural rights can be filled by domestic protective legislation and the value of a rights based approach to poverty. By putting all its meetings and documents on the web it expands knowledge of human rights and demonstrates its own commitment to openness.

#### ***Protecting the Rights of the Detained***

The report of the United Kingdom's Joint Committee on deaths in custody examines the causes of deaths in custody, considers what steps could be taken to prevent such deaths, and how better to protect the human rights of vulnerable people who are held in State custody. The report also considers the standards that apply, the extent of the problem and the number of people who die in detention. It places duties on the State to conduct independent investigations into such deaths and undertake steps to prevent deaths in custody. The report also considers the wider issues of overcrowding in prisons due to sentencing practices, the availability of satisfactory health care for vulnerable detainees and the alternative measures available to prison sentences. The comprehensive report recommends adequate training for prison staffs, developing good practices and guidelines as envisaged by the human rights norms applicable under the European Convention of Human Rights.

Mindful of the fact that the Canadian Senate is responsible for national interest, regional interest and minority interest, the Canadian Senate Standing Committee on Human Rights has a general mandate to study human rights issues. Though the committee at present does not look at specific violations, it may do so in future if the members so wish. Its report titled: Promises to Keep: Implementing Canada's Human Rights obligations, which was tabled on December 31, 2001, documented Canada's achievements but also the shortcomings of Canada's practices, procedures, and legislation in the field of international human rights. Particularly noted, was the lack of enabling legislation for international treaties and the lack of parliamentary input. Also noted was the fact that while Canada is a member of the Organization of American States, it has yet to ratify the OAS Convention on Human Rights. Canada also has a Standing Committee on Justice and Human Rights in the House of Commons, which in 2003, recommended an amendment to the Criminal Code providing for the punishment of incitement to hatred, which was then passed by the House of Commons.

Dedicated human rights committees can also oversee government activities to ensure that departments are implementing their programs in a rights-friendly manner. This includes Sierra Leone's Parliamentary Oversight Committee on Human Rights; as well as the Zambia Committee on Legal Affairs, Governance, Human Rights and Gender, which is mandated to oversee the activities of key ministries, the Permanent Human Rights Commission and other government departments and agencies directly related to the operations of the Committee. The Committee carries out detailed scrutiny of their activities and makes appropriate recommendations. It also recommends review of government policy or existing legislation and may consider draft bills when referred by the House. Of note is that the Committee will follow up on its recommendations. In 2002, for instance, it toured prisons and gave recommendations. Then in 2003 it assessed the response to these. In line with the recommendations, sanitation improvements had begun, and disciplinary action had been taken against a corrupt court marshal. Cameroon also has a committee on constitutional affairs, human rights and liberties, justice, legislation and administration.

Establishing a dedicated human rights committee sends a strong message to the public that parliament is serious about this critical issue and can focus public and parliamentary attention on human rights issues, in addition to providing a key mechanism for facilitating civil society engagement. However, sometimes the work of parliamentary committees can be severely restricted if they are not vested with the powers to enforce attendance of witnesses, especially if they are aligned with the government. In South Africa, the significance of committees as vehicles of democratic governance has been duly recognized as committees are empowered to summon any person to give evidence under oath or produce a document, receive petitions or submissions from any interested parties, conduct public hearings, decide their own procedures, and meet on any day or at any time whether the House is in session or not.

In addition, it is important that committees are vested with powers to carry out on-site visits to detention centers or correctional institutions to gauge the true extent of the government's compliance with human rights standards.

### **Sri Lanka Committee on Public Petitions**

Other committees, while not specific human rights committees, can also support human rights, such as Sri Lanka's Committee on Public Petitions. It looks into public petitions presented to Parliament by MPs on rights violations or other injustices by an official of a public institution. . The authority concerned is directed to follow the recommendations of the Committee and these are included in its reports to Parliament, which are then published.

Parliamentary committees can prove useful in building specific human rights knowledge among legislators, in addition to providing a mechanism for parliamentary oversight of national human rights institutions or other oversight bodies. Namibia's Parliament has a standing committee not only to oversee the working of the Ombudsman –which acts as a watchdog for the protection of the rights of the individual against abuses by the administration– but also to gauge the response of government offices, ministries and agencies to the Ombudsman's office. In addition to considering the annual and other reports of the Ombudsman that are laid before the National Assembly, the Committee also examines the policies and methodologies that are followed during investigation of complaints and can even recommend to the Assembly whether specific cases need to be referred back to the Ombudsman for reinvestigation.

Such committees function most effectively if they work in close co-operation with other parliamentary committees, such as those dealing with constitutional affairs, justice, foreign or social affairs. Such collaborations mainstream human rights into parliament's work, and ensure that human rights issues receive the concentrated attention they merit.

Follow-up to the reports of committees is important. Usually the government is obliged to respond to the recommendations of a committee--which may be to alter or disallow a bill because it does not conform to human rights standards; provide for certain safeguards to protect those lodged in custodial institutions; or be as generic as promoting human rights education. In Canada for example, a response is required from the government within 150 days under the Standing Orders of the House of Representatives. In the UK, departments must reply within 60 days, unless a longer period has been agreed by the committee. The government's response also requires follow-up, which can involve parliamentary debate or the committee can ask the minister concerned to give further evidence.

### **Unit 9 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. What are the activities of parliamentary committees dedicated to human rights?
2. What are some examples of how human rights protection has improved through the work of parliamentary committees?

### **Relevant Internet Resources**

Parliamentary Human Rights Mechanisms  
<http://www.ipu.org/splz-e/hr04/ndi.pdf>

