

# SEMINAR FOR CHAIRPERSONS AND MEMBERS OF PARLIAMENTARY HUMAN RIGHTS BODIES



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**STRENGTHENING PARLIAMENT AS A GUARDIAN OF HUMAN RIGHTS:  
THE ROLE OF PARLIAMENTARY HUMAN RIGHTS BODIES**

Seminar organised by the Inter-Parliamentary Union (IPU)  
and the United Nations Development Programme (UNDP) with the support of  
the Office of the United Nations High Commissioner for Human Rights (OHCHR)

**GENEVA, PALAIS WILSON, 15-17 MARCH 2004**



## FOREWORD

As the institution which embodies the right of the people to take part in the conduct of public affairs, enshrined in Article 21 of the Universal Declaration of Human Rights, parliaments are a guardian of human rights and play an essential role in their protection and promotion.

Over the past 15 years, the Inter-Parliamentary Union has consistently called on Member Parliaments “to take up human rights issues and to establish to that end parliamentary bodies for the promotion and protection of human rights”. It has done so mindful of the fact that most Member Parliaments are firmly committed to upholding the Universal Declaration of Human Rights. Indeed, the IPU considers that the establishment of a specialised body with an explicit human rights mandate is both a political message and a means of ensuring that human rights permeate all parliamentary activity and are taken into full consideration by legislators on a continuous basis.


As part of its efforts to promote the establishment of parliamentary human rights bodies and to facilitate networking among them, in 1990 the IPU published for the first time a World Directory of such bodies. The Directory has since been updated three times. Since January 2004, the relevant information has also been made available online, on the IPU's PARLINE database.

The information gathered for the World Directory showed that there was a great variety of parliamentary human rights bodies with largely differing mandates, powers and working methods. The idea therefore arose to follow the example of national human rights institutions, and to bring together the members of parliamentary human rights committees so as to enable them on the one hand to share their experiences and learn from one another, and on the other hand to explore ways and means of enhancing cooperation with international and regional human rights mechanisms, as well as national human rights institutions and civil society in general. This idea took the form of a seminar, which was held from 15 - 17 March 2004 and brought together some 200 legislators from all parts of the world.

The present publication contains, apart from the speeches made at the inaugural ceremony, the texts of the presentations made by the resource persons as well as the concluding observations drawn up by Mrs. Loretta Ann Rosales, Chairperson of the Committee on Civil, Political and Human Rights of the House of Representatives of the Philippines, who presided over the last sitting of the seminar.

The organisation of the seminar would not have been possible without the support of the United Nations Development Programme (UNDP), a partner with whom the IPU has been working for many years in promoting strong parliaments as key actors for the advancement of democracy. The seminar was funded under the IPU/UNDP Parliamentary Support Programme, and the IPU wishes to thank UNDP, and especially its Bureau for Development Policy, for its support. The IPU would also like to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its assistance, and particularly for hosting the seminar at its Headquarters, the Palais Wilson. This setting certainly contributed to the lively and friendly atmosphere in which the debates were held.

Last, but not least, the IPU would like to thank the resource persons for their invaluable input. Their contributions provided substantive insights into what parliamentary human rights bodies do and can do to ensure respect for human rights. In response to the participants' wish that such seminars be organised on a regular basis and in view of the importance of human rights questions, the IPU will make every effort to this end.

A handwritten signature in black ink, appearing to read 'Anders B. Johansson', with a stylized flourish at the end.

Anders B. Johansson  
Secretary General

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## PROGRAMME OF THE SEMINAR

## MONDAY, 15 MARCH

8 to 9 a.m.	Registration of participants and distribution of documents
9 to 9.45 a.m.	<ul style="list-style-type: none"> <li>▶ <b>Inaugural session:</b> <ul style="list-style-type: none"> <li>▶ Welcome address by Mr. Bertrand Ramcharan, United Nations Acting High Commissioner for Human Rights</li> <li>▶ Opening statement by Mr. Anders B. Johnsson, Secretary General of the Inter-Parliamentary Union</li> <li>▶ Opening statement by Mrs. Odile Sorgho-Moulinier, Director, United Nations Development Programme, Geneva</li> </ul> </li> </ul>
9.45 to 10 a.m.	Procedural matters
10 to 10.15 a.m.	Coffee break
10.15 a.m. to 12.30 p.m.	<ul style="list-style-type: none"> <li>▶ <b>Part 1: Mandate (terms of reference), functioning and working methods of parliamentary human rights bodies</b> <ul style="list-style-type: none"> <li>– <i>What are parliamentary human rights bodies and what is their raison d'être?</i> Introductory panel <ul style="list-style-type: none"> <li>▶ Ms. Loretta Ann P. Rosales, Chairperson, Committee on Civil, Political and Human Rights of the House of Representatives of the Philippines</li> <li>▶ Mr. Amos N. Nakalonga, Chairperson of the Committee on Legal Affairs, Governance, Human Rights and Gender Matters of the National Assembly of Zambia</li> <li>▶ Ms. Ann Clwyd, Chairperson of the All-Party Parliamentary Human Rights Group of the British Parliament</li> <li>▶ Mr. Michael Gahler, Member of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) of the European Parliament</li> </ul> </li> <li>General discussion</li> <li>– <i>How do parliamentary human rights committees function and what are their powers? How do they interact with other parliamentary committees and the executive branch?</i> Same panel as above</li> </ul> </li> </ul>
2 to 3 p.m.	Exchange of views on the last introductory panel of the morning session
3 to 3.30 p.m.	<ul style="list-style-type: none"> <li>– <i>Which terms of reference for maximum effectiveness?</i> <ul style="list-style-type: none"> <li>▶ Ms. Loretta Ann P. Rosales, Chairperson, Committee on Civil, Political and Human Rights of the House of Representatives of the Philippines</li> <li>▶ Mr. Amos N. Nakalonga, Chairperson of the Committee on Legal Affairs, Governance, Human Rights and Gender Matters of the National Assembly of Zambia</li> <li>▶ Mr. Michael Gahler, Member of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) of the European Parliament</li> </ul> </li> </ul>
3.30 to 3.45 p.m.	Coffee break
3.45 to 5.30 p.m.	General discussion
5.30 to 6 p.m.	Summing up of discussions



**TUESDAY, 16 MARCH**

8.30 to 10.30 a.m.	<ul style="list-style-type: none"> <li>▶ <b>Part 2: Parliamentary human rights bodies and their relationship with the UN and regional human rights mechanisms</b></li> <li>– <i>The role of parliamentary human rights bodies in ensuring the implementation of international human rights standards</i></li> </ul> <p>Introductory panel</p> <ul style="list-style-type: none"> <li>▶ Ms. H. I. Bogopane, Chairperson of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons of the South African Parliament</li> <li>▶ Mr. Leandro Despouy, United Nations Special Rapporteur on the Independence of Judges and Lawyers</li> <li>▶ Mr. Joseph Voyame, former President of the Committee against Torture (CAT), former Special Rapporteur on Romania</li> </ul> <p>General discussion</p>
10.30 to 10.45 a.m.	Coffee break
10.45 a.m. to 12.30 p.m.	Continuation of general discussion
2 to 3.45 p.m.	<ul style="list-style-type: none"> <li>– <i>Regional human rights mechanisms and parliamentary human rights bodies</i></li> </ul> <p>Introductory panel</p> <ul style="list-style-type: none"> <li>▶ Ms. Salamata Sawadogo, Chairperson of the African Commission on Human and Peoples Rights</li> <li>▶ Mr. Leandro Despouy, UN Special Rapporteur on the Independence of Judges and Lawyers</li> <li>▶ Mr. Eduard Lintner, Chairperson of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe</li> </ul> <p>General discussion</p>
3.45 to 4 p.m.	Coffee break
4 to 5.30 p.m.	<ul style="list-style-type: none"> <li>– <i>Presentation of a case study (Brazil) on the implementation of international human rights standards at the national level</i></li> </ul> <p>Moderator: Mr. Clarence Dias, UNDP consultant</p> <p>Introductory panel</p> <ul style="list-style-type: none"> <li>▶ Mr. Orlando Fantazzini, MP from Brazil</li> <li>▶ Mr. Guilherme Almeida, UNDP consultant</li> <li>▶ Mr. Khémaïs Chammari (Tunisia), human rights expert and former parliamentarian</li> </ul> <p>General discussion</p>
5.30 to 6 p.m.	Summing up of discussions
6.30 p.m.	Reception at IPU Headquarters

**WEDNESDAY, 17 MARCH**

- |                          |   |
|--------------------------|---|
| 8.30 to 10.30 a.m.       | <ul style="list-style-type: none"> <li>▶ <b>Part 3: Parliamentary human rights bodies and their relationship with National Human Rights Institutions, NGOs and civil society</b></li> <li>– <i>Parliamentary human rights bodies and National Human Rights Institutions: working together to promote and protect human rights</i><br/>Introductory panel             <ul style="list-style-type: none"> <li>▶ Mr. Egon Jüttner, member of the Committee on Human Rights and Humanitarian Aid of the German Bundestag</li> <li>▶ Mr. Gediminas Dalinkevicius, Chairman of the Committee on Human Rights of the Parliament of Lithuania</li> <li>▶ Mr. Orest Nowosad, Team Leader, National Institutions Team, OHCHR</li> </ul> </li> <li>General discussion</li> </ul> |
| 10.30 to 10.45 a.m.      | Coffee break  |
| 10.45 a.m. to 12.30 p.m. | <ul style="list-style-type: none"> <li>– <i>Parliamentary human rights bodies, NGOs, the media and civil society: how best to cooperate</i><br/>Introductory panel             <ul style="list-style-type: none"> <li>▶ Ms. Marie-José Laloy, Chairperson of the Human Rights Committee of the Belgium Parliament</li> <li>▶ Mr. Mark Thomson, Secretary General of the Association for the Prevention of Torture</li> <li>▶ Mr. Alain Bovard, Amnesty International, Swiss Section</li> <li>▶ Mr. Pierre Hazan, journalist</li> </ul> </li> <li>General discussion</li> </ul>  |
| 2 to 3.45 p.m.           | <ul style="list-style-type: none"> <li>– <i>The role of the UN (UNDP and OHCHR) and the IPU in supporting parliaments to protect, promote and realise human rights.</i> Presentation by representatives of the UNDP, the OHCHR and the IPU</li> <li>General discussion</li> </ul>   |
| 3.45 to 4 p.m.           | Coffee break  |
| 4 to 5.30 p.m.           | <ul style="list-style-type: none"> <li>– <i>Conclusions (including evaluation) and elaboration of follow-up activities, including the holding of regular meetings</i> ■</li> </ul>  |







## **INAUGURAL CEREMONY**

**Strengthening parliament as a guardian of human rights:  
The role of parliamentary human rights bodies**

**GENEVA, PALAIS WILSON, 15-17 MARCH 2004**







## MR. BERTRAND RAMCHARAN

Acting United Nations High Commissioner  
for Human Rights

### OPENING SPEECH

Allow me to welcome you this morning to the first ever international meeting of parliamentary human rights bodies, organised by the Inter-Parliamentary Union (IPU) and the United Nations Development Programme (UNDP), with the support of the Office of the High Commissioner on Human Rights (OHCHR). I would like to convey the significance that we attach to this meeting. In the world of the United Nations, we think that parliaments have a role to play in bringing the Charter of the United Nations home to each country, and in bringing the international Bill of Human Rights, the Universal Declaration of Human Rights and the various treaties home. We think that the link between the United Nations and the peoples of the world is through you, the representatives of the people, sitting in national parliaments. I cannot tell you how pleased I am that there are so many parliamentary human rights bodies. When we act to draft conventions, when we act in the United Nations to encourage States to submit their reports, when we act to look at problems of gross violations of human rights, we need you in a major way. We need you to support our treaty bodies, to support our rapporteurs, to support the ratification of new treaties and to help us in what we think is an important strategy concept advanced by the Secretary-General, namely the concept of a national protection system in each country. As we see from the history of the human rights movement, we think that each country should ask itself six questions when it comes to the national protection of human rights:

- Is the Constitution of the country reflective of international human rights norms?
- Are key parts of the legislation of the country in line with international human rights norms?
- Is it possible for the courts of a country to use the international human rights norms when deciding cases?
- Is there a specialised body in the country, like a national human rights commission or an ombudsperson, to watch over the protection of human rights?
- Are human rights being taught in the country's schools and universities?
- Is there oversight of the situation of vulnerable population groups in the country?

In today's world, we increasingly see that it is important to prevent problems before they take place. Particularly in multiethnic countries, the monitoring of the situation of different parts of the population is so important.

This concept of the national protection system is an important one. We have asked governments around the world to submit to us short summaries of what they consider their national protection system to be, and we have so far received replies from some three dozen countries. We have analysed these replies in a report that we have just submitted to the Commission on Human Rights (and copies will be made available to you). I shall ask you to take this issue back home and to ask your own governments, if they have not submitted these replies, why they have not done so and whether they do not consider it important to summarise the national protection system.

Another issue that I would ask you to think about is whether you think that enough is being done in your countries when it comes to providing education for human rights in primary and secondary schools and in the universities. I have been in many situations of war and peace. I have seen many situations where people are fighting because of lack of understanding, respect and tolerance among peoples, and each time I think that human rights education would have a role to play in preventing such problems.

I have launched the idea. I will address the opening sitting of the 60<sup>th</sup> session of the Commission on Human Rights and I will ask the Commission whether it believes that it would be a good idea to have an international convention on human rights education?



Distinguished members of parliaments, I am so grateful that you are here, and I am so grateful to Mr. Anders B. Johnsson and Ms. Odile Sorgho-Moulinier that they have brought you here. We would very much like to cooperate with you to maintain this link with you.

**MS. ODILE SORGHO-MOULINIER**

**Director, European Office of the United Nations  
Development Programme (UNDP), Geneva**

**OPENING SPEECH**

It is a privilege and an honour for me to be here today with you, parliamentarians of the world committed to the defence of human rights. I am also very happy to see that the cooperation between the Inter-Parliamentary Union, OHCHR and UNDP is bearing fruit, to wit this seminar which is bringing us together for the next three days. In this regard I would like to congratulate Mr. Johnsson and Mr. Ramcharan for the excellent relations they have forged with UNDP. UNDP believes such partnerships are very important in the fulfilment of its mandate.

As part of our endeavours in the sphere of democratic governance, our cooperation with and support for parliamentary institutions have expanded considerably over recent years. In 1995, we were supporting five activities to promote parliamentary development, while today we collaborate with more than 40 parliaments. Many of our parliamentary development programmes are carried out in cooperation with the IPU. In the future, we will be providing still more support to parliaments if we invest more effort in the area of democratic governance; that, of course, would not be possible unless our prime concern were the defence of human rights.

Ever since the publication of Human Development Report 2000, UNDP has repeatedly stated that human rights are the cornerstone of sustainable human development. This has to be reflected in the laws, institutions and legal framework of States, and in an enabling economic and political environment. Human rights have to be integral to the three core functions of the parliamentary institution: legislation, oversight and representation.

Parliament plays an essential role in promoting and guaranteeing human rights. Parliaments do not only codify the legal framework for human rights at the national level; they also set relevant priorities, inter alia, through the budget approval process. Moreover, parliamentarians are all, individually, important leaders within their communities: they influence laws and policies at that level.

In order to upgrade its work in the field of parliamentary development, UNDP is currently seeking new tools and fresh modalities, and is drawing lessons from its experiences, with a view to understanding how parliaments can reinforce their role as protectors and advocates of human rights. Above and beyond the work of parliamentary human rights committees, this covers parliamentary work in general in the areas of legislation, oversight and representation.

The Millennium Development Goals, adopted by 191 countries in September 2000, encapsulate the United Nations' vision of development for the twenty-first century. These goals enshrine an ambitious campaign to reduce poverty, combat hunger, provide universal education, promote gender equality and curb the spread of the HIV/AIDS pandemic. The Millennium Declaration stipulates that the Millennium Development Goals cannot be achieved without a clear commitment by all countries to democracy, human rights and good governance.

Your role as parliamentarians is paramount. Indeed, you have a personal stake in promoting the Millennium Development Agenda. Schools, hand pumps, access to medical care: these are but some of the daily concerns of the electorate that you represent.

Fighting for human rights is a unique challenge. The task is to turn the goals of the Millennium into factual reality. That is what we mean by a human rights-based approach, which has particular significance for the work of members of parliament. Parliaments are duty-bound to scrutinise government action and adopt laws to generate the right environment for strong and equitable growth. They are obliged to approve budgets which give priority to health care over military expenditure. They also oversee the provision of equitable regional

funds. As Chairmen of your various human rights committees, your duties go beyond your responsibilities within your respective committees and encapsulate all the other aspects of parliamentary activity.

In Lithuania, for example, the Parliamentary Committee on Human Rights and UNDP have cooperated to develop a national human rights action plan. This plan of action was built upon an extended consultative approach, including debates in a number of parliamentary committees, before final approval by the parliament in November 2002. An analysis of the consultative process demonstrated that the pivotal role played by the Parliamentary Committee on Human Rights was instrumental in the success of the endeavour, in particular because it guaranteed very broad involvement of the general public. This did a great deal to reinforce the faith of the citizenry in the role of parliament in their daily lives.

Allow me to conclude by reiterating how much we in UNDP appreciate this opportunity to address this distinguished assembly. We remain firmly committed to supporting your efforts to reinforce the role of parliaments in the promotion and protection of human rights and look forward to hearing the discussions in the coming days.

**ANDERS B. JOHANSSON**

**Secretary General, Inter-Parliamentary Union**

**OPENING SPEECH**

On behalf of the president of the IPU and on behalf of the institution, I wish to extend to you a warm welcome to Geneva and to this seminar.

We are very pleased with the cooperation with UNDP and OHCHR. It is truly thanks to tripartite cooperation between UNDP, OHCHR and the IPU that the first seminar of this kind can take place.

Let me put this seminar in its historical perspective. The IPU is the oldest international political organisation in the world. It was founded in 1889. The IPU started to address human rights issues in Lucerne in 1923; a Swiss member of parliament attending an IPU meeting called on the organisation to start addressing issues relating to democracy and human rights (he did not use the words human rights but if we look at what he said, that is what he meant). Since those early days, the IPU has in one form or another increasingly addressed issues relating to democracy and human rights. In those early days, it was a curious concern that prompted parliamentarians to want to focus on democracy. It was a feeling - as the Swiss deputy said - that parliaments were becoming too powerful, and there was a need to restore a better balance between the legislative branch, which in many countries tended to overthrow the government too often, and the executive branch. This is curious because in many ways, the reverse is true today.

The action of the IPU evolved considerably over the years in the areas of democracy and human rights. The IPU was very much involved in the making of international law. There are quite a few of the international treaties that saw the light of the day in the 1920s, 1930s and 1940s that in fact benefited from the contributions of members of parliament working in the IPU.

In the 1960s, a decision was taken to develop a fully-fledged programme to strengthen the parliamentary institution, and it was soon followed by a human rights programme. We have had an institutional programme for the defence and promotion of human rights for 35 years now.

In the beginning, one of the preoccupations of the IPU was that a number of parliamentarians could not actually work as members of parliament because the most fundamental of their and everybody's human rights were being violated: they had no freedom of speech, no freedom of expression, no freedom of association, in fact they could not work as members of parliament, and quite a few of them disappeared, were assassinated or jailed. This led the IPU to set up a Committee on the Human Rights of Parliamentarians. The Committee has met four times a year, almost for the last 30 years, has dealt with over 100 cases of alleged violations of the human rights of members of parliament, has developed an extraordinary case law on the rights and obligations of members of parliament and has in many instances been instrumental in securing the release of jailed parliamentarians.

Our human rights activity has not ended there: over the years, the IPU has worked to strengthen the ability of parliaments to address human rights issues. The IPU believes firmly that parliaments have a crucial role to play, and I am sure that this seminar will give many examples to illustrate how crucial that role is.

The idea that parliaments should have structures that allow them to address human rights issues is not a new one. For several years, the IPU has tried to map out how parliaments structurally address human rights issues. We recommenced these efforts a year and half ago and asked all parliaments to indicate to us where they addressed such issues. The result of that exercise is the publication that we have now made available to you. It is a tool to facilitate your contacts with your colleagues in parliaments around the world. For the time being, over half the world's parliaments are listed. From compiling that list, it did not take much to come up with the idea of bringing together all those who dealt with human rights issues in parliaments. That idea was particularly attractive to UNDP and OHCHR.

We in the IPU assume that this meeting will be useful. We do not know, however, whether this kind of meeting should take place on a regular basis. If at the end of this event that is your feeling, it would be very useful to let us know.

The world in which we live is a world in which human rights are more important than ever. Therefore, the work that you carry out in parliaments on human rights issues is taking on absolutely vital importance. We hope this seminar will help you in achieving those tasks.

Thank you.

## **CONCLUDING OBSERVATIONS BY THE CHAIR**

**Strengthening parliament as a guardian of human rights:  
The role of parliamentary human rights bodies  
GENEVA, PALAIS WILSON, 15-17 MARCH 2004**





## CONCLUDING OBSERVATIONS BY THE CHAIR

**Ms. Loretta Ann P. Rosales, Chairperson,  
Committee on Civil, Political and Human Rights of  
the House of Representatives of the Philippines**

*We have come together these last three days to discuss parliamentary human rights mechanisms and to exchange experiences on how we - as human rights practitioners in parliaments - can be more effective in ensuring respect for rights at home and can interact more efficiently with regional and global human rights structures and procedures.*

*Our starting point was our conviction that we, as elected representatives of the people, and our institution - the parliament - are the guardians of human rights, or the bastion of human rights. We must see to it that norms for the protection of the human being are translated into national laws. Likewise, we have a duty to oversee the implementation of policies and programmes to ensure that they meet the standards and goals we have set. Finally, we have a natural role, as politicians, to raise issues relating to human rights in public debate and to help forge a national consensus to uphold human rights.*

*While it is generally agreed that everyone in parliament, and therefore also every parliamentary committee, should take human rights into account in their work, we believe that it is important that a parliamentary committee be specially designated to address human rights matters and make sure that human rights are indeed treated as cross-cutting issues in parliament.*

*During our discussions, we have examined the very wide variety of human rights structures in parliament, their functions and powers. Some of the more important powers that were mentioned included the right to summon ministers and government officials, to request written reports and documents, to hold public hearings, particularly with NGOs, that constitute an invaluable source of information, to set up commissions of inquiry to undertake field visits, especially to prisons and detention centres, and to pose oral and written questions on the action taken in response to reports and recommendations.*

*We have heard some very interesting examples of what can be done. I would like to highlight one example from Brazil, where the parliamentary human rights committee launched a campaign for the valorisation of human rights in the media, particularly television. In a country where 97 per cent of the population watches television, certain broadcasts can annul human rights efforts and efforts to implement culture of peace. Together with UNESCO, the committee worked on a programme to fight against the broadcasting of such television programmes. Complaints can now be lodged by telephone or Internet with competent authorities, the media and their financing institutions (such as multinational corporations), and this can lead to sanctions. At the same time, the NGOs are working with television broadcasting companies, attempting to convince them not to carry certain programmes, or to modify their content. There are also campaigns to discourage people from being "consumers" of such programmes.*

*We have also stressed the importance of ensuring that all parliamentarians within a parliament have the same understanding of human rights. Indeed, unless we as a group agree on human rights, we cannot be able to promote and protect them. Hence the need for training programmes.*

*In order to do that, parliamentarians must also be able to disagree with their own party on human rights matters. As some of you have pointed out, we have to abandon partisan considerations when we deal with human rights. Of course, this also presupposes that there is respect for parliamentary immunities.*

*We also stressed that we have an important role to play at the international level. We must become much more active in order to preserve human rights today. How many of us in fact know how our countries vote in the United Nations Commission on Human Rights? How many of us know what instruments our countries have*



*ratified, what reservations our governments have entered when doing so and what periodic reports have been submitted or are due to be submitted?*

*In order to be more active, we have many tools at our disposal. We can raise questions about ratification. Many of you have stressed the need to ratify quickly the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court. But we can also raise questions about the many reservations that have been made when ratifying conventions, many of which have the pernicious effect of annulling their content.*

*Our colleague from South Africa gave a concrete example from her country which I think we would all do well to follow. In her country, all national reports to international monitoring bodies have to go to parliament for debate, and parliament ensures that those reports contain a wide variety of views, including those of civil society. To do so, parliament holds debates and public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens. In South Africa, members of parliament are included in national delegations that take part in the proceedings of international monitoring mechanisms, thus ensuring that they can better understand the recommendations that are subsequently made, and of course the parliament plays an active role in ensuring that these recommendations are also followed up and implemented at the national level.*

*We have also heard several examples of how best to use international norms as minimum standards for national legislation. Many of you have pointed to the need for international law to prevail. As one of you put it, we are the architects of the norms, so we must ensure their application.*

*We referred to the regional and sub-regional human rights mechanisms, and we all agree that we can do more to interact with those mechanisms. I think this is particularly true on the African continent, where there does not yet seem to be much interaction between the African Commission on Human and Peoples' Rights and the parliamentary human rights bodies. Improvements can also be made in Latin America and in Europe.*

*Of course, at meetings of parliamentary human rights activists such as this one, it is impossible not to talk also about the substance of human rights. From the many interventions that have been made, I believe it is clear that we all agree on the universality, interdependence and indivisibility of human rights, although cultural, economic and social differences exist, and will of course have to be taken into consideration. We have heard concrete examples of how this can be done, for example, in relation to the application in Africa of the Convention on the Rights of the Child.*

*We also agree that human rights are everyone's concern, and that we must act together as an international community. Human rights are not a slogan, nor even an ideology; they are juridical, ethical and moral principles which apply to everyday life. Defending human rights means defending the human rights of everyone, even those whose ideas one does not share.*

*Human rights have made progress at the level of norms, and the problem today lies more in the field of their implementation. Together, we have seen many examples of practical obstacles to their implementation, particularly the lack of resources, including economic, material and human resources. The HIV/AIDS pandemic, migration and refugee problems, trade regulations and the behaviour of certain States all pose serious problems to human rights.*

*Many of us, both men and women, have underscored the importance of ensuring equality between men and women as an essential part of human rights promotion and protection. Although we recognise that progress has been made, the level of participation of women in political life is still very disappointing. It is hardly better at this seminar, where only 17 per cent of us are women. We all agree that we have to do much better, much sooner.*

*Human rights education has also run as a red thread through our discussions. Most of us have underscored the need to create a human rights culture, and the way to do that is by ensuring that all education programmes have a clear focus on human rights. When we refer to education programmes, we do not mean just education in school, but also training for such bodies as law enforcement agencies.*

*Many of us have also referred to the fight against terrorism, whether state or non-state, which infringes upon human rights. We all agree that terrorism must always be condemned. Terrorism has no religion, no country and no excuse. However, what is equally important is that the fight against terrorism must not result in new human rights violations.*

*This brings us back to the beginning of our seminar, when we observed a minute of silence in memory of the victims of the terrorist attack in Madrid. Our thoughts also went to the victims of the terrorist attacks of 11 September 2001 and to those of the attack of August 2003 on the United Nations headquarters in Baghdad, in which the United Nations High Commissioner for Human Rights, Mr. Sergio Vieira de Mello, perished. In our minute of silence, we included all victims of gross human rights violations; the indigenous peoples of America and the Asia-Pacific region, the Arab people and the people of Israel, Latin America and Africa. Ten years ago, hundreds of thousands of Rwandans were slaughtered in a genocide. We should never forget this tragedy, and I invite all of you to join our colleagues from Rwanda in an act of remembrance on 7 April.*

*Finally we have spent time discussing where we go from here. Clearly, we want to see increased efforts in strengthening parliaments' ability to carry out human rights work. We therefore welcome the partnership between the IPU, UNDP and OHCHR, and their offer to increase support programmes for parliament in the area of human rights. We believe that such activities can be carried out most profitably at the national, sub-regional and regional levels. Ideally, such activities should focus not only on increasing parliamentarians' knowledge of human rights issues and mechanisms, but should also develop institutional capacity in parliament.*

*At the same time, I believe we all agree that this seminar has been extremely useful, and that we should find a way of holding future seminars of this nature. We believe that the interaction that it allows between us and the Commission on Human Rights can only be beneficial to our work back home. We therefore invite the IPU, working together with UNDP and the OHCHR, to consider holding further meetings of this nature in the coming years.*

*We also invite the IPU to consult with us on specific topics that can be included in the agenda of those future meetings.*

*Geneva, 17 March 2004*



## **EXPERTS' CONTRIBUTIONS**

**Strengthening parliament as a guardian of human rights:  
The role of parliamentary human rights bodies**

**GENEVA, PALAIS WILSON, 15-17 MARCH 2004**



▶ **PART 1**

**MANDATE (TERMS OF REFERENCE), FUNCTIONING AND WORKING METHODS OF PARLIAMENTARY HUMAN RIGHTS BODIES**

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- What are parliamentary human rights bodies and what is their raison d'être?
  - How do parliamentary human rights committees function and what are their powers? How do they interact with other parliamentary committees and the executive branch?
  - Which terms of reference for maximum effectiveness?

**MS. LORETTA ANN P. ROSALES (PHILIPPINES)**

**Chairperson of the Committee on Civil, Political and Human Rights of the House of Representatives of the Philippines**

On behalf of the House of Representatives Committee on Civil, Political and Human Rights of the Philippine Congress, let me express my appreciation to the Inter-Parliamentary Union, UNDP and OHCHR for the privilege of addressing you today in this historic dialogue - a coming together of parliamentarians engaged in the cause of human rights from all over the world.

In the Philippines, we are in the heat of political battle for the election of candidates to national positions, and my party, AKBAYAN, is an active participant. Every day counts, as elections will take place on 10 May. I have assured AKBAYAN, however, that my participation in this seminar is not a loss of campaign time because we must give top priority to international dialogues on human rights such as the one we are having now. Which brings me to a couple of questions that have been nagging me since I received your invitation.

First, why is it only now, after more than half a century has passed since the establishment of the United Nations, that parliamentary bodies on human right have decided to meet?

Second, while I certainly appreciate the initiative finally taken by the IPU, UNDP and OHCHR in convening this event, the invitation from the IPU indicated that not all parliaments have human rights bodies. If this is so, how can the international parliamentary community foster human rights?

Third, for those of us who have human rights bodies in parliament, how effectively do these bodies function in transforming the making and enforcement of a policy to benefit people who have remained wretched across generations, precisely because they have been systematically deprived of their human rights by their own governments?

It is in this particular regard that I shall give my presentation.

**The political context**

The cause of human rights was never so passionately and profoundly defended by Filipinos as in the second half of the twentieth century, when they engaged in fourteen years of struggle against Marcos's one-man rule.

The fourteen years of dictatorship, from 1972 to 1986 taught those of us who are in the fragile middle class what it means to abandon family and comfort in order to realise our own dignity as sovereign individuals, as well as to identify with the lot of the down-trodden and impoverished majority - farmers, workers, ethnic communities and the urban poor.

When the dictator was ousted, the spirit of struggle for human rights on all fronts - political, economic, social and cultural - was incorporated in the post-Marcos 1987 Constitution, in particular Article II, which contains the Declaration of Principles and State Policies. Article II, section 10 states that "The State shall promote social justice in all phases of national development", and section 11 states that "The State values the dignity of every human person and guarantees full respect for human rights".

The concretisation of these provisions is principally found in the Bill of Rights of the 1935, 1973 and 1987 Philippine Constitutions, which mainly addresses civil and political rights. However, in the 1987 Philippine Constitution, a new article was added expanding the scope and definition of social justice and human rights that Congress is specifically mandated to promote and uphold. Article XIII, Social Justice and Human Rights, states in its section 1 that "The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments. Section 2 states that "The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance".

Article XIII of the 1987 Philippine Constitution is principally the embodiment of the principle that those who have less in life should have more in law. It commands a legal bias in favour of those who are underprivileged. The import of this provision, that has developed in various court decisions, is that when the law is clear and valid, it must be applied; but when the law can be interpreted in more ways than one, an interpretation that favours the underprivileged must be favoured.

Section 1 of Article XIII translates the principle of more in law for those who have less in life into a duty of the State to attend to the enactment of measures that protect and enhance the right of all the people to human dignity, to reduce social, economic and political inequalities to and remove cultural inequities by equitably diffusing wealth and political power for the common good. And since those goals are to be achieved through legislation, the task is given to Congress. It is, moreover, given as a task of the "highest priority." The choice of the expression "highest priority" is deliberate. It communicates the message that what is expected of Congress is not just the exercise of day-to-day police power, but of powers needed to achieve radical social reform of critical urgency.

The rest of Article XIII goes in some detail into the areas to which Congress must give highest priority: labour, agrarian and natural resources reform, urban land reform and housing, health delivery systems, the protection of women, voluntary people's organisations and structures for the protection of human rights.

Within the Philippine Congress, the Committee on Civil, Political and Human Rights does not enjoy the vast powers and resources of other more powerful committees, such as the Committee on Rules, the Committee on Appropriations, the Committee on Ways and Means and the Committee on Accounts. It is, however, well endowed in that it addresses problems that involve sections of the populace that are without power, influence and money. It was in this context that the chairmanship of the Committee on Civil, Political and Human Rights landed on my lap. Having been tortured by the military under the Marcos regime, I was nominated by the Speaker of the House. Practically nobody wanted the post. No one wanted to chair a committee riddled with problems of gross violations of human rights involving military bombings and strafings on communities suspected to be the lairs of the Abu Sayyaf, a known terrorist group from Southern Mindanao; bombings on suspected bases of the Moro Islamic Liberation Front (MILF), or encounters in suspected guerrilla zones of the Communist Party of the Philippines (CPP) and the New People's Army (NPA).

### **The Committee on Civil, Political and Human Rights**

As described in the Rules of the House of Representatives, the Committee on Civil, Political and Human Rights is mandated to address policies involving the civil and political rights of citizens, as provided in Article III of the Philippine Constitution, better known as the Bill of Rights. That instrument has 22 provisions addressing inter alia the fundamental right to life, liberty or property, the right to due process and the right to equal protection under the law.

With its specific mandate, the Committee does not have specific jurisdiction over the economic, social and cultural rights which are covered in Article XIII of the Constitution entitled "Social Justice and Human Rights". Under the Rules of the House, this Committee is authorised to function as a Committee on Human Rights limited to matters involving civil and political rights. This explains the curious title of the Committee: the Committee on Civil, Political and Human Rights.

### **Other congressional committees involved in the defence of economic, social and cultural rights**

While the Rules of the House provide for the creation of standing committees addressing the economic, social and cultural rights of the people, the failure to define a human rights perspective in the mandate and functioning of these other committees may explain why the rights-based approach is easily lost in their operations.

In the Committee on Agrarian Reform, for instance, many of the members are people with major landed interests, who are obviously there to protect their big haciendas from being subjected to land acquisition and distribution, as provided by law. The Comprehensive Agrarian Reform Law was passed in 1988, under former President Corazon Aquino, with the aim of acquiring private agricultural lands from big *hacenderos*. But those *hacenderos* continued to dominate the Philippine Congress and to protect their lands from the Agrarian Reform Law.

Obviously, the momentum of the People Power Revolution that ousted Ferdinand Marcos in 1986 culminated in the passage of some landmark legislation, one example of which is the Comprehensive Agrarian Reform Law.

Since the People Power Revolution succeeded in ousting the dictator, the political environment that succeeded one-man-rule tolerated the restoration of powerful families and interests who hitherto had become enemies of the discredited dictator.

With the restoration of the traditionally strong families' interests in the legislative and executive corridors of power, standing committees that address the protection and promotion of the economic, social and cultural rights of the people have been stymied by resistance from the big business and landed interests whose presence strongly dominates the operations of these committees.

The basic principle of "land to the tiller" has been lost in the labyrinth of litigation cases on land disputes brought before land reform arbitration courts.

The oversight functions of the Agrarian Reform Committee are easily drowned out by the overload of legal land disputes. This situation is aggravated further by the absence of competent lawyers to defend the interests of farmer-beneficiaries against the landlords and their private armies.

### **Agrarian reform and human rights**

Today, however, the question of agrarian reform as a state policy pursued in keeping with the constitutional mandate of social justice enshrined in Article XIII is being given another chance for full enforcement. A recent Supreme Court decision qualified some \$ 684 million in escrow accounts as ill-gotten wealth of the Marcos family.

When the money was transferred from the Swiss accounts of the Marcos family to the Philippine National Bank that held it in escrow, it amounted to a little more than \$ 500 million. Today, it continues to gain interest, and under the Agrarian Reform Law, money stolen by the Marcos family and subsequently acquired by the Philippine Government should go to the implementation of agrarian reform.

The Committees on Agrarian Reform and Agriculture can reactivate their oversight functions to ensure that the executive branch undertakes land acquisition and distribution, while the modernisation of agricultural production can be undertaken in areas where land has been distributed to the farmers.

Another aspect of the money transferred from Swiss accounts is the share of the money that should go to the victims of gross human rights violations committed by the Marcos regime.



When 9,539 victims of the regime won the class action suit in a Hawaii District Court that awarded them \$ 1.9 billion in exemplary and compensatory damages, their case was viewed as a matter that had to be addressed by the Philippine Republic. When the money stolen by Marcos was transferred to the Philippines, the Swiss and Philippine Governments agreed upon two conditionalities:

First, the money had to be proven as ill-gotten through due process; second, part of this should be shared with the victims of human rights violations committed under the Marcos regime.

### **Legislative, executive, judicial relations on the matter of agrarian reform and human rights**

The Supreme Court's final ruling that the money deposited by the late Mr. Marcos in Swiss banks was ill-gotten is a landmark decision that has calls for legislative and executive action.

The Committee on Civil, Political and Human Rights, with the help of the Presidential Commission on Good Government (PCGG) from the executive branch, filed a bill to legislate that a third of the money held in escrow should go to victims of human rights violations committed under the Marcos regime. As Chairperson of the Committee, I have been able hold process deliberations on a Compensation Bill that would amend the Comprehensive Agrarian Reform Law and give a share of this money to the 9,539 victims of torture, summary executions and forced disappearances. House Bill No. 4535 (Compensation Bill) has now been approved on third and final reading in the House of Representatives. However, a Senator who is a landholder and who has been sceptical of initiatives taken by politicians on the left has blocked it. As long as he blocks the Compensation Bill, he likewise is blocking the use of the money stolen by Marcos for land acquisition and distribution.

On the other hand, the executive branch has fully supported legislation on human rights and agrarian reform. The Twelfth Congress ends in June, and we now have little time for the passage of these bills into law.

The Committee also actively works with other government agencies in the executive branch, including law enforcement agencies. In the drafting of laws, the Committee regularly consults the Commission on Human Rights, the Presidential Committee on Human Rights, the Department of Social Welfare and Development, the Presidential Commission on Women, the Department of Education and the Department of Justice, among others, as well as the Philippine National Police and the Armed Forces of the Philippines. The Committee together with these government entities always conducts technical working group meetings.

Some of the major legislative measures that are a product of consultations with government agencies include bills providing for the abolition of the death penalty, combating sexual discrimination, upholding the rights of the accused, calling for mandatory training courses on human rights and protecting all persons from enforced disappearance.

### **Joint referrals with other committees**

Moreover, the Committee on Civil, Political and Human Rights has been actively working with several other committees to ensure that whatever legislation or legislative action that may be recommended or undertaken by other committees is consistent with the promotion and protection of human rights as enshrined in the Philippine Constitution. Some such legislation is listed below.

For example:

- Land Use Act (passed into law);
- Trafficking of Women and Minors (passed into law);
- Establishment of Juvenile Court (on second reading);
- Amendments to the Magna Carta of Migrants Rights (the Department of Labour agreed to suspend the deregulation of the recruitment of Filipinos for overseas job opportunities, pending the enactment of legislation);
- Absentee Voting for Qualified Filipinos Abroad (passed into law);
- Magna Carta of Teachers Rights (on second reading).

## Inquiries in aid of legislation

### Oversight function

In the performance of its legislative tasks, the Committee takes cognisance of international instruments or covenants on human rights and humanitarian law when local laws are not sufficient, in keeping with the policy of the State to "adopt the generally accepted principles of international law as part of the law of the land" (Article II, Principles, Philippine Constitution).

For example, the Committee asserts that the United Nations guidelines for the treatment of internally displaced persons and international humanitarian law must be applied in the ensuing armed conflict between the Moro Islamic Liberation Front (MILF) and the Armed Forces of the Philippines in the southern Philippines, particularly on Mindanao Island, as well as in other parts of the country where there are likewise armed hostilities between government troops and the New People's Army (NPA). On several occasions, the Committee has initiated dialogues or forums with government and non-governmental organisations with the aim of reaching a common understanding and ensuring cooperation with respect to the laws and principles that should guide all the entities concerned. In this respect, the Committee serves as an instrument in bridging and filling the gaps between government and law enforcement agencies tasked with protecting and promoting human rights and civil society in general.

This role is crucial under present conditions, where the wheels of justice are slow. The Commission on Human Rights (CHR), a constitutional body and the primary state machinery, while tasked to promote and protect human rights, is saddled with the serious limitation of having no prosecutorial powers. In addition, it has a perennial lack of resources and personnel.

In the conduct of its oversight functions, the Committee on Civil, Political and Human Rights has been effective, to some extent, in deterring gross violations of human rights. For example, it has advocated or carried out the following:

- Revocation of the Department of Justice Memorandum dated 13 July 2001, which allowed warrantless arrests, searches and seizures in the provinces of Basilan and Sulu against persons suspected of being members or supporters of the Abu Sayyaf terrorist group;
- Committee investigation of human rights violations committed by the Armed Forces of the Philippines and the New People's Army in the provinces of Sorsogon and Camarines Norte;
- Committee investigation of human rights abuses committed by the Armed Forces of the Philippines in the province of Mindoro, particularly the murder of human rights workers;
- Committee investigation of the bungled operation of agents of the National Bureau of Investigation in Cebu City, that nearly resulted in the death of five innocent Plantation Bay resort and hotel employees.

With peace talks under way between the Government and the MILF and the CPP-NPA-NDF, and in the context of the global campaign against terrorism, the Committee serves to remind the parties concerned to abide by the principles of international human rights covenants and international humanitarian law.

Aside from the exercise of its legislative powers and functions, the Committee also initiates education and information campaigns for the promotion and protection of human rights, cognisant of the importance of raising the consciousness of government officials and public servants on this subject. For two consecutive years, for example, the House Committee on Civil, Political and Human Rights held a series of forums on various issues concerning women, children and internally displaced persons, as part of its observance of international human rights week. For the forthcoming 2004 elections, the Committee has initiated a campaign for peaceful and credible elections, in cooperation with the Commission on Human Rights. Among other major issues, the Committee on Civil, Political and Human Rights, in cooperation with the Committee on Suffrage and Electoral Reforms as well as various civil society groups, has launched a campaign against the extortion activities carried out by NPA rebels in the guise of collections for the so-called "permit to campaign (PTC)."

### **International campaigns**

In furtherance of its constitutional mandate to protect and promote social justice and human rights also beyond the borders of the Republic of the Philippines, the Committee on Civil, Political and Human Rights has also actively taken part in certain international campaigns.

The ratification of the Rome Statute establishing the International Criminal Court (ICC) has drawn interest among a number of legislators. While the former Head of State, President Estrada, signed the Statute in 2000 before his impeachment, the current President has taken no action on the Statute, and has refused to endorse its ratification by the Senate.

In this case, it has been civil society that has been most helpful. The healthy relations between the Committee and the civil society have nurtured several major activities in support of the ICC, and has put the Government on the defensive.

The Philippine Coalition for the ICC has joined efforts with individual members of Congress in filing a petition to the Supreme Court questioning why the President refuses to endorse ratification of the Rome Statute by the Senate.

During the Eleventh Congress, the organisation of a referendum on the independence of Timor-Leste from Indonesia prompted members of the Committee on Civil, Political and Human Right to act as observers during the referendum.

The campaign against the negative impact of globalisation on third world economies has drawn on a large mobilisation, and there has been healthy cooperation between Congress and government agencies against the unfair trade practices of the developed world.

The campaign to halt the United States economic blockade against Cuba has drawn multisectoral cooperation among university professors, civil society and members of the House of Representatives.

In both the issues of the ICC and the economic blockade of Cuba, members of the Philippine Congress, through the Committees on Civil, Political and Human Rights and Foreign Affairs, have increasingly grown critical of Philippine foreign policy, which uncritically subscribes to United States policy on both issues.

While the United States Government may have its differences with specific Governments, it is the gross violation of the human rights of the people, in Cuba and in Iraq, for instance, that the Philippine Government must be sensitive to.

Hence, through their standing committees, the members of the House of Representatives are better able to distance themselves from some of the policies of the Philippine Government, that remains uncritical of violations of human rights committed by the United States.



## **MR. AMOS N. NAKALONGA (ZAMBIA)**

**Chairperson of the Committee on Legal Affairs,  
Governance, Human Rights and Gender Matters  
of the National Assembly of Zambia**

### **Introduction**

Parliamentary bodies may be defined as groups of a number of members of parliament especially named or appointed to consider, inquire into, or deal with particular matters or bills. In this respect, parliamentary bodies allow for continued oversight in specific fields and raise awareness within the public service that they act as watchdogs, on behalf of parliament, of certain functions of the executive branch. The many inquiries and investigations that parliamentary bodies conduct bring parliament closer to the people through the system of summoning and hearing evidence from witnesses, as members conduct detailed reviews of proposed legislation, examine matters referred to them by the House, and scrutinise government policies and programmes. Parliamentary bodies also allow for public participation in the parliamentary affairs of their country.

The objective of this paper is to look at a particular parliamentary body which deals with human rights. In Zambia, this role is played by the Committee on Legal Affairs, Governance, Human Rights and Gender Matters. The paper explores the duties and responsibilities of the Committee by looking at its mandate, functioning and working methods.

### **1. Raison d'être for the establishment of a committee to look into human rights issues**

The *raison d'être* for the establishment of this Committee was to ensure that human rights standards would be adequately observed in Zambia. The role of committees had evolved in Zambia following the introduction of parliamentary reforms. Committees were given greater control over their own affairs, particularly with respect to their investigative functions, such as when a bill was brought before the House, as such bills were now first analysed by the appropriate parliamentary committee. This has meant that committees have begun to spend a significant portion of their time conducting studies on selected issues. That is a role which is new to them today. The Committee on Legal Affairs, Governance, Human Rights and Gender matters draws on the cooperation of other players in the human rights field, both locally and internationally. These include government institutions such as the Permanent Commission on Human Rights, the Electoral Commission, the Anti-Corruption Commission, the Drug Enforcement Commission, the Police Service, the Prisons Service and Legal Aid.

### **2. Terms of reference for maximum effectiveness**

The Committee on Legal Affairs, Governance, Human Rights and Gender Matters in the National Assembly of the Republic of Zambia has the following mandate:

- (a) to study and report on the mandate, management and operation of ministries, departments and agencies assigned to it by the Standing Orders Committee or the House. This particular committee oversees the activities of the Ministry of Legal Affairs, Gender in Development Division (GDD) of the Cabinet Office and other government departments or agencies directly related to its operations;
- (b) to initiate investigations on specific policy or subject matter, such as to carry out detailed scrutiny of certain activities being undertaken by government ministries, departments and agencies and make appropriate recommendations to the House for ultimate consideration by the House;
- (c) to conduct studies, report and make recommendations to the government, through the House, on the mandate, management and operations of government ministries, departments and agencies on issues related to its field of competence;

- (d) to make, if necessary, recommendations to the Government on the need to review certain government policies or existing legislation; and
- (e) to examine and make recommendations on bills referred to it by the House.

### **3. Operations, powers and functions of the Committee on Legal Affairs, Governance, Human Rights and Gender Matters**

The Committee on Legal Affairs, Governance, Human Rights and Gender Matters also enjoys all the privileges, immunities and power of a sessional committee, as provided for in the National Assembly Standing Orders, the Constitution of Zambia and the National Assembly (Powers and Privileges) Act CAP 12 of the Laws of Zambia. In carrying out its functions, the Committee applies the following operating procedure:

#### *(a) Programme of work*

After being constituted by the Honourable Speaker and subsequently electing its own chairperson, the Committee begins its annual sessional assignments by drawing up a comprehensive programme of work which will define the activities to be undertaken in each year or session.

#### *(b) Summoning of witnesses*

When the Committee begins to meet as per its programmes of work, it is at liberty to call on any person and/or document that it feels will assist it in its work. Any witness who fails to appear before any parliamentary committee without giving good and acceptable reasons is in contempt. Witnesses are also in contempt if they give false information to a parliamentary committee. In addition to reasonable expenses for transport actually incurred, witnesses summoned to give evidence before the Assembly or a committee thereof are compensated for other expenses, on such conditions and at such rates as the Speaker determines.

At the discretion of the Committee, payment may be made to any professional or other witnesses, or to persons whom the Committee may deem to be required to employ in furtherance of the inquiry with which it is charged. The Committee's resolution is sufficient authority for payment by the Clerk of the National Assembly.

#### *(c) Public participation in the deliberations of committees*

Parliamentary bodies or committees take parliament to the people through public inquiries. Public input is important, and committees should, as much as possible, promote public awareness and debate on matters such as government policies, and bills being considered by parliament. Parliamentary bodies or committees provide a forum for the presentation of the various views of individual citizens and interest groups.

#### *(d) Committee reports*

Upon completion of its deliberations as per its respective programmes of work, the Committee compiles its report, which is tabled in the House for consideration and subsequent adoption. If the House does not adopt a Committee report, all its contents become null and void, and cannot, therefore, be used as reference material.

#### *(e) Confidentiality of Committee reports*

Although proceedings of the Committee are open to the public, the final outcome of those proceedings, which culminate in Committee reports, still remain the guarded property of the National Assembly. Committee reports are, therefore, treated as confidential until they are adopted by the House.

#### *(f) Action-taken report*

After the House has adopted Committee reports, copies of the same, with covering letters, are sent to the respective ministries to take action on the observations and recommendations made by the Committee on the various issues considered. According to established parliamentary practice and procedure and the Standing Orders of the National Assembly, the Action-taken Reports or Treasury Minutes should be submitted to the

National Assembly and tabled in the House not more than sixty days from the date on which a particular Committee report was adopted.

(g) *Nature and scope of the action to be taken*

Parliaments and their committees do not govern, nor do they seek to govern. Rather, parliaments and their committees have the mandate to enforce accountability by those that govern to those that they govern. The observations and recommendations that committees make are, therefore, meant to enforce this accountability. However, where the executive branch feels very strongly that a particular recommendation cannot be adhered to, it is required to give a convincing reason why such a recommendation cannot be accepted. In other words, it is not obligatory for the executive branch to implement all the recommendations made by committees of parliament, provided that where differences of opinion occur, explicit and satisfactory reasons are given.

(h) *Consideration of bills*

All departmentally-related committees have the mandate to consider the committee stages of respective bills that are referred to them by the House.

#### **4. Working methods of the Committee**

(a) *Appointment of members to the committees*

The current provisions of the Standing Orders empower the Speaker to appoint members to various committees. However, the appointment of members to committees must take into consideration the following:

- (i) the constitutional obligation to ensure the representation of all parties in the committees, as in the House;
- (ii) gender sensitivity, (where possible, to have a gender balance and/or representation); and
- (iii) members' qualifications, experiences and preferences, although these are not binding in the ultimate selection or nomination of members to various committees.

(b) *Preparations for meetings*

Before convening a meeting of the Committee, the following should be attended to:

- (i) determination if there is sufficient business to warrant the calling of a Committee meeting. If there is a lot of business, the Chairperson should be consulted. However, it should be noted that it is not always possible to submit the agenda for approval by the Chairperson. The programme of work of the Committee is normally adopted at the beginning of the session. Thereafter, the Committee Clerk plans the agenda in accordance with the approved programme;
- (ii) if the Chairperson agrees to call the meeting, authorisation must be sought from the Clerk of the National Assembly. If it is granted, notices of the meeting are sent to members. In this regard, the Committee Clerk must ensure that adequate notice is given to members to enable them to travel in good time from their respective areas, particularly when the House is in recess. Notices of meetings should indicate the expected duration and dates of the sitting. In such instances, members should be informed by both police message and telegram. Members having telephones or telexes must be informed additionally by those means;
- (iii) if witnesses are required, they should be alerted in good time. To be on the safe side, they should be reminded a day or two before the meeting, and if background papers are required, it is the duty of the Clerk servicing the meeting to prepare these in advance. Papers must be as informative and as succinct as possible. Papers of a technical nature are prepared to correspond with the comprehension level of the members.

(c) *The day of the meeting*

- (i) Before commencement of the meeting, the following should be noted: the Clerk servicing the Committee meeting is normally in the Committee room fifteen minutes earlier than the commencement

- time of the meeting, during which time the Chairperson is briefed about pertinent issues of the meeting;  
and
- (ii) No proceedings start unless there is a quorum of the Committee. If there is no quorum after fifteen minutes, the provisions of the appropriate Standing Order are followed, BUT before this is done, the Principal Clerk of Committees is consulted.
- (d) *During the meeting*
- (i) Before taking down the Minutes, the Clerk servicing the Committee always indicates the time of the commencement of the meeting. The first business on the agenda is usually the adoption of the Minutes of the previous meeting. In this regard, the names of the members present at the meeting must be noted, and if there are any apologies, the Chairperson should be alerted so that he can inform the Committee;
  - (ii) During the meeting, the role of the Committee Clerk is to take down resolutions and conclusions, but as much as possible, these should be detailed, especially if there are no backup secretarial services;
  - (iii) The Committee Clerk should give advice or talk only when called upon to do so by the Chairperson. However, the Clerk advises the Chairperson through small notes whenever the need arises. The Clerk always monitors the mood of the meeting and sees to it that relations with the witnesses do not involve any unnecessary abuse;
  - (iv) If there are any urgent resolutions to be attended to, the attention of the Clerk of the National Assembly is drawn to these immediately instead of waiting until the Minutes are submitted. At the end of the meeting, the Clerk ensures that the time of adjournment is indicated;
  - (v) After the meeting, the Clerk immediately begins writing the Minutes. The Clerk ensures that typographical errors are done away with. Prior to this exercise, the Clerk ensures that administrative reports are submitted soon after the meeting, because delays would only render the reports stale. The immediate supervisor is orally briefed on the proceedings of the Committee before the Clerk begins writing the administrative report.

## **5. Interaction with the executive branch - Ministry of Legal Affairs**

The Committee has on a number of occasions summoned government officials. Specifically, it has requested the Permanent Secretary in the Ministry of Legal Affairs to brief it on the Government's policy on human rights and the Government's performance on governance and human rights. In her submissions, the Permanent Secretary stated that the Zambian Government was committed to the protection and promotion of human rights for all Zambians. To this end, the Government had ratified all six major international human rights covenants, namely:

- (i) the International Covenant on Civil and Political Rights (ratified in 1984) and its first additional protocol;
- (ii) the International Covenant on Economic, Social and Cultural Rights (ratified in 1984);
- (iii) the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1972);
- (iv) the International Convention on the Elimination of All Forms of Discrimination Against Women (ratified in 1985);
- (v) the International Convention on the Rights of the Child (ratified in 1991);
- (vi) the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified 1998).

At the continental level, the Government had ratified the African Charter on Human and Peoples' Rights (1984). The Permanent Secretary has further informed the Committee that civil and political rights were entrenched in Part III of the Republican Constitution of 1991. Part IX of the Constitution sets out the Directive Principles of State Policy, which guide the executive, legislative and judicial branches when they implement human rights. These directive principles were mainly used in reference to economic, social and cultural rights and solidarity rights, in which it was internationally acknowledged that their violation was non-justifiable.



## **MR. MICHAEL GAHLER**

**Member of the European Parliament (MEP),  
Member of the Committee on Foreign Affairs, Human Rights,  
Common Security and Defence Policy, Substitute Member  
of the Committee on Development and Cooperation  
of the European Parliament**

In respect of the rights of the citizens of the 15, and soon to be 25, member States of the European Union (EU), it is the Civil Liberties Committee that deals with such matters. As for questions of human rights in other countries, they are handled by the Foreign Affairs Committee, the official title of which includes the words "human rights". Other committees too deal with human rights issues, including the Development and Cooperation Committee, which handles questions related to the joint Africa-Caribbean-Pacific (ACP)-EU Parliamentary Assembly; a body which brings together representatives from those regions and from Europe, and which also addresses human rights concerns. There are also bilateral parliamentary delegations. Throughout the negotiation process with the 10 new candidates for EU membership, the European Parliament has raised human rights issues, some of which related specifically to minority rights and efforts to meet the political criteria to accede to membership of the EU. To cite an interesting example, in 1998 it was decided that accession negotiations should not begin with the Slovakian Government, which at the time did not fully comply with democratic principles. Negotiations on accession were therefore delayed. Since then, those problems were solved, and Slovakia is now among the 10 countries that will soon accede to the EU.

In respect of the EU, I should like to address some of the questions asked by Mr. Ramcharan this morning. He asked if the Constitution reflects international human rights standards and refers to the commitments that the country has taken. The draft Constitution of the EU meets those criteria. The second part of the draft Constitution refers to the Charter of Fundamental Rights of the EU and fully reflects the international obligations of the member States. The court of the EU, the European Court of Justice, can invoke international conventions, and more specifically the European Convention on Human Rights (a convention of the Council of Europe, a separate organisation). The European Parliament also elects a European Ombudsman; citizens of the EU can refer their cases to the Ombudsman if their rights are infringed by any measures taken by an institution of the EU.

I should now like briefly to address the substantive work done by parliamentarians to ensure human rights in the light of the specific history of the European Parliament, which was first directly elected in 1979. At that time, MEPs did not have a great deal of legal competence or decision-making capabilities. The European Parliament was more of a consultative assembly with little decision-making power, but that meant that it focused from the outset on issues that were accessible to it, including human rights issues. From the very beginning, then, it scrutinised the situation of human rights in all countries, large and small, rich and poor, with a global approach that has since proven to be quite successful. For years, there was a symbolic empty chair in the European Parliament for the nations of Eastern Europe that had not acceded because they did not have democratic rule. It was 21 years ago that the European Parliament adopted a resolution demanding the right of self-determination for the nations under the control of the Soviet Union - a step that at the time was perceived by some as complicating the difficult relations with that country. But the European Parliament has never considered the place of human rights on the agenda of the day in an opportunistic light. Since the fall of the wall in Europe and the beginning of reunification, the Parliament has addressed shortcomings in the observance of human rights all over the world, in large and small and in rich and poor countries. It has not turned a blind eye to any human rights violations, anywhere in the world, including within the member States of the EU. Indeed, the Parliament addresses our own shortcomings, especially through the work of the Civil Liberties Committee. The European Parliament cannot be accused of criticising others without keeping order in its own house. Its resolutions have left many of the governments of the member States ill at ease, but that is the task and purpose of a human rights committee: to address shortcomings without sweeping them under the rug.



When the newly elected European Parliament meets in July 2004, we will already have reorganised our activities. Within our Committee we will set up a subcommittee on human rights. Such a body existed until 1999, but was subsequently replaced by a working group on human rights.

There are various opportunities to table human rights issues in our Parliament. If the conference of group chairmen so decides, a full debate may be organised, including the European Commission and the Council, which must answer to the Parliament. Political groups and individual members may also formulate written and oral questions for the Commission or the Council. Within the Committee, regular hearings are scheduled on specific issues or on the situation in specific countries.

The European Parliament attaches a great deal of importance to the inclusion of human rights clauses in bilateral agreements. One well-known example is the Cotonou Agreement. In it, the human rights clauses established a mechanism that can suspend privileges granted to a State if it does not meet certain criteria for democracy, good governance, the rule of law or human rights. Consultations have been held with a number of countries to avoid invoking the suspension clause. In the case of Zimbabwe, not only have we suspended our development cooperation assistance (apart from humanitarian aid); we have also established a black list of persons who are specifically involved in the exploitation of their own people or of committing gross human rights violations.

We have also established dialogues on human rights between the EU and countries such as China and the Islamic Republic of Iran.

In addition, in 1997 the European Parliament established the Sakharov Prize, which is awarded to human rights activists all over the world. In 1998 Nelson Mandela was the first laureate. Since then, it has been awarded to Aung San Suu Kyi, Leila Zana, Ibrahim Rugova, and in 2004 to Kofi Annan.

Since 1994, some 100 million euros have been awarded every year for activities carried out under the European Initiative for Democracy and Human Rights, which has four main themes: strengthening democratisation, abolition of the death penalty, the fight against torture and impunity, and combating racism and xenophobia. The Initiative is implemented by civil society, including non-governmental organisations (NGOs), working with international organisations. Its budget line is unique in the EU, in that it does not require the prior consent of the government of the country where its activities are carried out; this ensures the independence of the Initiative's beneficiaries. Since 2001, the Commission has managed some 380 projects worldwide. The European Parliament is very keen to continue those projects, and to maintain close contact with parliamentary colleagues in other countries.

Both rich and poor countries sometimes fail in their observance of human rights. The important thing is to maintain a discussion on the subject. Human rights must be promoted for the people's sake, not the government's.



## **MS. ANN CLWYD (UNITED KINGDOM)**

**Chairperson of the All-Party Parliamentary Human Rights Group of the British Parliament, Member of the IPU Committee on the Human Rights of Parliamentarians, Member of the European Parliament**

The All-Party Parliamentary Human Rights Group in the House of Commons is a voluntary Committee. It is not funded by the Government, but by a voluntary organisation which gives us money for a set period of time. That means that we operate facing considerable difficulties. There is only one paid officer of the group. It is a large group. We have 150 members in the House of Commons, and we campaign on a variety of human rights issues. I have found it very useful being a part of the IPU Committee on the Human Rights of Parliamentarians, which campaigns for the rights of members of parliaments in all our countries, who for whatever reason are not able to carry out their mandate (some are in prison, some find it very difficult to speak freely in their countries). The IPU campaigns for those parliamentarians (sometimes in private), and it has achieved a lot through such activities.

First of all, I would like to say why I think parliamentarians and parliamentary bodies have the potential to make an impact, and what action parliamentary bodies can undertake in the human rights field.

### **Role of parliamentarians**

As parliamentarians and as members of parliamentary human rights bodies, we have to make sure that the ethos of human rights, as enshrined in the Universal Declaration of Human Rights and in other human rights conventions, underpins the functioning of state institutions, legislation and civil society. We are able to acquire knowledge about the parameters within which state institutions should function. They arise from domestic and international legislation. We can see where there are deficiencies in the implementation of human rights norms in our States and in others.

In particular, parliamentarians who are members of human rights bodies can be informed about parliamentary procedure. They may require information or raise concerns relating to human rights issues using such mechanisms as "early-day motions (EDMs)". EDMs are motions tabled in our order of the day. We can draw attention to a particular issue, and also draw the press's attention to it, through this mechanism. We can also put written or oral questions to ministers, send letters to ministers and also lobby them. Parliamentarians can also play a role through human rights legislation and norms, for example, by influencing domestic human rights legislation, international human rights treaties in this field and human rights case law.

As members of parliaments, we are very privileged because we have enormous resources at our disposal (such as library facilities, in-house research staff, internet access, the support of international organisations, the United Nations, the European Union, the Commonwealth and the North Atlantic Treaty Organization (NATO)). There are many ways in which parliamentarians can inform themselves about the workings of these bodies and how actions are taken by them to raise human rights concerns in those forums. Some of those bodies have complaints mechanisms which can be used by parliamentarians. Sometimes parliamentarians are involved directly in their workings, for example, in the civilian liaison committees set up by NATO.

Thanks to our links with government officials, to parliamentary colleagues, NGOs and individuals, we are able to act as a bridge; we can facilitate communication between governmental, inter-governmental and non-governmental bodies and ensure that constructive links are made between them, for example through letters received from the public.

Most of all, I see parliament as a platform from which to raise concerns. Not only can we use the debate in chamber to raise awareness among our own colleagues and the government of the day; parliamentary activity

also generates interest among the media in most of our countries. Through the media, our concern for human rights can be given a wider hearing, thus bringing pressure to bear on state institutions. I think we have a crucial role in shaping the political agenda within our own countries and in the international political arena.

In our All-Party Parliamentary Group, we discuss issues of common concern. Sometimes they are country-oriented, and sometimes subject-oriented. There are about 100 groups in Parliament, most of which are funded from outside Parliament, which in some instances creates difficulties because interest groups can occasionally be manipulated. The All-Party Beer Group gets more funding than any other all-party group. Not many people seem interested in funding an all-party group on human rights. Some of the oil industry groups (BP, Shell) have offered to do so, but we must be careful, because some of those groups are allegedly involved in violations of human rights so we cannot take money from them. The lack of funding and severe constraints on resourcing do create difficulties. It is also difficult to get parliamentarians to devote sufficient time and resources to the group's activities as all members of Parliament are quite busy. And there is also a lack of interest in our constituencies. There is a big education job to be done among the people who vote for us. That requires resources. It is the kind of education job that should be done in schools, but it is rarely done there.

There is a Joint Select Committee on Human Rights, but it almost exclusively looks at domestic human rights issues, such as cases of death in custody in the United Kingdom or the drafting of a gender recognition bill. That committee is made up of backbench MPs and members of the House of Lords. It receives evidence from ministers, civil servants and experts to further its investigations, and it is funded by the Government.

### **Action**

The parliamentary human rights group tries to raise awareness; we write and disseminate reports concerning violations of human rights throughout the world. We recently issued a joint report with an outside organisation that campaigns for the victims of torture, and we have written a pamphlet on torture in Saudi Arabia.

We draft and circulate early-day motions on particular issues. We also hold regular meetings on subjects such as the situation of human rights in Afghanistan, Colombia, Chechnya, and Palestine. Leading United Nations figures active in the field of human rights come to see us from time to time to discuss their work.

We try to uphold the Universal Declaration and other international human rights instruments. We linked up with Canadian MPs when we were campaigning on the treatment of prisoners in Afghanistan. It is always very welcome when you can link up with members of parliaments from other countries. On occasion, we have convinced people such as the United States Ambassador in London to come to the House of Commons to discuss Afghanistan; they are generally greeted by a very angry group of MPs.

All of us here now are either active or potential campaigners for human rights. I hope that by the end of this event we will all be campaigners for human rights.

▶ **PART 2**

**PARLIAMENTARY HUMAN RIGHTS BODIES AND THEIR RELATIONSHIP WITH THE UNITED NATIONS AND REGIONAL HUMAN RIGHTS MECHANISMS**

- The role of parliamentary human rights bodies in ensuring the implementation of international human rights standards



**MS. H. I. BOGOPANE (SOUTH AFRICA)**

**Chairperson of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons of the South African Parliament**

*"The protection of human rights and the freedom of humankind is a concept I live for and I am prepared to die for".*

- Nelson Mandela

Among the yardsticks used to measure a society's respect for human rights, to evaluate the level of its maturity and its generosity of spirit is the status accorded to those members of society who are most vulnerable: disabled people, senior citizens and children.

The South African Parliament established the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons in 1999 to concentrate on ensuring that the basic human rights of these three sectors (disabled people, young people and children) are not violated. In 1994, when a democratic Parliament was established, the institution created a number of committees. The assumption was made that as these committee deliberated, they would cover issues of concern to disabled people, children and youth. However, within five years it became very clear that this would not be possible because of the committee's workload. Each portfolio committee was dealing with a huge backlog. Therefore, those issues fell by the wayside.

In an attempt to correct that the National Assembly introduced the Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons. This Committee is special in that it has certain powers, and it is the only committee that has members from both houses (the National Assembly and the National Council of Provinces). Another committee with special powers is the Committee on Women. Those two committees have more powers than our standing committees, our portfolio committees and our select committees.

**Powers and functions of the Committee**

The first function of the Committee is to ensure that each and every piece of legislation that goes through the South African Parliament is "child, youth and disabled-friendly". This has been a challenge for our Committee because we do not have legislative powers. Our first calling is to ensure that there is an improvement in the quality of life of the sectors that we as members of Parliament represent.

We faced the challenge of transforming parliamentarians from politicians into monitors. We had to force them to advocate. We had to find a way of creatively questioning committees on the legislation they dealt with. One particular example was the whole issue of gun control. We had a responsibility to ensure that the legal age for

the acquisition of a gun was not lowered. Because our Committee was not in charge of this particular legislation, we had to find a way of conferring with other parliamentarians and committees. If you begin to step on another chairperson's territory, it becomes a nightmare. So as the Committee Chairperson, from time to time I had to fight with the chairpersons of other committees. I was essentially interfering in their work.

Our next challenge is to make sure that the Parliament properly allocates budget resources. When the Minister of Finance introduces the budget, we need to take time to look at it and to begin to ask questions. Does the budget allocate any resources to the sectors we represent? Does this budget aim to improve the quality of life? We engage in that debate long before the budget speech is made by the Minister, because the minute the Minister makes the budget speech, it is too late. So we make sure that our intervention takes place early. Because of our advocacy, Parliament has introduced a Budget Committee, which engages in the preparation of the budget right from the beginning. We also need to ensure that the budget will not be a dead letter, and that the government departments will implement it.

Very often, Parliament lacks follow-up system to monitor the implementation of the legislation it adopts. When the Committee was established, we made sure that we would follow up any piece of legislation related to its fields of competence. For instance, we have amended the Maintenance Act which obliges fathers to provide maintenance support for their children (regardless of whether the father is in a marriage). It would have been easier for us pass the law, let the Department of Justice deal with its implementation, and move on to the next pieces of legislation. This Committee has made sure that when such legislation goes through Parliament, we follow up on it. Before the Portfolio Committee on Justice and Constitutional Development passes the legislation, they must convince us that they have all the necessary mechanisms in place for its implementation; that they provide a budget and the necessary human resources. Failing that, we would make sure that the legislation does not go through Parliament, because once legislation gets signed by the President, it must be possible to implement it immediately.

All the aspects I have talked about so far have been related to domestic issues. The Committee has another function, though, which is to facilitate the ratification of international conventions, protocols and treaties. Amongst the conventions we have dealt with is the Convention on the Rights of the Child (CRC). When that instrument was debated and ratified by a number of countries, South Africa was not an active member of the United Nations. South Africa resumed full membership in 1994, and ratified the CRC in 1995. When we looked at the Convention, we did not think it held a lot of promise for the African child. We could not merely ratify it; we had to make sure that there were laws in place to make it relevant to South Africa. The CRC is a very good instrument. But when we had to interpret it in the context of the African child, it did not make a lot of sense. For us, the Convention was too westernised. If we had to implement the Convention word by word as drafted, we would lose our culture and with it the specific identity of the African child. So as a Committee, we had to look at this Convention and recommend legislation to help it make sense. During our deliberations, that particular Convention was due for review. The challenge for us was to participate in the review of the Convention in the United Nations. We made it very clear that if our Government had the opportunity to review the Convention, we wanted to be part of the deliberations. It took a long time to fight for that right. We finally won because we made it very clear that we were expected to monitor the Government's commitment and ensure that it met its obligations. We said that if the Committee is expected to monitor this Convention and we have that responsibility, then we too must go to New York for the review, to make sure that we will be able to monitor the instrument's implementation, to ensure that the Government meets its obligations and that whenever we submit a report, to the treaty body, it is endorsed by us.

We added value to the delegation without undermining its independence as a government body and also without compromising our own independence as parliamentarians. We were able to provide valuable inputs to the delegation.

We learned that it is very important for parliamentarians to form part of such delegations because it gives them immediate exposure to international politics. It makes it possible to know what the Government of the United States thinks about the rights of child, what the Governments of China, Thailand and other countries think.

South Africa has three levels of government: national, provincial and local government. In Parliament, we are the only Committee to have direct access to all three levels. We have a responsibility to ensure that our

provincial and local legislation establishes similar committees so they are able to monitor whether the respective governments improve the quality of life of the sectors concerned.

Because the Committee has limited human resources, it relies heavily on the information from NGOs. It cooperates closely with NGOs, which complement the Committee's lobbying and advocacy work.

The training of Committee members is extremely important. In order to determine whether a piece of legislation is rights based, we need to know what to look for. We had to train our Committee members on human rights, the rights of the disabled and the concept of youth development.

Because we have a Commission on Human Rights in South Africa that has specific committees (on the rights of the disabled, on children rights and on civil and political rights), we have been able to refer individual human rights violations to the Commission, and it has worked very well.

We also face challenges when our Government does not apply legislation. In such cases, our Committee may take up the matter with the government ministers, or even the President. The reason why we are able to bring such matters up with our President is that the programme for the disabled is based in the President's Office, as are the programme on the rights of the child and the commission on youth. When things do not work out, we take the President to task, because he has the responsibility to ensure that the programmes are implemented. We are the only parliamentary committee that has the power to cross-question and monitor the President himself. This also gives us the opportunity to engage him in his international endeavours because we are the only one he directly reports to in Parliament.

The United Nations is now drafting a Convention for the protection and promotion of the rights and dignity of persons with disabilities. From the outset, the Committee has taken part in the negotiations. It has made sure that the Government would include disabled people in the group sent to negotiate that instrument. South Africa has played a significant role. We will ensure that the basic human rights of disabled people will not be compromised in that Convention, and that it will be a Convention that African countries will be able to ratify and implement. <sup>1</sup>

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<sup>1</sup> The Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities was created by the UNGA resolution 56/168 of 19 December 2001.



**MR. LEANDRO DESPOUY**

**United Nations Special Rapporteur on the independence of judges  
and lawyers, and former Chairman of the United Nations  
Commission on Human Rights**

My presentation is founded upon a pair of convictions. The first conviction is that over the past fifteen years the international political and legal bodies have undergone a sea change and that human rights have been a key element in that development. The second is that parliaments will have an ever more decisive role to play in ensuring that human rights are protected in the future.

I should like to illustrate these two statements and offer an insight into the extent of the challenges that in my opinion currently face humankind.

With regard to the contribution made by human rights to the major changes of recent years, an examination of the situation at the end of the Second World War shows that at that time the protection of human rights came under national jurisdiction alone. States were entitled to do as they saw fit to ensure that the rights they recognised were properly respected. The Second World War alerted the world to the fact that the atrocities committed in one State could have dramatic effects for other States, and that the absence of morality in one State could condition the fate of humankind as a whole. Consequently, the adoption of the Universal Declaration of Human Rights was of more than political significance: it truly overturned the traditional legal set-up, in that States were no longer the only protagonists in the international arena, and individuals could now denounce governments' wrongdoings before a number of international bodies. That gave rise to a totally new world order. I dare to make such a forthright statement because I have worked unrelentingly to ensure that human rights are respected. If I had more time, I could demonstrate the political and legal impact of the actions of the United Nations Commission on Human Rights. However, I do not, so I will confine myself to highlighting what in my opinion are two major developments.

The first of these developments concerns the adoption of a series of principles and standards that have come to form the international human rights system and that stem as much from declaratory texts as from the treaties, agreements and other documents adopted by States. Some of these documents - treaties and conventions - are legally binding on States, and in most cases a treaty body has been entrusted with supervising their implementation at the national level. This is how the following came into being: the United Nations Human Rights Committee (for the International Covenant on Civil and Political Rights), the Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Elimination of All Forms of Discrimination against Women and a number of other supervisory bodies, each with a specific field of competence. These bodies have drawn up measures to guarantee States' compliance with the obligations they agreed to when they became parties to a given treaty. Furthermore, they have built up an extremely elaborate case law when considering specific national situations and complaints of human rights violations. Day after day, these precedents take on a universal scope.

In the 1960s it was still impossible to lodge an accusation against a State. All complaints were addressed in confidential procedures. But several procedures have since been opened to the public. Specific instruments have been created to respond to certain situations: there are special mechanisms in the Commission on Human Rights, such as special rapporteurs, working groups and independent experts. As a consequence of these developments, the human rights situation in some 60 States is on the agenda of the Commission on Human Rights. A public procedure used by the Commission makes it possible to send a special rapporteur to a State whenever complaints are received suggesting that such a step is necessary and that it would be useful for it to be presented with a report; the Commission subsequently takes a position on the basis of the report.

Some of us special rapporteurs have specific thematic mandates addressing a given subject; such as torture or extrajudiciary, summary or arbitrary executions. In the case of the independence of judges and lawyers, for which I am the Special Rapporteur, a report must be presented to the Commission on the different domains in



which there appears to be a breakdown of judicial authority, with an analysis of the complaints received and a request for explanations from the governments of the States concerned. The resulting report then gives rise to an interactive debate in which representatives of the States take part, along with those of a whole range of organisations, in particular NGOs. Following that debate, the Commission adopts a resolution that reflects its conclusions and recommendations.

A whole set of international human rights protection mechanisms thus now exists. Some of these mechanisms are treaty-based, as in the case of the bodies set up to implement specific treaties, such as the Committee against Torture and the Committee for Economic, Social and Cultural Rights. Some of them are not treaty-based, as in the case of the various special procedures established by the Commission and Sub-Commission on Human Rights. This worldwide system for the protection of human rights dovetails with specific regional systems, in particular in Europe, the Americas and Africa, as will be shown at a later stage of this seminar.

We cannot help but note that parliaments have been conspicuous in their absence from the highly dynamic process of framing international human rights principles and standards, a process that has taken place over recent decades. And now, as certain States permit themselves unilaterally to ignore international law, we can see the price to be paid for the absence of representative assemblies of the people. If in the future parliaments fail to play an active part in the international effort to promote and protect human rights, that could well lead to a noticeable regression in terms of standards and a sharp deterioration of the situation in terms of the effective respect of human rights. We are now witnessing a genuine offensive against the international human rights system created over decades of indefatigable efforts.

Parliamentary committees may sometimes be called upon to play a role when work is being carried out on treaties or conventions relating to human rights. But in most cases, those committees are called upon to ensure that those rights are properly respected nationally.

I would like to know about your national practices and experiences: as parliamentarians, are you always aware of your governments' stance on such and such a vote to be cast at the United Nations or in the regional bodies? Are you systematically informed of the reservations issued by your government or other governments concerning the essential provisions of a treaty or convention and, by extension, are you able to try to prevent such reservations from being issued? When your government is required to present a periodic report as part of a human rights procedure, are you entitled to have your say about that report? When a human rights treaty body or a special procedure of the United Nations presents your government with its conclusions and recommendations, are you made aware of the views expressed by that international body, and do you have an opportunity to supervise and contribute to the implementation of its recommendations? I have another question for you: does your government have the obligation to parliament on the measures it has taken to implement the recommendations of international bodies in respect of the human rights situation in your country?

By putting these questions to you, I simply wish to highlight the fact that parliaments have an opportunity to play a very dynamic and multidimensional role in this domain. At the national level, it is in fact the duty of parliamentarians to be the architects of the human rights system and legislation. It is principally your duty as representatives of the people to ensure that international human rights principles are respected in your country. It is first and foremost your duty to act as guardians of human rights and to ensure that the domestic situation is truly in keeping with international human rights principles.

To wind up this all too brief presentation, I should like to urge you to consider the international human rights system for what it is, in other words an ally, a very powerful tool that can help you to guarantee that human rights and fundamental freedoms are respected in your different countries. If I may, I should like to end by emphasising very strongly the fact that when the human rights of a parliamentarian are violated, it is not merely the human rights of an individual that are flouted, but those of a guarantor of human rights, of someone who has been called upon to play a key role in ensuring respect for those rights. Such violations are therefore a major challenge. The Inter-Parliamentary Union was perfectly justified when, nearly three decades ago, it created its own special procedure for the protection of your human rights!

**MR. JOSEPH VOYAME**

**Former Chairman of the United Nations Committee  
against Torture (CAT), former United Nations  
Special Rapporteur on Romania**

After the brilliant political exposé given by Mr. Despouy, I shall be more technical, focusing on the international and regional mechanisms set up to protect human rights.

At the institutional level, there are scarcely any direct relations between governmental organisations and parliaments or their subsidiary bodies. Thus, if a convention provides that a national authority is required to act or to receive a communication, it is for the State in question to designate the proper authority. Usually, this will be the government, acting through the Ministry of Foreign Affairs.

But it does not follow that parliaments have no role to play in this connection.

First, parliament keeps the government and the administration under close scrutiny by means of delegated bodies such as parliamentary committees. It goes without saying that the scope of such scrutiny also includes the defence of human rights. In addition, intergovernmental organisations are generally created by conventions, which define their structures and remits. Now these instruments, in most cases, can only be ratified with the authorisation of parliament.

As we know, numerous international or regional conventions have been concluded in the field of human rights. At the international level, for example, there are the two major covenants of 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. There is also the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each of these conventions set up a committee, a sort of monitoring body to which every State party must periodically submit a report on the legislative and administrative measures it has taken to fulfil its obligations under the instrument. Such committees, for their part, prepare reports for the States concerned, offering their findings and recommendations. The reports are also transmitted to the United Nations General Assembly, and are public.

And members of parliament? They have many possible courses of action open to them.

Thus, parliamentary human rights committees, and any other committees concerned, could ask to be consulted when national reports are being drafted, in order to be in a position to verify whether they are comprehensive and accurate.

As for the reports of the international treaty bodies, it goes without saying that members of parliament can obtain them either from their governments or from the secretariats of the committees concerned. The relevant parliamentary committees could even "subscribe" to these reports (on average, for a given country two are produced per year by all the international committees). They would thus know how their national legislation and the conduct of their government and their administration are judged, and could draw conclusions enabling them, for example, to propose the ratification of a certain convention; to propose new laws, or amendments to existing laws; to invite parliament to monitor closely a certain case; or to intervene, officially or unofficially, in a specific case.

Conversely, a treaty body may obtain information from members or former members of parliament. For example, the Committee against Torture may in serious cases carry out a special investigation on the territory of the State in question. Its delegation can interview on the spot not only victims, officials, or representatives of

non-governmental organisations, but also current or former members of parliament. I have myself been involved in such activities, and can tell you that the dialogue was very instructive for both sides.

As for regional organisations, I shall mention only one, as an example. This is the Council of Europe, which has its headquarters in Strasbourg, France, and includes almost all European countries, from Lisbon to Vladivostok, in the farthest eastern reaches of Siberia.

Within the framework of the Council of Europe there has been created, alongside many other bodies, a Commission Against Racism and Intolerance. Every five years, each of the 45 member States receives an in-depth visit from a delegation of the Commission. Following this, the delegation, on the basis of information gathered on the spot and other data received, prepares a report on the extent of racism, xenophobia and discrimination in the country in question. This report, like those of the United Nations treaty bodies, contains recommendations for instance on the ratification of international instruments, the improvement of national legislation, or the conduct of the administration. We can see immediately the interest such reports can have both for members of parliament and for civil society. This is why the Commission sends its reports not only to the governments and to the organisations concerned, but also, personally, to all the country's members of parliament. And in order to facilitate their understanding, these reports, which are disseminated initially in the languages of the Council of Europe, namely English and French, are also translated into the country's official language or languages.

Lastly, I should like to endorse Mr. Despouy's eloquent conclusion, and to add to it a plea of my own: may I recommend to you the ratification of the Optional Protocol for the prevention of torture, a protocol adopted by the United Nations General Assembly in December 2002, and which is certain to increase the effectiveness of the 1984 Convention against Torture.

Here is a case where parliamentary human rights committees can play an important, motivational and decisive role.

▶ **PART 2**

**PARLIAMENTARY HUMAN RIGHTS BODIES AND THEIR RELATIONSHIP WITH THE UNITED NATIONS AND REGIONAL HUMAN RIGHTS MECHANISMS**

– Regional human rights mechanisms and parliamentary human rights bodies

**MR. LEANDRO DESPOUY**

**United Nations Special Rapporteur on the independence of judges and lawyers, and former Chairman of the United Nations Commission on Human Rights**

I shall now give you a brief overview of the inter-American human rights system, but first of all, I would like to recall that at the regional level, it is the European human rights system which is the oldest, with the African system being the most recent.

A very notable aspect of the inter-American system is the manner in which it has evolved and has constantly adapted itself to take into account regional changes.

In the post-Second World War era, Latin America was one of the few regions to be spared by war. So it is not by chance that the region adopted the American Declaration of the Rights and Duties of Man as early as 1948, a few months before the Universal Declaration of Human Rights was adopted. By so doing, the Americas obtained an important legal instrument.

There are two mechanisms within the inter-American system designed to protect human rights, namely: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The recommendations of the Commission have the weight of opinion, while the decisions of the Court are binding on States.

The Inter-American Commission on Human Rights was established a long time ago. At the outset it did not come into being by virtue of a treaty. In fact, it was established on the basis of the Charter of the Organization of American States. It was by operating within the framework of the inter-American system that it gradually became invested with powers and a procedure for presenting petitions was put in place which allowed it *inter alia* to conduct missions of inquiry in countries accused of violating human rights and fundamental freedoms. Only later was a treaty adopted, the American Convention on Human Rights. Virtually all States in the region have acceded to that treaty, with the exception of the United States, which has yet to ratify the instrument.

The Convention conferred upon the Commission the legal basis and authority it needed. The Commission is composed of seven experts, and meets thrice yearly to consider cases submitted to it. Its procedure consists of hearing all parties involved and it goes without saying that certain conditions have to be met for a petition to be deemed admissible. These conditions include the following: (a) *ratione personae*: the person(s) lodging the petition must meet certain criteria; (b) *ratione temporis*: compliance with the period for lodging a petition (time between the petition and the alleged human rights violation); (c) *ratione materiae*: one or several specific clauses of the Convention must be violated; and (d) no other international human rights body can be hearing the same case. Furthermore, all domestic remedies must be exhausted, which means that the Commission will not hear the case as long as it is before a national authority. If the petition is declared admissible, the government of the country in question is contacted. It must respond to the allegations within a stipulated period.

An interesting aspect of this procedure is that petitions filed in respect of violations of the human rights enshrined in the American Convention may be submitted not only by alleged individual victims, but also by groups of persons or non-governmental organisations. The inter-American system, which is governed by international public law, also confers on all States parties the right to lodge a petition against another State. For this to be possible, the States concerned must accept the principle of reciprocity, i.e. they must both recognise the competence of the Commission to hear cases involving States. To date, no such petition has been reported by the Commission. It has heard cases submitted by individuals and organisations only.

In cases when the Commission considers that there has indeed been a violation of human rights, it issues its recommendations to the State concerned. If after a certain period the State in question has taken no measures pursuant to the recommendations, the Commission may make public the report first communicated to the State concerned confidentially, or may take it upon itself to refer the case to the Inter-American Court of Human Rights.

Individuals, on the contrary, are not authorised to take their cases directly to the Inter-American Court. However, any State singled out in a report of the Commission affirming the existence of a human rights violation may turn to the Court regarding the content of the report. In this way, either the State or the Commission may choose to take the matter to the Court.

The procedure applied by the Court is relatively simple. First of all, it must determine whether the petition is admissible and whether it is competent to hear the case. Once this preliminary criterion has been met, the Court rules on the legal basis of the case, and makes a binding ruling. It is not rare for the Court to oblige the State concerned to amend its laws or regulations, free prisoners or award compensation to persons whom it recognises as victims of human rights violations. Moreover, the Court itself determines the kind and amount of compensation to be awarded. The Court may also act in an advisory capacity, and provides a wealth of opinions which have far-reaching ramifications for the national laws of many Latin American countries. Indeed, the American Convention on Human Rights has become firmly anchored in our national laws thanks more to its advisory opinions than its rulings.

Regarding the impact of these procedures on parliament, I would like to point out that whenever an effort is made to avoid bringing a Commission decision before the Court, the Commission and the government concerned hold consultations. The decisions of the Commission and the Court affect the national situation, and also the work of the parliament. However, at the inter-American level there is no permanent system for consultation with parliament, and it is therefore imperative to establish formal institutional ties to that end.

In conclusion, I would like to say that a lot of progress has been made and we must recognise the huge impact that the inter-American system has had on our States in dealing with particularly delicate human rights situations. As we all know, the continent has had its share of highs and lows in this area as it has lived through many a dictatorship. If you think back to the particularly trying moments in Latin American history, you will realise that in fact, the inter-American human rights system was able to weather the storms of the past and to allow us to make huge strides in the area of human rights. Nowadays all States in the region recognise that the inter-American system has offered them decisive support during the darkest hours of their history, and both the Inter-American Commission and Court have made invaluable contributions not only to the implantation of human rights principles, but also to the restoration of democracy.



## **MS. SALIMATA SAWADOGO**

**Chairperson of the African Commission on  
Human and Peoples' Rights**

### **Introduction**

Human rights are today a universally recognised and accepted imperative of public administration, which fully explains why initiatives have been taken in various quarters to establish roots for the concept of human rights and its principles in the major sectors of public life. Africa has of course been a part of this trend.

Since the end of the 1980s when Africa was swept by what some called the Winds of the East (the great changes that affected Eastern Europe, including *perestroika* and *glasnost*), there has been a resurgence of interest in Africa for democracy, human rights and good governance. This contrasts with the practices of most of the previous regimes, which attached only little if any importance to such values.

Those in power in Africa, and also African civil society organisations, encouraged or pressured by their development partners, effected significant change in the means of public administration. Among other things, they gave a fresh impetus to the work of the African system for the promotion and protection of human rights, through the African Commission on Human and Peoples' Rights, which was strengthened.

Furthermore, as human rights became an essential component, and even a requirement, for development and good governance programmes in Africa, parliaments were quite naturally involved in this movement. The establishment within parliaments of bodies and other structures devoted to human rights is therefore an excellent initiative.

We shall now consider the various types of interaction that human rights bodies in African parliaments can, or more aptly should, have with the African human rights system.

### **I. The main African human rights mechanism: The African Commission on Human and Peoples' Rights**

As for any institution of its kind, the composition and means of functioning of the African Commission is clearly set out, in its case by the African Charter of Human and Peoples' Rights and the Commission's Rules of Procedure. Of course, the Commission cooperates with various partners, both in Africa and elsewhere.

#### **A. Composition and functioning of the African Commission**

The African Commission on Human and Peoples' Rights is composed of 11 members who are elected by the Conference of Heads of State and Government of the African Union. They are independent and do not represent States, and they are elected with due consideration for certain informal criteria such as geographic distribution and gender. The Commission currently has five female and six male members.

The Commission elects its officers, including a Chairperson and a Vice-Chairperson. It holds two two-week sessions per year. It also meets in extraordinary sessions when an emergency situation so requires. So far, the Commission has already held 36 sessions, including two extraordinary ones. The sessions are generally held at the Commission's headquarters in Banjul, but they are often held elsewhere, at the invitation of the States parties. In such cases the Commission has an opportunity to make itself known in these States parties and to hold constructive discussions with the country's authorities.

During its sessions, the African Commission attaches a great deal of importance to discussions with States parties, non-governmental organisations (NGOs) and other partners that may attend. The sessions are thus forums for debate and frank discussions on the urgent issues of the day. The Commission subsequently meets in closed sessions to consider complaints of violations of human and peoples' rights that are submitted by States, NGOs and individuals.

As part of the Commission's efforts to promote and protect human rights, its members and special rapporteurs carry out on-site missions to the State parties. In close cooperation with its partners, the Commission also organises seminars and other meetings dealing with human rights on the continent.

## **B. Partnership with States and with civil society organisations**

From the outset, the Commission rightly assessed the importance of working not only with States, but also with NGOs and other partners interested in human rights in Africa.

Indeed, how could the Africa-wide human and peoples' rights institution work without the cooperation of the States that established it, and which were also the only entities that could answer possible allegations (and be responsible for reparation) of violations of human and peoples' rights?

The Commission therefore reserves an important place for constructive dialogue with States parties, and this policy has proven constructive. All African States are now parties to the African Charter except Morocco, which suspended its participation in the Organization of African Unity (the precursor of the AU) in 1982.

Other, more numerous non-state actors - NGOs - have since the very beginning proven to be indispensable partners, as they have made significant contributions even to the establishment of the system itself. As for United Nations specialised agencies, in particular the Office of the United Nations High Commissioner for Human Rights and other interested bodies, the African Commission holds their immense contribution in high esteem and has always cooperated closely with them.

As early as in April 1988, the African Commission established observer status for NGOs. In 1999 a special affiliate status was added for national human rights institutions (NHRIs). These statuses provide well established legal frameworks for cooperation in full transparency between the Commission and its partners.

There are currently over 300 NGOs and similar bodies that have observer status with the Commission, and some 10 NHRIs have affiliate status.

The types of partnership that the African Commission maintains with these bodies vary from the sharing of expertise to material or financial assistance. The Commission is very grateful to its partners for their constant attention and for the progress that, thanks to them, the Commission has made in its work. Clearly, without the constant mobilisation of its partners, the African human rights system could not have attained its current level of activities.

It is now important for the Commission to extend this partnership to parliamentary human rights bodies.

## **II. The concept of human rights in African parliaments**

The commitment of African States to democracy and good governance has paid off in a number of ways. National representation now reflects political reality more faithfully; there is greater parliamentary oversight of government activities, and the oversight is more diverse, in particular as it has been extended to new areas, including human rights.

### **A. Parliamentary representation in the "New Africa"**

In Africa, the idea of national representation is nothing new. Even under the most authoritarian regimes of the single-party era in the 1970s and 1980s, political leaders were careful to have "elected representatives" who

often served more as foils for them than as overseers or critics of government action. Back then, the proposals or decisions of the executive branch were rarely, if ever, truly contested by parliamentarians. In fact, any opposing view was often considered as sedition or opposition, and the person advocating it was treated accordingly.

While the notion of national representation is not new in Africa, the multipartite dimension is. Indeed, democracy is underpinned by multipartism, which is therefore indispensable. Thus, the parliaments of the "New Africa" - those that emerged in the 1990s - are an increasingly better reflection of the actual political composition of States, and that in itself is a good thing.

The new surge of democracy in all African States in the 1990s allows African elected representatives to apply increasing oversight over the executive branch in the fields of finance, law and other sectors falling within their competence. Later, as if it were an afterthought, parliamentarians deemed that they should also exercise systematic and better oversight over the practices of the executive branch relating to human rights.

#### **B. The establishment of parliamentary human rights bodies in Africa, a commendable initiative**

The desire to ensure effective oversight of government at all levels led parliamentarians to set up human rights bodies. Thanks to this trend in favour of human rights, there are now units or other structures in charge of human rights questions in certain ministerial departments (for instance in ministries of foreign affairs and justice).

It is thus completely natural and even quite commendable that our elected representatives should strive to immerse themselves in human rights issues, thus providing the required oversight of the executive branch's work in this field as well.

We do not propose to define here the competence or the work of parliamentary human rights bodies in Africa. However, it is worth noting that they are strategically important for the African Commission and for many other interested partners, not only because of their nature, but also because of the influence they can wield over the various levels of activity of the executive branch. They are therefore a natural and quite special partner of the African Commission, whose objective is of course to promote and protect human and peoples' rights in Africa.

#### **III. The interaction required between the regional mechanism and parliamentary human rights bodies in Africa**

Yet there is this inescapable truth: there is at this point no cooperation between parliamentary human rights bodies in Africa and the African system for the promotion and the protection of human rights. This is a lacuna that must be addressed quickly.

##### **A. The lack of relations between parliamentary human rights bodies in Africa**

During the missions that the African Commission carries out regularly to States parties, the Commissioners and the Special Rapporteurs visit parliaments and discuss various human rights issues with parliamentarians, but so far, no formal cooperation has been established.

The fact that parliamentary human rights bodies are a recent phenomenon in Africa apparently does not explain the total lack of interaction between such bodies and the Commission. Clearly, we simply have not made this click. We hope to do so here and now, thanks to the gracious invitation of the IPU to attend this meeting.

In the light of the above, it is up to all of us to work to "make up for lost time". We can assure this august assembly that the African Commission stands fully ready to engage in as active and intensive cooperation as possible with the parliamentary human rights bodies of Africa. Such cooperation is necessary, and what is more, is justified, for several reasons.



## **B. The need for intensive cooperation between the African Commission and parliamentary human rights bodies in Africa**

There is a critical need for intensive cooperation between the African Commission and parliamentary human rights bodies in Africa, as both parties would gain from it.

Indeed, parliamentary human rights bodies are well placed to play a decisive role in the ratification of legislative instruments relating to human rights, and later to oversee their implementation by the executive branch and other state bodies. I should like to take this opportunity to appeal for the ratification of the African Charter on the Rights and Welfare of the Child, the Additional Protocol to the African Charter of Human and Peoples' Rights establishing the African Court of Human and Peoples' Rights and the Additional Protocol African Charter of Human and People's Rights on the Rights of Women in Africa.

If parliamentary human rights bodies are to discharge their duties with success, it is imperative for their members to have a profound knowledge of the most urgent human rights problems in Africa and the world. In this respect, close cooperation with the Commission (including attendance at its sessions and meetings) would make it possible for parliamentarians to follow and to better understand human rights issues on the continent. For its part, the Commission would thus gain another interlocutor, and one that is particularly well placed within the States parties.

From another point of view, given that the work of the Commission should benefit the peoples of Africa, parliamentarians are undeniably a link between the Commission and the grass roots. Parliaments, which are more aware of the populations' realities, needs and expectations (including those in respect of human rights), can provide better advice to the Commission on the ways and means to respond to them.

As one of the basic functions of the Commission is to consider communications/complaints, parliamentary bodies could effectively assist in monitoring the implementation of the Commission's decisions by States parties, making use of constitutional and other mechanisms that may be valuable in this regard.

One of the difficulties currently encountered by the Commission is its lack of financial and human resources, which results, at least in part, from the irregular payment of financial contributions to the African Union by its member States. Parliamentary human rights bodies, which are well aware of this situation, can therefore act as knowledgeable and well-placed "advocates" to defend the interests of the Commission, in particular by encouraging the States parties to pay their dues to the African Union on time. I call on the African parliamentarians who are here today to use their power to ensure that States pay their contributions and provide sufficient funding for the activities of the Commission, as provided in the African Charter.

### **Conclusion**

From the above it is clear that the establishment of parliamentary human rights bodies in Africa is an excellent initiative in support of the promotion and protection of human rights on the continent. Cooperation between the Commission and these bodies is imperative in the light of the obvious benefits that such interaction would have for both parties, and above all for the people of Africa.

While we may regret that such cooperation has not yet existed, we can also welcome the fact that the parties are now willing to begin to work together.

For its part, the Commission, which firmly believes in cooperation and attaches a great deal of importance to it, will spare no effort to develop functional and lasting relations with the parliamentary human rights bodies of Africa.

Of course, such cooperation must not be restricted to African bodies. As globalisation is a reality in all fields, ideas coming from all quarters must be taken into consideration. Parliamentary bodies of the other regions may make a significant contribution to the work of the Commission. We can only encourage the initiation and development of such cooperation between the Commission and such bodies.



## MR. EDUARD LINTNER

### Chairperson of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe

As Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, I have the privilege to preside over a body that brings together parliamentarians from the Council of Europe's 45 member countries who share a special interest in the field that lies at the core of the activities of the Council of Europe as a whole: to foster the rule of law throughout Europe, and to contribute to the protection of our citizens' human rights, as laid down in the European Convention on Human Rights.

In line with the topic of our panel discussion, I should like to begin with a short presentation of our Committee and its working methods, including some examples of recently treated topics. The second part of my presentation will focus on the relationship between our Committee and the European Court of Human Rights, the Convention's unique judicial enforcement mechanism.

The Assembly is the Council of Europe's parliamentary body that provides impetus for the organisation as a whole, and in particular for its intergovernmental executive organ, the Committee of Ministers. The Assembly's recommendations and resolutions are not legally binding, but in practice they carry a lot of weight, both within the organisation and in its member States.

The Committee on Legal Affairs and Human Rights, which has 82 members, is one of the Assembly's ten specialised committees. Its mandate includes all kinds of legal issues arising in the context of the Council of Europe's activities, but the focus is clearly on the protection of human rights. When an issue is referred to the Committee by the Assembly's Bureau, following a motion supported by at least 10 parliamentarians from at least five countries, the Committee appoints one of its members as rapporteur, who explores the matter and prepares a draft resolution or recommendation addressed to the Committee of Ministers or to the Council's member States. The rapporteurs, who are assisted by a small international secretariat, have the possibility of carrying out fact-finding visits in situ or of organising hearings with experts in order to prepare their reports. The draft resolution or recommendation is first debated and voted in Committee and then in the plenary Assembly or its Standing Committee. Amendments can be introduced at all stages.

Examples of topics recently covered by the Committee - the current work programme includes several dozen items - include the report by my colleague, Christos Pourgourides, who is also Chairperson of the Sub-Committee on Human Rights, on missing persons in Belarus. I mention this topic first because one of the missing persons whose fate Mr. Pourgourides has looked into is a fellow parliamentarian, Victor Gonchar, whose disappearance is also being investigated by the IPU's own Committee on the Human Rights of Parliamentarians. I am pleased to say that our committees have shared information and worked together closely on this matter. Mr. Pourgourides' report, based on meticulously presented evidence, was adopted unanimously by our Committee at the end of January. It implicates leading representatives of the Belarusian regime in the disappearances of opposition politicians and journalists, or in their cover-up. The document is on the agenda of the plenary Assembly at the end of April, and I am quite optimistic that the Assembly will follow our Committee's lead.

Other reports related to human rights issues that were adopted last year include:

- a condemnation of the detention of suspects without sufficient legal grounds by the United States at Guantanamo Bay;
- a strongly worded condemnation of human rights abuses in Chechnya;
- a mildly critical report on the new Bulgarian law on religion, urging its practical application in line with the principles developed by the European Court of Human Rights;
- a resolution in defense of the International Criminal Court;

- a resolution and recommendation to put pressure on Azerbaijan with a view to releasing the remaining political prisoners in this country;
- a report urging abolition of the death penalty in the Council of Europe's observer States (in particular, the United States and Japan);
- a resolution on the case of Grigorij Pasko, a Russian military journalist who became a victim both of substantial legal problems and of procedural injustices, owing to a negative attitude towards critical journalists that can be termed "spy mania", and which extends far beyond the Russian Federation.

The last example brings me to my second main point: the relationship between the Assembly's work and that of the European Court of Human Rights. Mr. Pasko has also introduced a complaint with the Court, and the Assembly cannot and does not wish to interfere with the ongoing judicial procedure. But Mr. Pasko's case has raised legal issues that go far beyond the individual case: the fact that the scope of criminally sanctioned official secrecy can be defined by regulations that are themselves secret makes it possible to intimidate journalists, as they have no way of knowing whether the information they are divulging is considered to be "secret", or not. And the striking lack of procedural protections for the accused before the military courts shows a general need for reform of the military courts procedure in the Russian Federation and in many other countries. In such cases, the Assembly can reach general conclusions and address recommendations to the countries concerned without waiting for the outcome of the procedure before the Court, which unfortunately takes a lot of time. Of course, the Court remains absolutely free to make use, or not, of the Assembly's findings.

This problem of the length of proceedings before the Court leads me to the next very important issue concerning the relationship between my Committee and the Court: the reform of the Court. The Assembly, and first and foremost its Committee on Legal Affairs and Human Rights, is closely associated with the ongoing discussions on much-needed reform of the European Court of Human Rights. The Court must be put in a position to cope more effectively with the rapidly growing avalanche of applications. It would be most ironic if the European Court of Human Rights, which rightly condemns certain member countries for excessive length of judicial proceedings, were itself unable to respect the time limits it sets for national courts. But the right of individual petition, to which the Assembly attaches great importance, must be preserved. The Assembly sees its role in the reform discussion as making sure that - as one says in my country - "the baby is not poured out with the bath", i.e. that the necessary streamlining of procedures does not undercut the possibility of ordinary citizens whose rights are infringed by their home State to find redress in Strasbourg.

For this purpose, the Assembly also exercises political pressure on governments to ensure that the Court receives the necessary resources to properly execute its functions.

In this context, I should also point out the important role that the Assembly plays in providing the Court with its most important resource: the best possible, qualified judges. It is the Assembly which elects the judges of the European Court of Human Rights. The candidatures presented by member States are subjected to careful scrutiny by a special sub-committee of the Committee of Ministers which interviews the short-listed candidates and submits a proposal to the plenary.

Last but not least, the Assembly plays an important role in generating political pressure that is - unfortunately - sometimes needed in order to motivate countries to execute in good time the judgments of the Court. At regular intervals, our Committee appoints rapporteurs to look into the execution of judgments. Currently, my Netherlands colleague Erik Jurgens is in the final stages of presenting a report on the implementation of judgments by Turkey. Turkey is - unfortunately, again - not the only country that sometimes needs a gentle shove to execute the Court's judgments in good time. And it must also be recognised that this country has made a good deal of progress, and not only on this count, in recent years. As regards the implementation of judgments, the Assembly's role is, once again, complementary to that of other instances of the Council of Europe. In accordance with Article 47, paragraph 2, of the Convention, the Committee of Ministers plays a leading role in supervising the implementation of the Court's judgments, and our Committee works closely with this body in fulfilling this important task.

In conclusion, I should like to sum up the role played in the field of human rights by the Parliamentary Assembly, and first and foremost by its Committee on Legal Affairs and Human Rights, as follows:

- The Assembly inquires into human rights problems concerning one or several of its member or applicant States, and addresses resolutions or recommendations proposing concrete improvements to other Council of Europe bodies or to its member States.
- In relation to the Court, the Assembly provides a parliamentary forum to provide political support for the Court's task, including participating in - and at times instigating - discussions on needed reforms, and pushing for the implementation of its judgments. Last but not least, the Assembly also elects the Court's judges.



► **PART 2**

**PARLIAMENTARY HUMAN RIGHTS BODIES AND THEIR RELATIONSHIP WITH THE UNITED NATIONS AND REGIONAL HUMAN RIGHTS MECHANISMS**

- Presentation of a case study (Brazil) on the implementation of international human rights standards at the national level

**MR. GUILHERME ALMEIDA (BRAZIL)**

**Consultant, United Nations Development Programme (UNDP)**

Thank you very much for the invitation to speak about human rights in the National Congress of Brazil, and in particular about the Human Rights Committee of the House of Representatives, the lower chamber of the National Congress. I will share this task with a prominent member of the Human Rights Committee, Mr. Orlando Fantazzini. I will address the mandate and functioning of the Committee and Mr. Fantazzini will speak more about its work and concrete cases.

**Human rights in the National Congress of Brazil: the historical perspective**

Concern for human rights is recent in the Brazilian Congress. The debate was instigated by congressmen and political activists that lived through the military dictatorship, comprised the resistance against it and were victims of arbitrary acts, torture, executions and forced disappearance. For these political leaders, the expression human rights became a shield against repression and violation of the most fundamental guarantees of human dignity.

The re-democratisation process that began in 1985 allowed institutions to be more accepting of and sensitive to human rights. The debate on human rights grew with Brazil's participation in the World Conference on Human Rights, held in Vienna in 1993. The Brazilian State slowly began to incorporate concern for guaranteeing human rights. The Brazilian Congress monitored this process of incorporating human rights into the national political and legal order. The Workers' Party (PT) created a department for subjects related to human rights and citizenship that prepared political activists and leaders to deal with issues related to human rights.

Since 1993, Brazilian States and cities have begun to create spaces within the parliament itself to debate human rights themes and to request that the National Congress create a permanent national forum for these issues. On 31 January 1995, by means of resolution No. 231 proposed by federal representative Nilmário Miranda, and unanimously adopted, the Human Rights Committee of the House of Representatives was established.

The creation of the Human Rights Committee was a watershed in the history of human rights in the country. An old demand of peoples' organisations, congressmen and advocacy groups defending human rights had finally been met.

**Composition of the Committee**

The Human Rights Committee of the House of Representatives has 23 representative members, and an equal number of substitutes. It is directed by a Chairperson and three Vice-Chairpersons. The term of office is one year. In the beginning of each legislative year, on 1 February, the Chairperson and three Vice-Chairpersons are elected. Before the elections, the political parties decide which committees they would like to lead. <sup>2</sup>

<sup>2</sup> In the nine years of the Human Rights Committee's existence (1995-2003), the Worker's Party (PT) held the chair seven times.

Many congressmen were elected as federal representatives in 2002 because their campaigns focused on the fight for human rights. This was the case for the federal representative who received the most votes for the Workers' Party in the State of Espírito Santo Representative Iriny Lopes a human rights activist and one of the leading fighters against that state's organised crime. Iriny Lopes could not run her electoral campaign because she had received death threats and her life was in danger. She could not take part in public meetings or demonstrations. The large number of votes she received was a recognition of a life dedicated to human rights and to fighting the "extermination groups" and organised crime that plague that state.

Many representatives elected in the last elections are human rights advocates and they made it the key point of their political campaigns.

There are 15 employees working at the Human Rights Committee: five analyse cases and accusations, and 10 work in the administrative division.

### **Mandate**

The Human Rights Committee was created to investigate human rights violations and to expedite and streamline the investigative work done by the Brazilian legislative branch.

Until its creation, all of Congress's activity related to the investigation of human rights violations took place in the work of the parliamentary investigation commissions. There was no commission that could receive and investigate human rights violations.

The Human Rights Committee, along with the other standing committees, has its scope of operation described in paragraph XVI of article 32 of the Standing Orders of the House of Representatives, which stipulates that the Committee is competent:

- to receive, assess and investigate accusations relative to threats against or violations of human rights;
- to inspect and follow up government programmes relative to the protection of human rights;
- to collaborate with non-governmental domestic and international bodies that advocate human rights;
- to research and study the situation of human rights in Brazil and worldwide, including publishing and subsidising other bodies of the House;
- to hold public hearings with civil society entities, and to summon federal ministers personally to provide information on a given subject; to grant ministers hearings to expose issues relevant to their ministries, and to forward them requests for information through the Chair.

In addition to the functions listed above, the Human Rights Committee can also take action in fields related to citizenship and human rights.

If a member of the Human Rights Committee wants to manifest his or her opinion on a certain bill, he or she must request that it be analysed by it. This mechanism has already been used many times in respect of bills that are important for human rights, such as Proposal for Constitutional Amendment (PEC) No. 368/96 attached to PEC 29/2000, which establishes federal jurisdiction over crimes against human rights within the scope of the reform of the judiciary branch, or the bill governing the possession and bearing of arms, Bill No. 2787/97, or the bill that governs the National Human Rights Council, Bill No. 4715/94, and so many others. The Human Rights Committee's opinion report completes the process, and is transmitted to the competent standing committee that will analyse the bill.

### **Treatment of complaints and its effectiveness**

The main activity of the Human Rights Committee is to receive allegations of violations. This task gives congressmen a better understanding of how, when, and where human rights violations take place. After receiving and examining the allegations, the Committee forwards requests for action to the competent authorities.

Most authorities do not respond to requests, and this makes it difficult to assess the effectiveness of congressmen's actions. However, based on the feedback given by victims themselves, we can say that the Committee's action in favour of people is often sufficient to stop violations or to produce otherwise satisfactory results. The Committee receives an annual average of 320 new allegations of human rights violations. The largest category of allegations involves violation of the rights of inmates and arbitrary detentions, followed by police violence and rural violence. We have noticed an increase in the number of violations involving vulnerable groups such as Indians, homosexuals and blacks.

The Committee responds to each allegation received by it with official letters and follow-up. On average, three official letters are produced for each allegation received. Requests are directed for example to federal and state public prosecutors' offices, the judiciary branch and state administrations. Each allegation is dealt with through an administrative proceeding for follow-up and monitoring. When there is no answer from the authorities, the Committee sends reminders of its official letters and requests. The answer often comes long after the violation has taken place.

In many cases, however, a single phone call from the Committee can stop the violation. This mostly occurs when a human rights violation such as abuse of authority, threats, torture or police violence is ongoing and the victim is in custody. In general, the aggressors fear the repercussions the case may have, and stop the violence. In some cases, congressmen travel to distant towns just to collect the testimony of victims and their family members and to adopt the necessary measures to repair the harm done.

When monitoring allegations, the Committee works with feedback from the victims and their family members. They tell it whether the violation has stopped and if any action has been taken. The Committee may subsequently demand explanations from the appropriate authorities.

The Committee tries to work with the media so as to foster resonance of specific cases. The press is often interested in such cases and accompanies congressmen in their local inspections and investigations. In recent years, the House of Representatives has been investing in radio and television equipment, thereby facilitating coverage of the Committee's work.

Today, the Committee is publicly acknowledged as the country's main human rights monitoring body. Public officials and institutions are aware that they may become the Committee's next target. As an example, we can cite the case of the former federal police director, João Baptista Campello. He was appointed to office in 1999, and soon the Committee disclosed several cases of torture in which he was involved. The Committee held public hearings, and eventually Campello was asked to resign, which he did. This case and others help show how effective the Committee's oversight and monitoring is.

## **Conclusion**

Despite certain limitations, the Human Rights Committee has, owing mainly to a lack of suitable capacity to perform its monitoring function, the lack of routine inspections and lack of sufficient human rights knowledge of its members. Thanks to its credibility, strong capacity of articulation and connection with NGOs and its ability to assess and produce a good diagnosis of the human rights scene in our country, the Committee is today the national human rights body that is perhaps best placed to make a general and national assessment of human rights. The Committee receives information and allegations from all the country's regions, and maintains permanent contact with all authorities and public institutions. Based on this information, it can assess which states of the federation have problems with impunity and which authorities are neglectful. No other human rights body in Brazil can perform this human rights "ombudsman" function so well. Another strength of the Committee is the work it performs based on the idea that human rights are universal, indivisible and interdependent. The Committee monitors all kinds of human rights - economic, social, cultural, civil and political. However, it gives priority to the defence of civil and political rights, for example by endeavouring to control police violence, torture, extermination groups, urban violence and abuse at prison facilities, since other standing committees of the National Congress also monitor economic, social, and cultural rights. It has even been said by some congressmen that the Committee is the only body that works to defend civil and political rights. The situation is different in relation to economic, social, and cultural human rights, because there are many governmental and non-governmental organisations and social movements involved in their defence.



I would like to conclude by saying that the concept of the universality of human rights creates a new territory. It is not a physical territory, but a territory of knowledge. It is the country of human rights. In his letters from prison, Antonio Gramsci once said: "We must replace the pessimism of reason with the optimism of will".

Thank you.



## **MR. ORLANDO FANTAZZINI (BRAZIL)**

**Member of parliament, Member of the Human Rights Committee of the House of Representatives**

Mr. President, dear colleagues,

I would first of all like to thank the Inter-Parliamentary Union, the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the invitation. As Mr. Almeida said, I will speak about some of the work our Brazilian Human Rights Committee is carrying out.

The majority of the members of our Committee are parliamentarians who are entirely committed to the cause of human rights. Those who do not have this commitment and who have no understanding of the defence of human rights do not remain for a long time members of our Committee.

The importance the Human Rights Committee has gained over the years is very much linked to its cooperation with non-governmental organisations (NGOs) and civil society. In Brazil civil society organisations are very strong and for this reason we always work together with them. One example of such cooperation is the work we did together after the Attorney General threw out a judicial action which our Committee had introduced urging him to take action against organised crime in the province of Espírito Santo. Working with civil society organisations, our Committee exerted pressure on the President of the Republic. He subsequently decided to set up a commission made up of the federal police and representatives of the Attorney General's office to carry out investigations. This was a big victory.

Our Committee does a lot to spread knowledge about international human rights conventions. The people, and even important civil society organisations have not been aware of these treaties. Likewise, we work to spread knowledge about human rights mechanisms, in particular the Inter-American Commission on Human Rights and the United Nations Special Rapporteurs.

An important part of the Committee's work at the time when it was presided over by Mario Miranda, was to promote the ratification of human rights treaties and of the Rome Statute of the International Criminal Court.

We have also introduced the use of so-called "human rights caravans". Their aim is to prompt discussion in the federal states, the federation and society as a whole about certain human rights questions. For example, for 10 years a bill about institutions for the insane was pending before the National Congress, and it was impossible to have it voted upon. Consequently, we organised human rights caravans in the whole country to make people aware of the situation in these institutions, of the real situation of those detained there, the human rights violations of which they were victims and the fact that they did not enjoy minimum standards of detention. The caravans were given large-scale media coverage, and led to a popular outcry about the situation in these institutions. We finally managed to have the law passed after 10 years of debate.

The same occurred with the situation of the elderly. Thanks to a human rights caravan which visited the majority of homes for old people, public opinion exerted pressure on the Congress to adopt quickly a law on the status of these homes. The bill had been pending before Congress for 12 years. It was necessary to make people aware of this problem so as to create favourable public opinion, which exerted pressure on all parliamentarians.

We have two forms of public hearings: On the one hand, we had hearings inside parliament, at which we deal with human rights violations, for example, regarding cases of disappearances which have remained unresolved, and also with questions relating to the drafting of bills for human rights protection. We also hold public hearings in the federal states in which human rights violations have occurred. For example, in certain federal states, we

have cases of children being castrated by satanic sects, and the states in question do not take the necessary action to prevent this from happening. Since Brazil is a federal state, the central government is not competent to investigate and bring to justice those responsible for such acts. However, if we hold public hearings in the federal state in question, we can influence public opinion and exert pressure on the authorities so that they agree to an investigation by the central government's police and judicial authorities in order to put an end to such human rights violations.

For some time now, we have also been holding human rights conferences. Each year, we choose a specific theme for those conferences, for example, torture. As result, we decided to establish a hotline which receives torture complaints from all over the country. In each federal state we have a small organisation which investigates the veracity of those complaints and then sees to it that those responsible for torture are punished. We organise the human rights conferences together with civil society organisations and the human rights offices in the federal states. Today, they determine practically the national human rights agenda; they will soon no longer have a consultative, but a deliberative status. This was decided by the Secretary of State for Human Rights, who was our Committee's President for two consecutive terms, and civil society. For us, this is a big step forward because we will no longer be hostage to state politics in this field. We will elaborate human rights policies ourselves.

Our Committee is also at the origin of the elaboration of national human rights action plans. For example, in 1999, when Brazil did not present its national report to the United Nations Committee on Economic, Social and Cultural Rights, we organised the drafting of a parallel report, which we submitted to the United Nations. This obliged the Government to draft a report. Since then, as a sort of compensation, the Government has established the second national human rights action plan dedicated to economic, social and cultural rights.

I would finally like to mention the work we have been doing for two years to valorise human rights in television. For us, human rights valorisation in the media is very important. We have adopted a slogan which is "Those who finance vulgarity are against citizens". This message is not only meant for the owners of television stations, but also for the people. We tell them not to consume the products of those who produce programmes glorifying the violation of human rights. We have a website, which we maintain with the help of the United Nations Educational, Cultural and Scientific Organisation (UNESCO), where everyone in the country can lodge complaints. We also have a hotline in the House of Representatives specifically for this purpose. People can call and complain about programmes. For example, there are some which use women to advertise drinks. They treat them as sexual objects to satisfy men, and not as human beings. We act not only against programmes which favour gender prejudice, but also racial prejudices. We need programmes which help us to build a culture of peace and tolerance, and not a culture of violence and systematic human rights violations. When we receive a complaint, a group follows it up and makes a report, which we send to the Minister of Justice, the Attorney General's office, television stations and also to the programme's sponsors. We have had some success. A large multinational company was thus obliged to withdraw its support from a programme which broadcast false information, and in which death threats were made against certain persons, including Doctor Hélio Bicudo.<sup>3</sup> We also succeeded in ensuring that judicial sanctions were taken against this programme. However, there are many other shows which still broadcast a message that is contrary to human rights, such as police programmes which defend the death penalty and the use of violence to combat violence, and which encourage vigilante justice. Such programmes prevent progress in human rights. In Brazil, more than 97 per cent of the people have television and watch such shows. When we take a step forward, such shows actually ensure that we take three or four steps backwards. This is why this programme for the valorisation of human rights in television is extremely important for us.

I would like to conclude by inviting you all to participate in a seminar on the International Criminal Court, which our Human Rights Committee will host on 25 and 26 March in Brasilia. It is very important that all States ratify the Rome Statute.

Thank you for your attention.

<sup>3</sup> Hélio Bicudo was a member of the Inter-American Commission of Human Rights and is the vice-mayor of São Paulo.



## **MR. KHEMAIS CHAMMARI (TUNISIA)**

**Human rights expert and former parliamentarian**

I have been asked to speak in this seminar - organised by the Inter-Parliamentary Union (IPU) and the United Nations Development Programme (UNDP) with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) - on initiatives undertaken by UNDP for the National Assembly of Benin. Commissioned by UNDP under the joint UNDP/OHCHR Human Rights Strengthening Programme (HURIST), I carried out, with Mr. Simon Munzu (Senior Human Rights Adviser, UNDP New York), from 18 June to 6 July 2003, a human rights based approach review of UNDP programmes.

The mission consisted in examining UNDP programmes in Benin and the related planning and programming tools of the United Nations system, in order to assess:

- (a) human rights mainstreaming in UNDP development policies and programmes in Benin; and
- (b) the state of implementation in Benin of a common United Nations system strategy on integrating the human rights based approach in the formulation and execution of all development support programmes and projects launched under the auspices of the United Nations system.

As part of the mission, we studied the targets, content and implementation modalities of a subprogramme initiated under the programme of support for good governance and National Assembly capacity building. Setting up a State Budget Review, Oversight and Evaluation Unit (UNACEB) has been a truly promising step. The support had aimed at helping parliament and its members to better perform their legislative and oversight functions, and at strengthening the electoral process in the local government elections (December 2002) and the legislative elections (March 2003) by backing the various bodies responsible for elections management: the National Independent Electoral Commission (CENA), the Constitutional Court, the Audio-Visual and Telecommunications Authority (HAAC) and the Supreme Court.

UNACEB's support to parliamentarians had focused on public finances, tax legislation and budget review. In concert with the national stakeholders, UNDP had initiated discussions on the possibility of broadening the scope of the unit's activities to include raising awareness of human rights issues. In that connection, I was asked at the end of my mission to address members of parliament on the role that they and parliament can play in relation to the protection of human rights. I propose now to reiterate the main ideas of that statement. I shall first discuss (I) the diversity and universality of human rights from a development perspective, and then (II) the desirable or potential contribution of parliament and its members to human rights protection.

### **I. Human rights and development**

1. Human rights are clearly not an ideology, but a set of fundamental legal and ethical principles applicable to individuals, communities and peoples and intended to protect the prerogatives that every human being individually and all human beings collectively are born with, by reason of their dignity as persons and as members of humanity.

Since their proclamation, human rights have therefore been torn between their intended universality and considerations of cultural diversity. The resulting tension, heightened by profound changes in the balance of powers and in the world situation, which are highlighted today by the process of globalisation, has given rise to some strong reactions reflecting the desire to defend one's identity.

For human rights defenders, the universality of human rights does not mean eliminating differences or imposing cultural uniformity. Since the universal draws on the particular, any universal culture is by the same token a culture based on diversity. In other words, the right to preserve the culture by which we have been nurtured and the traditions that have shaped us is accounted for in the very idea that human rights are universal. It is certainly not fortuitous that human rights have been recognised as a fundamental political and ethical standard

in the last half-century within an international community composed of peoples and societies with diverse civilisations, cultures, histories and religions. Universality does not in the least express a Western monopoly over human rights. In fact, what is striking is that strands of thought springing from a varied multitude of sources on all continents have, after thousands of years, converged on an intercultural consensus built on respect for the human person, consideration for his or her dignity and rejection of all forms of discrimination.

In that light, the preservation of cultural diversity and distinctive identity - which is indispensable - should not be used to deny or fail to recognise the universality of human rights standards, but to revitalise intercultural dialogue.

2. For a long time, especially during the cold war, a line was drawn between on the one hand civil and political rights (the right to physical integrity, non-discrimination, individual and public freedoms and the rule of law), and on the other hand economic, social and cultural rights. Happily, that distinction no longer applies.

The insight that the right to development is a human right, together with the emergence of the notions of human development and sustainable human development<sup>4</sup>, mark out a conceptual evolution, culminating with the international community's realisation that better governance is urgently needed at the political, administrative and economic level as a fundamental prerequisite for development. The process is complex and dynamic, and comprises four components:

- the rule of law;
- citizens' participation;
- responsibility and accountability; and
- transparency.

3. Against that backdrop, national governments and the international community resolved "to halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water".

Those forceful commitments were prompted by the awareness that poverty is not preordained, and that it is incompatible with the full enjoyment of human rights, and constitutes in fact a violation of those rights. Without such rights, freedom and solidarity become meaningless, insofar as indigence prevents women and men from exercising their inalienable rights.

Attaining within 15 years the eight Millennium Development Goals (MDGs) agreed upon at the Millennium Summit in September 2000 is a major human rights challenge. The MDGs address poverty; the school enrolment of boys and girls; gender equality and women's empowerment; child mortality and maternal health; combating HIV/AIDS, malaria, tuberculosis and other infectious diseases; the sustainable use of natural resources and environmental protection.

4. Consequently, in all areas, from consolidating democracy and promoting good governance and decentralisation to meeting development challenges - an area where the New Partnership for Africa's Development (NEPAD) aspires to provide new and appropriate solutions - and from attaining the MDGs to implementing peaceful conflict management and conflict prevention strategies, the issues of human rights promotion and protection are more topical than ever. Three years ago, the *Human Development Report* stated: "Human rights express our deepest commitments to ensuring that all persons are secure in their enjoyment of the goods and freedoms that are necessary for dignified living".

<sup>4</sup> In UNDP, *Human Development Report 2000*, human development is defined as "the process of enlarging people's choices, by expanding human functionings and capabilities. Human development thus also reflects human outcomes in these functionings and capabilities. It represents a process as well as an end." By the same token, sustainable human development is an economic, social and cultural right consisting in satisfying current wants without undermining the ability of future generations to meet their own needs.

## **II. How can parliament and members of parliament contribute to human rights promotion and protection?**

In the context outlined, parliament and its members in all of their work, can play a decisive role in promoting and protecting human rights. By taking the right steps and decisions in the following areas, which include legislating (on defence, justice, taxation, education, health, housing, transportation and the environment), approving the budget and overseeing government action, they can affect the human rights situation directly or indirectly and ensure that human rights are not only formally recognised, but also put in actual practice and enjoyed by citizens in their daily activities.

### **1. Legislation and adopting the budget**

1.1. Every debate in plenary sessions or in a parliamentary committee before the adoption or rejection of draft laws submitted by the government is an opportunity to insist on the need to take human rights standards and principles into consideration both in the substance of the texts brought before parliament and in the modalities of their implementation, if they are adopted. Parliamentarians should seek - particularly through their political groups - the opinion of experts capable of enriching the discussion of the texts under consideration and providing insights on their human rights implications. They can also request that persons experienced in the protection of human rights - especially the freedoms and rights of particularly vulnerable groups, such as women, children, and persons with disabilities or diseases (especially HIV/AIDS) - are heard in the appropriate committees.

In many countries, including Benin, once a bill has been voted into law, parliamentarians may directly refer specific provisions of the text to the Constitutional Court.

1.2. Parliamentarians themselves may also introduce bills, particularly on issues related to basic rights. That avenue is not as a rule pursued often enough. In some cases, constitutional prerogatives and/or regulatory procedures for the functioning of parliament may be deliberately restrictive.

1.3. Debates on the budget can offer excellent opportunities to address human rights issues. Over and above technical aspects of budget review, oversight and evaluation, budgets and the options and priorities on which they are based can be examined from a human rights perspective. That is a good way to address human rights related questions that are not explicitly on the agenda. For instance, the ratification of specific international human rights conventions may be brought up when the foreign affairs budget is discussed.

### **2. Oversight government action**

2.1. An entire range of means for providing oversight of government action is available to parliamentarians: written questions, oral questions (with or without debate), urgent questions, emergency debates, and parliamentary fact-finding, investigation and monitoring committees.

The use of such procedures:

- brings parliament and public opinion closer together;
- builds effective contact between parliament and population groups exposed to unwarranted or inequitable treatment; and
- motivates the government to take, if necessary, corrective measures in respect of the population's rights and living conditions.

2.2. This component of parliamentary activity can be of particular interest to non-governmental organisations (NGOs). For instance, a workshop organised with UNDP support on building NGO capacities to promote good governance in Benin contained a module on "available legal courses of action", including, in addition to the procedures previously mentioned, recourse to the provisions of the rules and regulations of the National Assembly on petitions (rules 121-125). If accepted, a citizens' petition may give rise to a parliamentary debate in a standing committee - for issues related to freedoms, in the Committee on Laws, Administration and Human Rights - or even in the plenary.

### **3. Emphasising cross-cutting themes, in particular the question of gender**

Human rights can be promoted by raising awareness of cross-cutting issues, particularly those related to gender. Women's rights and empowerment are key areas to address in all debates on freedoms and on economic and social development policies. It is crucial to raise awareness of "gender equity" and "gender and development" aspects. The State Budget Review, Oversight and Evaluation Unit has decided to take that approach as a matter of priority.

Issues related to any group that is particularly vulnerable, such as people with disabilities, are another set of cross-cutting concerns. Despite achievements in that area, progress will remain limited as long as there is no systematic policy to combat exclusion, ensure the exercise of the rights of such groups and provide them with equal opportunities.

### **4. Bringing national legislation into conformity with international law**

Bringing national legislation into line with the provisions of international conventions and following up on reports submitted by the various countries to the monitoring bodies of human rights treaties is another relevant area of action.

4.1. In many cases, such dovetailing requires harmonising national texts, which often contradict each other. Under the Constitution of Benin, the provisions of international conventions to which the country has acceded take precedence, after ratification and publication, over domestic legislation. Bringing national legislation into conformity with international commitments involves a vast area of action directly related to parliament's legislative function.

4.2. Benin, for instance, has signed and ratified the fundamental human rights conventions and covenants at the levels of the African region and the United Nations system. Seven of those instruments have an international mechanism for monitoring implementation. By ratifying them, Benin has committed itself to submitting periodic reports to the African Commission on Human and Peoples' Rights and to six United Nations treaty bodies.

Yet, in Benin and a number of other countries, there seems to be no mechanism for parliament's contribution to the preparation of the reports. In fact, parliament has been apprised neither of the national reports submitted by Benin nor of the final observations and recommendations issued by the United Nations monitoring bodies.

It is certainly appropriate to set up a mechanism ensuring that parliament is regularly kept abreast of work accomplished in that area.

4.3. The fact that the monitoring bodies' observations and recommendations - published on the OHCHR website - contain suggestions for legislative action and the conditions for accession to international conventions makes the establishment of such a mechanism all the more necessary, since those suggestions obviously concern parliament, whose main function is the adoption of legislation.

### **5. Defending parliamentarians' rights**

Lastly, there is the area of protecting the rights of parliamentarians. Ensuring such protection is part of the ordinary business of the bodies responsible for parliament's operational management. Nevertheless, it is appropriate to stress the need to provide parliamentarians with sufficient safeguards built into procedures for waiving parliamentary immunity. Special vigilance is called for in this regard in order to forestall abuses, particularly when one political party has become predominant or hegemonic.

### **Conclusion**

I hope to have shown convincingly that parliament and parliamentarians can play an active role in human rights protection. In certain circumstances, parliament is - in word and deed - the guardian of citizens' fundamental human rights. Accordingly, its contribution is essential to building a legal environment conducive to the effective exercise of those rights.

The provisions of the Universal Declaration of Human Rights are, of course, a "common standard of achievement", to be implemented progressively. At the same time, however, the promotion of the rule of law and human rights as a whole in everyday reality is dependent inter alia on the resolve and commitment of the main stakeholders. Parliament, one of those protagonists, is called upon to play a decisive role in that area.

All too often, human rights defenders are regarded as impatient and impetuous agitators or utopians. A genuine partnership with parliamentarians can help to change that image.

In that connection, it is fitting to remember the words of Max Weber, the sociologist: "All historical experience confirms that mankind would not have attained the possible, if time and again it had not reached out for the impossible".

Indeed, what will tomorrow be possible, is today perceived as impossible.

That is why, despite the haunting reality of human rights violations; despite poverty, famine, disease, ever more armed conflicts and rising intolerance; despite the absurd, pathetic expressions of racism, xenophobia and rejection of others, Martin Luther King's dream is not a vain utopia.

"I have a dream", he cried. He dreamt - I quote - "of a blue planet where life is venerated in all of nature's kingdoms, where human beings live and work in harmony, and all children - well nourished and taken care of - go to school; where the serene radiance of nature, culture and science is as evident as the recurrence of spring; and where only grandfathers can still remember, in the darkness of night, a far-off time when men refused to recognise other human beings' rights".

Some will certainly voice reservations, denouncing the dream as an expression of smug and voluntarist optimism. But that would be inaccurate. Human rights defenders are rather akin to Pessoptimist, chief character in a series of short stories by the late Palestinian writer Imil Habibi. The nickname signifies "optimist-pessimist"; and, in regard to our commitment to the promotion and protection of human rights, I am - we are - willing to accept the epithet "pessoptimists" or "optipessimists".

Thank you for your attention.





▶ **PART 3**

**PARLIAMENTARY HUMAN RIGHTS BODIES AND THEIR RELATIONSHIP WITH NATIONAL HUMAN RIGHTS INSTITUTIONS, NGOs AND CIVIL SOCIETY**

- Parliamentary human rights bodies and national human rights institutions: Working together to promote and protect human rights



**PROFESSOR EGON JÜTTNER (GERMANY)**

**Member of the Committee on Human Rights and Humanitarian Aid of the German Bundestag**

I intend today to concentrate firstly on the work of the German parliament's Committee on Human Rights. I will then move on to briefly outline the tasks and organisation of the German Institute for Human Rights in Berlin. The Institute and the Committee work together to promote and protect human rights.

The Committee, which is made up of 17 members of the German Bundestag, has decided that its deliberations in the current fifteenth legislative term should focus in particular on the following:

- the further development of national, European and international instruments to safeguard human rights, and legal and political steps to deal with human rights abuses;
- German human rights policy in multilateral or bilateral frameworks;
- aspects of foreign, development and security policy, and economic and external trade policy of relevance to human rights;
- aspects of asylum and refugee policy of relevance to human rights and policy on minorities and racism;
- issues concerning humanitarian aid.

The spectrum of work of the Committee on Human Rights and Humanitarian Aid ranges from taking note of and discussing international reports, to receiving briefings and information from the federal Government on the human rights situation in other countries, and deliberating on and adopting motions tabled by the different parliamentary groups represented on the Committee. Representatives of the responsible ministries, as well as individual domestic and foreign experts, attend meetings and brief the Committee on such matters. The members of the Committee can feed this information into their work in the form of motions, interpellations and resolutions in parliament.

In addition, like all the committees, the Committee on Human Rights deliberates on draft bills of the German Bundestag and items related to the European Union (EU), as well as motions tabled by the Bundestag parliamentary groups, the Bundesrat or the federal Government. It states its own position on these items from a human rights point of view as a "committee which has been asked for an opinion". Because of the Committee's own numerous activities, however, it is being designated as the committee responsible for an increasing number of items.

One way in which the Committee can exert influence is through its right - which it does indeed invoke - to call on the government to take any action possible on specific cases. This often happens during its meetings, when high-ranking government officials are present to hear such calls directly.

One of the main tasks of the Committee on Human Rights is to scrutinise the work of the government. To this end, the members of the Committee use various parliamentary instruments. The most commonly used parliamentary instruments include motions for resolutions and so-called minor interpellations.

In motions for resolutions, views on certain human rights issues are set out, and the federal Government is called upon to take measures to solve the problems that are described. These motions are discussed and voted on both in the Committee and the plenary of the Bundestag.

Minor interpellations, generally drafted by individual members of the Bundestag and submitted to the federal Government via the parliamentary groups, give members of the Bundestag the opportunity to obtain a statement of opinion from the federal Government on human rights abuses in particular countries. These minor interpellations, which the federal Government must answer within 14 days, are among the most important instruments which the opposition can use to scrutinise the work of the Government.

In addition, Committee members are able to obtain first-hand information about the current human rights situation or the effectiveness of German development assistance projects in particular countries in the framework of official trips abroad. In their meetings with government representatives and other political decision-makers in host countries, they openly and directly bring up the subject of human rights violations. Meetings with opposition representatives or minorities give them the opportunity publicly to express their solidarity with those affected, and not only to provide moral support, but also to attract media attention to the problems in question.

In the current electoral term, the protection of human rights defenders is a major concern of the Committee. Again and again we have observed that not only parliamentarians, but also lawyers and journalists who stand up for human rights in their countries, themselves suffer from human rights violations, in some cases disappearing or being tortured or detained. The Committee therefore held a public hearing on the *Protection of human rights defenders under threat*, at which experts from different countries spoke. Following this, a debate on human rights was held in a plenary session of the German Bundestag. A cross-party motion on the same topic was unanimously adopted, in which the parliamentarians committed themselves in future to raise the issue of parliamentarians under threat or being held in detention, within the framework of their bilateral contacts in Germany and abroad. The basic idea is that parliamentarians who can exercise their office in safety should help their foreign colleagues who are at risk.

It is characteristic of the work of the Committee on Human Rights that all parliamentary groups represented on the Committee work together constructively. Unlike other committees, this body has hardly any party policy or ideological rifts. Motions from opposition and government parties are often drafted as joint motions in order to give the issues in question greater weight.

As far as the relationship with other parliamentary bodies is concerned, there is close interaction for draft laws and motions, but these are discussed both in the responsible committee and in other committees which have been asked for an opinion. As a result, the Committee makes a recommendation which is discussed and put to a vote in a sitting of the German Bundestag.

As for relations with external bodies, many non-governmental organisations (NGOs) seek to engage in dialogue with Committee members in order to inform them about the human rights situation in individual countries or about other specific issues. The dialogue takes place either in the form of private hearings in the course of a regular Committee meeting, or it is held outside Committee meetings, with the members of parliament interested in specific issues.

Finally, let me mention that the Committee has played a decisive role, for example:

- in the establishment of the German Institute for Human Rights;
- in recognising non-state and gender-specific persecution as grounds for asylum under the Immigration Act;
- in ensuring that increased attention is paid to issues of human rights in the German parliament; and
- in drawing attention to the Government's reports on arms exports.

Allow me to finish with a brief description of the German Institute for Human Rights, based in Berlin. It was founded in 2001 on the basis of a Bundestag resolution adopted with the support of all parliamentary groups. It currently employs nine full-time staff members.

According to its statutes, the Institute is to provide information about the human rights situation in Germany and abroad, and contribute to preventing human rights violations and help promote and protect human rights. In order to achieve these aims, it is to carry out the following tasks:

- Provision of information and documentation on human rights;
- Advising on policy: The Institute's practical orientation is intended to help it provide advice on policies on human rights issues and to recommend strategies for action.
- Education work in Germany relating to human rights: One of the Institute's objectives is to help to raise public awareness of human rights considerations by formulating suggestions for school curricula, becoming involved in the qualification process for experts in civilian conflict management in respect of human rights issues, and drawing up training programmes and material for human rights education in sensitive areas (for example for the police, prisons and psychiatric facilities).

The Institute, which is a non-profit civil society association, receives its basic funding from the State, but it is nonetheless politically independent.





## **MR. GEDIMINAS DALINKEVICIUS (LITHUANIA)**

**Chairman of the Committee on Human Rights  
of the Parliament of Lithuania**

Lithuania has achieved remarkable progress in the area of human rights protection since restoration of independence in 1990. In 1991, Lithuania pledged to follow the principles of the Universal Declaration of Human Rights and acceded to the International Charter of Human Rights, thereby committing itself to respect and protect human rights in all aspects of life.

The Constitution of 1992, approved in a referendum, proclaims the basic values of the nation, including respect for fundamental human rights and the duty of the state to protect them. These principles were subsequently infused into national legislation. In addition, Lithuania took on obligations under major international human rights treaties, thus establishing a solid legislative basis for human rights protection. At present, the challenge is to translate legal commitments into practice and to create an environment in which people are aware of their rights and respect the rights of others.

Lithuania has considerably advanced in the development of institutional structure for human rights. Apart from the courts which are the first institution to which aggrieved persons can turn to obtain justice, if they feel aggrieved by an action of any State institution, new institutions were set up, including the Lithuanian Centre for Human Rights, an NGO, established in 1994 and the Parliamentary Ombudsman institution which was established in 1995 following the practice of many European and other countries. Its specific task is to protect human rights. According to the Constitution, the Ombudsman is competent to investigate complaints of citizens concerning an abuse of power by State officials and local government officers. The Ombudsman office has the special right to submit applications to the Court to dismiss officers from their position.

When it turned out that the competence of the Seimas (Parliament) ombudsman office was not wide enough and did not encompass violations of human rights in certain spheres, our Parliament established two other Ombudsmen institutions, the Office of the Ombudsman for Equal Opportunities of Women and Men, set up in 1999, and the Children's Rights Ombudsman institution, set up in 2000.

The Ombudsman for Equal Opportunities of Men and Women Lithuania operates on the basis of the Law on the Equal Opportunities of Women and Men, which came into force in 1999, and which was the first of its kind in Central and Eastern Europe. The Law empowers the Ombudsman to investigate complaints and initiate investigations related to gender discrimination. The Office, which was established with support from UNDP, has been successfully advancing the cause of gender equality.

Following the findings of the baseline study on the human rights situation in Lithuania, which recommended to expand the mandate of the Ombudsman for Equal Opportunities of Women and Men, the Seimas Human Rights Committee, in collaboration with the Ombudsman and UNDP embarked on a project aiming at the inclusion into the Law on Equal Opportunities of additional grounds of discrimination other than gender based ones. The new law, which was passed in 2003, prohibits all direct and indirect discrimination related to age, sexual orientation, disability, race and ethnic origin.

As I said earlier, we have also set up an Ombudsman on the rights of the child. This institution monitors the implementation of the provision of the Constitution and the Conventions ratified by Lithuania and other legal acts regulating the protection the rights of child. The Ombudsman supervises and controls activities of institutions related to the protection rights of child and proposes measures to the Parliament and the government to improve the protection of child rights and children's legal interests.

There is much cooperation between the Parliament and the ombudsman offices. In particular, Parliament is entitled to receive and to examine the reports of the ombudsman and to adopt decisions in this respect. If necessary, the Human Rights Committee of the Seimas may submit a draft resolution on the work of the Ombudsman to the Parliament for consideration.

The Human Rights Committee is entitled to submit proposals concerning the structure and the funding of the Ombudsman institution and to submit conclusions to the Parliament for consideration.

During 2003, the Seimas Ombudsman received about 2000 complaints from citizens. The majority of complaints concerned property rights and land management issues which were more than 35% of all registered complaints. The complaints concerning the action of officers of correction institutions amounted to 26%. Complaints against action of police officers amount to 13%.

All Ombudsmen institutions cooperate with the State, various institutions, NGOs as well as IO. They encourage and promote the activities of NGOs that assist them in their tasks. They are today essential elements of human rights protection and promotion in Lithuania.



## **MR. OREST NOWOSAD**

**Coordinator, National Institutions Unit, Office of the United Nations High Commissioner for Human Rights**

I am pleased to take this opportunity to speak with you about the relationship between national human rights institutions and parliamentary human rights bodies.

The Vienna Declaration and Programme of Action adopted in 1993 at the World Conference on Human Rights affirmed that “democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives”. In this context, “the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached”. It is very much the role of national parliaments or assemblies, elected by the people and for the people, to ensure that human rights are universally applied within their jurisdictions and that oversight is provided.

A resolution adopted in 1992 by the Commission on Human Rights had set out standards governing national human rights institutions (the Paris Principles), that were later to be unanimously endorsed by the United Nations General Assembly, in December 1993. Participants in the World Conference on Human Rights encouraged the establishment of national institutions in conformity with those principles.

In his report of 9 September 2002 concerning the reform of the United Nations, United Nations Secretary-General Kofi Annan said:

“The capacity of the United Nations to help individual countries to build strong human rights institutions will be strengthened. ... Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the Organisation. These activities are especially important in countries emerging from conflict.”

Within the Office of the United Nations High Commissioner for Human Rights we very much support, encourage and assist in the establishment of national human rights institutions which comply with the Paris Principles. This is done in a number of ways, including the provision of legal advice, assistance in ensuring that the operations and management of the institution permits its effective and meaningful functioning, and capacity-building in substantive and operational areas of interest.

The Paris Principles, as minimum standards, guide the establishment, competence, responsibilities, composition, independence, pluralism, methods of operation, and quasi-judicial activities of such national bodies. Very briefly, they include:

- The importance of independence guaranteed by the institution’s constitution and/or statute. It is important that while the general parameters concerning the national institution should be provided in its constitution, a formal legislative framework must govern the institution’s actual functions, powers, competencies, appointment and dismissal procedures and privileges and immunities;
- The importance of financial and operational independence, ensuring that the institution is at arms length from the government, including in its composition;
- The importance of national institutions having a broad-based mandate, which should include the promotion and protection of all human rights, whether they are civil, political, social, cultural or economic;



- The need for pluralism in the institution's composition and in representative bodies, thus reflecting the needs of all sectors of society;
- The need to ensure that the institution and those within it are accessible to the public which it serves - physically, socially, linguistically, culturally and financially; and
- The need for national institutions to work closely with non-governmental organisations (NGOs) as part of a larger family of institutions that promotes and protects human rights.

It is important that the institution be fully credible and that it be established in an open and transparent manner. Broad consultation on the nature of the institution is required.

National human rights institutions, because of their legal mandate and the authority vested in them through parliaments, have a legitimacy which other organisations may not. Increasingly, as they are strengthened, national institutions are seen as a critical entry point for contact between civil society and state bodies. Indeed, national human rights institutions along with other institutions such as parliaments and the judiciary, are recognised as central to the strengthening of democracy.

Given the mandates of such bodies, what is the role of parliaments and parliamentary committees in relation to them? Let me highlight just a few possibilities.

### **Establishment**

It is important that parliamentary bodies be well versed in the Paris Principles and what a national human rights institution is, as it is through parliaments that most national human rights institutions are established. Hence, parliamentarians need to ensure that appropriate legislation is drafted regarding national institutions, and that it is compliant with the Paris Principles. Similarly, many national human rights institutions receive their budgets from parliament. It is critical that a national institution be adequately resourced to undertake its mandate, and that parliament play an informed role in determining an appropriate budget for it. Without such resources, the institution most probably cannot meet the expectations of either parliament or the public it serves. Hence the responsibility for the success of a national human rights institution is a shared one.

### **Appointments**

Particular attention needs to be paid by parliament to the appointment process for the national institution's members. Increasingly - and this is a welcome development - representatives of parliament have a direct role in this process, through selection committees that nominate candidates for the post of head of the national institution. In some instances, this is done through a parliamentary committee. Either the head of the institution is selected, or as in the case of Thailand, the entire membership of the Commission is selected through such a process. Calls for nominations are made publicly, with the selection committee then determining which candidates actually qualify for the post. Whatever appointment process is utilised should focus on transparency, inclusion, professionalism, integrity and expertise. Similarly, the appointment should be non-partisan.

### **Accountability and monitoring**

As parliaments have an oversight role, and most national human rights institutions are established by parliamentary legislation, it is clear that there is an important role to be played by bodies such as those that you represent. National human rights institutions are generally required to submit annual reports to their parliaments highlighting their work, major human rights trends, and the various recommendations they have made and any follow-up undertaken. It is important that these reports be discussed and reviewed jointly by parliament and the institution in question, and not simply be tabled. The use of the reports can provide a measure of accountability. In addition, however, they can contribute to highlighting the need for legislative reforms, for new legislation, for action to provide remedies and for follow-up to recommendations so as to prevent any further violations of human rights.

Parliamentary human rights bodies and national human rights institutions can complement one another, in particular when it comes to monitoring violations of human rights. Indeed, many parliamentarians receive

complaints from their citizens, which they either deal with directly or pass on to a national human rights institution for action. As parliamentarians also have offices at the regional and local levels, they can play an important role in feeding information on issues of concern to the national institution for its consideration.

### **Harmonisation of legislation and international standards**

The Paris Principles explicitly call for national human rights institutions to promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation. Similarly, under the Paris Principles, national human rights institutions are tasked with encouraging the ratification of international human rights instruments and ensuring their implementation. Parliaments, as legislatures, can have a clear strategic link with national institutions in regard to these two areas. Indeed the efforts of parliaments and national institutions can be complementary in ensuring that the national human rights protection system is strengthened through legislation.

There are thus a number of ways in which parliaments can interact with national human rights institutions, and indeed in which both institutions can mutually reinforce one another. Where the process of engagement is only beginning, regular meetings may be held, for example on thematic issues, annual reports and/or special reports. This might then lead to some joint initiatives for the promotion and protection of human rights.



► **PART 3**

**PARLIAMENTARY HUMAN RIGHTS BODIES AND THEIR RELATIONSHIP WITH NATIONAL HUMAN RIGHTS INSTITUTIONS, NGOs AND CIVIL SOCIETY**

- Parliamentary human rights bodies, NGOs, the media and civil society: How best to cooperate



**MS. MARIE-JOSÉ LALOY, SENATOR (BELGIUM)**

**Chairperson of the Human Rights Committee of the Belgian Parliament, Substitute Member of the IPU Committee of the Human Rights of Parliamentarians**

The words "human rights" are read and heard most of the time in the expression "human rights violations".

If anything, this is proof that such rights are still being flouted and that any initiative to make them flourish and be respected can only be useful.

It is also proof that it is impossible for parliaments to be too concerned about such rights. I will humbly illustrate, through a few concrete examples, what parliamentary committees are doing to make human rights emerge from the miasma of ostracism, obtuse ideas, inanity, violence and cowardice that surrounds them.

In the Belgian parliament, in both the House of Representatives and the Senate, there are basically three committees that work to make this noble objective a bit less utopian either through specific initiatives or by using the panoply of legislative power. These three bodies are the Human Rights Committee, the Justice Committee and the External Relations Committee. None of these bodies has the power to hold inquiries, and except in special circumstances, their sittings are generally held in public.

**Human Rights Committee**

While the other two bodies are parliamentary standing committees that are empowered to request that the relevant ministers be present for questioning, to adopt motions or resolutions and to consider legislative and government-sponsored bills, the Human Rights Committee, as an informal body with no official government oversight functions, can only "invite" the competent ministers to present explanations, and has no competence to consider bills. It can only adopt resolutions and recommendations that must be acted upon by the standing committees, and it is first and foremost a forum for discussion of topical questions.

**Justice Committee**

The second committee that takes initiatives and deals with questions related to human rights is the Justice Committee, which is one of the standing committees that I mentioned before.

In respect of human rights, this multidisciplinary committee is different from the External Relations Committee, insofar as it deals with human rights issues within the country, while by definition the External Relations Committee deals with human rights problems in other countries, and is especially involved in considering the ratification of international human rights instruments.

Because it is not mandated specifically to deal with human rights, the Justice Committee, like the External Relations Committee, generally deals with respect for or the violation of human rights when the question arises in the discussion of some other aspect of government policy or when it considers a given draft text presented by one of its members or by the Government. Among the issues it addresses are the situation of detainees and asylum seekers, immigration policy, the situation of juvenile offenders, judicial guarantees provided by the code of criminal procedure.

It also may use all possible sources of information to ensure that it is up to date on everything happening or being prepared in the field of human rights, and regularly receives a series of reports that the Government is obliged to send it under certain laws, including the Act establishing a Centre for Equal Opportunity and the Struggle against Racism, the Act to repress human trafficking and child pornography and the Act for the protection of privacy in the processing of personal information.

When necessary, the Committee has no qualms about carrying out visits to take stock of a given situation. It has at various times visited certain penitentiaries to investigate conditions of detention.

The Justice Committee considers bills proposed by legislators or by the Government in its field of competence before they are submitted to the plenary. I can cite two concrete examples in which this Committee took part, or is currently participating, in the drafting of legislation to promote respect for human rights.

Firstly, there was the Act of 28 January 2003 aimed at granting the family residence to spouses or legal cohabiters who have been the victims of domestic violence committed by their partners. The Act amended article 410 of the Criminal Code. It improves the protection of victims of domestic violence between couples, both in terms of civil and criminal law. It is one of the elements aimed at giving concrete expression to the Federal Plan of Action to stop violence against women, which was adopted by the Government on 11 May 2001, and it is entirely in keeping with Recommendation (2002) 5 of the Committee of Ministers of the Council of Europe, on the protection of women against violence.

The other legislative initiative that I think illustrates this participation is a bill that sets out the principles for the prison administration and the legal status of detainees, which was initially submitted by 10 members of the Justice Committee of the House. Its aim is to establish a modern legal framework governing the legal status of indicted detainees, defendants, the accused and sentenced prisoners while they are in custody, and to define the resulting principles for the functioning of the prison administration. From a human rights perspective, this is of interest mainly because it is intended to place in a legal enactment rules that have so far been set almost exclusively by the executive, in particular by the prison administration, and because its authors designed it to be in keeping with the European Prison Rules adopted by the Council of Europe in 1987, and in keeping with numerous recommendations issued by the Council. It is worthy of mention that the prison administration made an effort to observe the principles contained in the legislation even before it was adopted.

### **External Relations Committee**

The third committee dealing with human rights is the External Relations Committee, which is another standing committee. Its means of influence are the same as those of the Justice Committee (on 2 March, the External Relations Committee held a hearing with representatives of Amnesty International in preparation for the 60<sup>th</sup> Session of the United Nations Commission on Human Rights). However, since in most cases this body deals directly or indirectly with human rights problems outside of the national territory, and since it is much more difficult to address such problems using Belgian domestic legislation, the committee makes more extensive use of resolutions, through which it more or less establishes objectives for action by the Government.

It would be wrong to think that the resolutions adopted by the parliament are for it no more than a means of salving its conscience, and that the wishes they express are lost in the bustle of politics like so many fine words. The case of one resolution, adopted in April 2002, provides a convincing argument against that hypothesis. I will now describe the requirements that it contained and the effects that it produced.

The resolution addressed the conclusions of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 31 August to 7 September 2001, and their implementation by Belgium.

The parliament, considering in particular that racism, racial discrimination, xenophobia and intolerance were obstacles to the full development of human rights, a negation of the obvious fact that every human was born free and equal in dignity and in rights, a hindrance to friendly and peaceful relations between peoples and States and a threat to democratic societies and their fundamental values, requested the Government to do the following, in respect of the actions falling under the remit of the Ministry of Foreign Affairs:

- To encourage, through diplomatic contacts, the effective implementation of the Durban Programme of Action at both the international level, through the United Nations, and at the regional level, through the Council of Europe and the European Union (EU);
- To cooperate with the Centre for Equal Opportunity and the Struggle against Racism in order to study the Durban Programme of Action and to propose ways of translating it in concrete terms into Belgian law through various legislative and regulatory initiatives and through specific activities described in a multi-year action plan;
- To foster dissemination of the conclusions of the Durban Conference in schools;
- To make use of its diplomatic influence so that all States bring perpetrators of racist crimes to justice; and
- To encourage the universal ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on 21 December 1965, and all other international instruments on this subject.

Following the adoption of this resolution, the Government informed the parliament, through the Ministry of Foreign Affairs:

- That at the international level, Belgium had actively taken part in the negotiations that had led to the adoption by the United Nations General Assembly of three resolutions respectively dealing with the follow-up to the Durban Conference, with the measures to take to combat racism and racial discrimination, and with the third international decade against those scourges, and that it had made a significant contribution to ensuring that these three initiatives would be co-sponsored by the EU; that at the regional level, Belgium had campaigned in the Council of Europe for the concrete implementation of the Durban provisions and had, with other States, succeeded in ensuring that the Secretariat of the Council of Europe would be instructed to encourage its sectors to incorporate the Conference's conclusions in their activities;
- That contacts had been made with the Centre for Equal Opportunity and the Struggle against Racism with a view to drawing up a national plan of action;
- That a book containing the Durban Declaration and Plan of Action would soon be distributed, in particular in schools, for youths 15 to 18 years of age;
- That Belgium would continue to work at the international level for the effective implementation of the measures decided upon at the Durban Conference in order to strengthen the legal framework for the struggle against racism; and
- That in its political dialogues, the Belgian Government stated that one of its concerns of the highest priority was the universal ratification of international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination.

Thus, each of the requirements set out in the parliament's resolution elicited a positive response from the Government.

Unlike my first example, my second example concerns a concrete, specific situation in which there have been many human rights violations: the situation in Algeria.

In its resolution on the situation in Algeria, the parliament, having noted that a large number of the provisions contained in international human rights conventions were being violated both by the Algerian Government and its army and by the terrorist groups, requested that the Government:

- Intervene with all members of the EU so that the criteria defined in the EU Code of Conduct would be scrupulously observed in respect of Algeria;

- Intervene with the Algerian Government to ensure that democratic rights in respect of freedom of the press and freedom of movement would again be respected;
- Assist the Algerian justice system through the establishment of national criminal courts, so that it would be able to dispense justice with respect for the rule of law;
- Monitor the application of the Geneva Convention on the Status of Refugees in respect of all Algerian citizens;
- Continue to include on the agenda of bilateral meetings between Belgium and Algeria the question of observance of human rights and the strengthening of the State based on the rule of law.

In substance, the Ministry of Foreign Affairs responded point-for-point to the above requests, as follows:

- The official conclusion of the Association Agreement between the EU and Algeria would ensure a constant dialogue and follow-up with Algeria on human rights and other matters, such as the fate of people who disappeared and those in detention;
- The Belgian Government took every opportunity to raise the question of the restoration of freedom of the press and freedom of movement with the Algerian Government;
- The Belgian Government was at Algeria's disposal for assistance in the field of justice, and in this field the Association Agreement contained provisions that should meet the requirements of parliament;
- The Belgian Government ensured that despite the five-fold increase in the number of asylum requests from Algerian nationals, the Geneva Convention was applied in a completely objective manner;
- Observance of human rights was of prime importance in Belgium's bilateral relations with Algeria. Taking into consideration that despite the Algerian authorities' very real desire to improve the human rights situation in their country, there were still many shortcomings, the Belgian Government would continue to include the question of observance of human rights and the strengthening of the State based on the rule of law on the agenda of bilateral meetings; furthermore, it would ensure, as part of the bilateral development cooperation programme to be concluded with the Algerian Government, that significant means were made available to Algeria for the strengthening of the State based on the rule of law.

In this case, rather than eliciting responses from the Government, the parliament's resolution, which essentially corresponds with the options already taken or considered by the Government, has the effect of confirming the justification for such decisions and encouraging the Government to continue along the same lines.

My third example, which also addresses a concrete and specific situation, is of particular interest because of the nature of the main response to the resolution, which addressed the role of the Belgian presidency of the EU and European support for the peace process in Colombia.

While the resolution's preamble and the parliament's demands are dwarfed by the litany of attacks, kidnappings, massacres and cases of torture and trafficking in Colombia and also by the Colombian Government's failure to observe its international commitments, they are nonetheless particularly long and well developed. I will therefore restrict myself to mentioning some of these demands indirectly, insofar as they are reflected in the main response that ensued.

The main response was the fact that the Belgian presidency of the EU succeeded in adopting a Declaration by the Presidency, on behalf of the European Union, on the peace process in Colombia. The Declaration, adopted following discussions with our European partners, obviously does not reflect exactly the desires expressed in the parliamentary resolution, but it was strongly influenced by it, insofar as in it, the EU:

- Said that it stood by its active support for the peace process in Colombia and for the courageous efforts made by that country's President;
- Called upon the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) rebels to resume or continue the dialogue with the Colombian Government;
- Stated that it wholeheartedly supported all efforts to ensure respect for human rights and international humanitarian law by all parties involved;
- Reiterated its vigorous and steadfast condemnation of the practices of abduction, extortion and other crimes, and called upon the armed groups to free all hostages and to forswear such practices immediately;

- Insisted that the Colombian Government continue and step up its efforts to disarm the paramilitary forces and bring the full force of the law to bear on those responsible for crimes;
- Considered that it was of vital importance that the efforts already made to combat illicit drug production and trafficking continue at both the local and the regional levels;
- Emphasised the need to reduce socio-economic inequalities in Colombia and to elaborate and implement a programme of decisive socio-economic reforms.

These three examples illustrate that resolutions are an incontrovertibly effective tool, that they make it possible to achieve various types of results and that they allow the External Relations Committee, and in more general terms the parliament, to make use of means of action and the Government's influence in order to achieve their objectives.

At the beginning of my statement I said that it was impossible for parliaments to be too concerned about human rights.

Now that you have a more precise idea of the way in which they show that concern, I am sure that you will understand that parliaments can be proud of that role, without being in any way complacent. Whatever we can do is minuscule compared with what needs to be done.

Indeed, I should mention that Amnesty International considered that human rights violations in 2002 were sufficiently prevalent in 151 of the world's 233 States and territories for it to single them out for criticism in its 2003 Annual Report. Belgium was among those singled out for criticism.







## MR. MARK THOMSON

**Secretary General, Association for the Prevention of Torture (APT)**

Over the last 50 years there has been a massive development of non-governmental organisations (NGOs) throughout the world. Whether you like it or not, they now form an important part of civil society and can have a significant impact on public opinion and government policy. It is therefore very appropriate, albeit a little overdue, to review how we (NGOs and parliamentarians) can cooperate better. Allow me to thank and congratulate the IPU, UNDP and OHCHR for organising this seminar.

Parliamentarians must identify the right NGOs with which to cooperate.

- NGOs have different mandates, methods, levels of independence and expertise. Is that expertise appropriate for the particular challenges and human rights issues that parliamentarians must address?
- NGOs operate nationally, regionally and internationally. Wherever possible, national parliamentarian ought to be cooperating with national NGOs. But sometimes it takes the involvement of an international or regional NGO to enable that to happen, and international and regional NGOs may have particular expertise and tools that are useful to parliamentarians.
- For example, the Association for the Prevention of Torture (APT) is an international NGO focusing specifically on the prevention of torture. We are willing to work with any parliament or state authority that is sincere about preventing torture and ill-treatment. We do not help rehabilitate victims of torture, and we do not take up individual cases. That is the work of other NGOs. We limit ourselves entirely to the challenge of preventing the horror of torture and ill-treatment.
- To do that we must cooperate with a variety of actors, including ministries of justice, the interior and foreign affairs, ombudsmen, national institutions, police and armed forces, United Nations mechanisms, regional human rights bodies, the media, academics, NGOs and yes, parliamentarians. And we cooperate not just to achieve a particular objective, but rather to help those partners be more effective in their torture prevention initiatives.

### **Cooperation with parliamentarians in their legislative functions**

As parliament is the legislative body in any country, there is a natural potential for NGOs which have the relevant expertise to cooperate with parliamentarians in the areas of:

- drafting new legislation (bearing in mind that organisations like ours help draft international human rights standards);
- lobbying for the adoption of a new human rights standard;
- lobbying for the ratification of international human rights norms;
- ensuring that international human rights norms are adequately integrated in national legislation.

Parliamentarians can help protect the rights of the judiciary, NGOs (human rights defenders - including parliamentarians themselves) and the press to operate freely.

Let me illustrate that cooperation by drawing your attention to the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Protocol provides for visits by qualified international and national experts to places of detention with a view to making recommendations to the head of prisons, police, ministries of justice, ministries of the interior and other relevant authorities. The United Nations General Assembly adopted the Protocol in December 2002. So far, 23 States have signed it, and three have ratified it. It needs 20 ratifications to come into force. Therefore, it is largely up to you, as parliamentarians and law makers, whether your State will ratify this novel new initiative to better prevent torture and ill-treatment. We are ready to help you in that process by explaining the implications of your

State's ratification, and by assisting in the drafting of possible new legislation and the creation of a national preventive mechanism, as set out in the Protocol.

As parliamentarians you have a role to play on this legislative front not only at the national level, but also internationally. You have privileged contacts with parliamentarians in other countries, either via bodies such as the IPU or directly. This offers yet more scope for cooperation with human rights NGOs. Let me give you an example. At the end of 2001, I spoke at a hearing convened by the Human Rights Committee of the German Bundestag on mechanisms to combat torture (the hearing was, incidentally, a prime example of how NGOs and other experts could share their views with parliamentarians). In the meeting I proposed that the German parliamentarians use their "peer pressure" to persuade their Irish colleagues to move ahead on ratification of the United Nations Convention against Torture. They did, and they received a positive response. Seven months later, Ireland finally ratified the Convention.

### **Cooperation with parliamentarians in their executive functions**

- Of course, in some countries, a number of parliamentarians are also members of the Government, and therefore are entrusted with executive powers and responsibilities. NGOs logically seek to lobby them and their staff directly in their executive functions, but their fellow parliamentarians are also an excellent conduit for a more indirect lobby when they cooperate with them. As Ann Clwyd mentioned on the first day of this seminar, an "early day motion" by a relatively small group of members of parliament can have a big impact in forcing a government minister to declare or explain the Government's position on a particular human rights issue.
- As the excellent IPU compilation on parliamentary bodies shows, many of you also have certain executive functions. For example, many parliamentarians act on certain human rights related matters, for instance by visiting places of detention and investigating abuses by public officials.
- We in the APT are more than willing to help you perform those functions effectively. Here in Geneva we advise the Geneva cantonal parliament's commissions which visit all places of detention. In another Swiss canton, Ticino, we also regularly provide training for their parliamentary commission which visits detainees. This offer of assistance of course extends to other parliamentary oversight bodies, including those that monitor the police and armed forces. For example, in South Africa we cooperate with the body that provides oversight of the police.

### **Cooperation with parliamentarians in stimulating public debate**

Despite the fact that torture and ill-treatment remain widespread practices throughout the world, many States deny this, and most people prefer not to address such a horrible matter. It therefore remains the task and responsibility of parliamentarians, the media, NGOs and other human rights bodies to break this taboo and promote, or rather stimulate, public debates that should result in revisions of state policies, so as to prevent further violations.

As "guardian of human rights", parliamentarians not only draft and adopt laws protecting peoples rights, but must also supervise the correct implementation of the rule of law, in conformity with international human rights standards. I would venture to say that in many countries this promotional and supervisory role of parliamentarians is under-utilised by NGOs. Therefore, this is an area where increased cooperation would be beneficial.

### **NGOs need to identify the parliamentarians who are willing and able to act as guardians of human rights**

Just as I appeal to you as parliamentarians to make a better distinction between NGOs, their roles and their expertise, and therefore to identify better how you can cooperate with them, NGOs too need to know more about the competence, availability and willingness of the parliamentarians with whom they must cooperate.

May I therefore appeal to all of you to continue to update the IPU on your parliamentary bodies dealing with human rights? For us NGOs, this information is the gateway to further cooperation.

## **Conclusions**

Clearly, there is already enough evidence to show how cooperation between parliamentarians and NGOs can be very beneficial in advancing respect for human rights. I have focussed on how that may happen through your legislative and executive functions. I have also highlighted your leverage on executive bodies and persons, as well as the importance of peer pressure within your own country and with colleagues abroad.

If in your evaluation or conclusions this afternoon you propose to organise follow-up meetings, let me state that our Association is more than willing to assist, in particular if you choose to focus on the prevention of torture and ill-treatment, for which I believe you are ideally placed to play an effective role.



**MR. ALAIN BOVARD****Amnesty International, Swiss Section**

It is not easy to sum up in a few minutes the intense work that Amnesty International has carried out for many years now with numerous national parliaments. The task is rendered more difficult by the fact that this work, which sometimes takes the form of collaboration, varies enormously from one State to another, depending in part on national parliamentary structures and in part on the resources (which often vary enormously) available to the different national sections of our movement.

I should like, here, to set out the four different categories of relationships which may exist between Amnesty International and national parliaments. These categories represent my personal view of the situation, and are based on the often patchy data that I have been able to collect from various colleagues working in other national sections.

### **Categories**

#### **1. A complete lack of any formal link between Amnesty and the parliamentary body**

In some States, in most in fact, there is no link, official or otherwise, between parliamentary human rights bodies and Amnesty International. In such cases, for example in France or Italy, Amnesty's work is limited to conventional lobbying. Those in charge of relations with parliament in our organisation use their personal contacts in an attempt to make parliamentarians aware of certain issues, or to bring to their attention the human rights implications of a topic on the parliamentary agenda. In such cases, collaboration is often difficult, as Amnesty has its own goals which differ from those of the parliament. It is therefore not easy to reconcile everyone's interests and to get our organisation's message across. In other words, although our comments may often be of great use to parliamentarians, Amnesty "receives" very little in return, and our actions rarely result in a positive response.

#### **2. Amnesty is officially consulted as an expert (with observer status)**

This is another stage in the process of establishing a good working relationship between parliament and NGOs. The parliament (and more particularly, the parliamentary human rights body), by officially consulting Amnesty International (or other NGOs) recognises the organisation as a valuable interlocutor on the one hand (which, of course, is very gratifying), but on the other hand expects to receive help in the form of advice, expert opinions, and even recommendations. Unfortunately, in such cases, the relationship is generally one-sided. Here too, it is difficult for Amnesty not to impose its own agenda, but merely to identify its own priorities. After all, Amnesty carries out large-scale campaigns, such as the one we recently launched worldwide to stop violence against women, or the one we carried out at the that end of the 1990s in support of the International Criminal Court (a campaign which continues even now in those States which have still not ratified the Court's Statute). The Swiss section has long had such a relationship with the Swiss Parliament's Foreign Policy Committee, which is responsible for human rights issues. In Uruguay, the Senate's Foreign Affairs Committee invited Amnesty to present its concerns regarding the law on the national implementation of the Statute of the International Criminal Court. The law adopted by the Senate did not take into account our organisation's recommendations, but the House is currently giving serious consideration to the document prepared by Amnesty, and it is very likely that changes will be made to the bill.

### **3. Amnesty provides a service for parliamentarians, and the parliamentary human rights body in particular**

This is currently the case in Switzerland, which to my knowledge is the only example of such a scenario. In the Swiss parliament, there is an informal parliamentary group (i.e., not an official committee with its own budget and consultative status at government level) which meets four times a year, during each session. The Swiss section of Amnesty International has acted as the secretariat for the group since last December. This, of course, means that we carry out a number of administrative tasks, but we also actively participate in each of the group's sessions and have the same rights as the parliamentarians present when it comes to taking part in discussions. We work closely with the group's Chairwoman to establish a legislative agenda for the group and to determine specific agendas for meetings. The idea is to address a mix of parliamentary issues of the day and questions which are a priority for our organisation. It is still too early to draw any conclusions from this experience because the group has only met twice since Amnesty International assumed the role of secretariat. From a long-term point of view, it would, however, seem that the solution is satisfactory for both parties. The parliamentary group receives logistical support, and above all it regularly benefits from the contributions of human rights specialists (for instance in the form of know-how and experience), and Amnesty International is able to put its priority issues on the working agenda, and has the opportunity to see its recommendations relayed to the parliament as a whole.

### **4. Amnesty International parliamentary groups**

In two or three States, there are Amnesty International groups operating within the national parliament. This is notably the case for Australia (which played a pioneering role regarding this matter), where there has been a group in place since 1973, and New Zealand. There is also such a group in Japan, and it appears that one has recently been established in Sweden. These groups communicate Amnesty International's concerns to the parliaments in question. In accordance with Amnesty's policy of impartiality, these groups always include representatives of the various national political strands, which has largely contributed to the credible and effective nature of their work. The following are examples of the kinds of activities that may be undertaken by the groups in question:

- Promotion of parliamentary debate on subjects put forward by Amnesty International;
- Support and promotion of international initiatives or domestic legislation related to human rights;
- Intervention at an individual or group level with governments in support of Amnesty International's actions;
- Advocacy (through letters or the sending of delegations) on behalf of parliamentarians who have been, or are, the victims of human rights violations;
- Public support for Amnesty International's work.

Amnesty International's parliamentary group in Australia regularly meets during sessions of the Australian Parliament. An executive board determines what the group's activities are to be; these may include visits to embassies, petitions, questions in Parliament, the use of parliamentary delegations abroad to carry out enquires in the countries visited or contact with foreign delegations visiting Australia.

The members of the group who travel abroad either in an official capacity or as private individuals are encouraged to bring up issues related to human rights in the countries they visit.

Amnesty's parliamentary group has created a fair amount of interest. I should like to quote from a speech delivered in Rome in 1985 by Senator Alan Missen, who was then Chairman of the Group, addressing the Society for International Development; "The Amnesty parliamentary group is in no way a servant of the Government, and often presses the latter to act in a stricter and more rigorous fashion in the field of foreign affairs. The group has thus shown itself to be one of the most influential tools in the promotion of our ideas regarding human rights." In the same speech, the Senator vigorously recommended that other parliaments should create similar groups, a recommendation which I can only make yet again here today.

## **Conclusion**

Whatever the form of collaboration with Amnesty International adopted by the parliamentary human rights bodies, such exchanges are undeniably beneficial for both parties. Parliamentarians are not, generally, specialists in the field of human rights; they come from varying professional backgrounds, which are often far removed from their current occupation. They therefore require expert support, advice and access to the skills of people specifically trained in this field. Specialists working elsewhere within governmental institutions do not always have the same level of independence which should typify large human rights NGOs such as Amnesty International. These public servants are therefore not always in a position to give objective advice to parliamentarians.

NGOs representing civil society, however, often try to make contacts with people who share their concerns or seek information held by parliamentarians. NGOs also attempt to gain public support for their actions, support which parliamentarians, in their role as opinion leaders, are in a position to give.

Personally, I am convinced that such collaboration and pooling of resources is an effective way of making progress in the field of human rights and should thus be strengthened. Synergies need to be developed between the work of parliaments and that of NGOs, so that the numerous existing international instruments concerning human rights not only are ratified, but above all, are implemented at a national level.





**MR. PIERRE HAZAN****Journalist**

I have been following the work of the Commission on Human Rights (CHR) for 10 years as an observer. Parliamentarians have a crucial role to play because never, for a very long time, has the situation been so serious. The deterioration of human rights we are now witnessing is the outcome of a conjunction of factors.

After the cold war, the CHR and the United Nations aroused great hope, traces of which are to be found in Boutros Boutros-Ghali's Agenda for Peace, in the creation of the post of High Commissioner for Human Rights, in the whole philosophy of preventive diplomacy, and so on. There was a human rights movement very soon to be disappointed with what happened in Rwanda and Somalia.

The failure of some peace-keeping operations was compounded by a more serious phenomenon whose importance was not immediately grasped. The West long made use of the CHR as an ideological benefit in the cold-war stand-off. The cold war was followed by a disinvestment of the Western States that were the driving force of the CHR. At the same time, the universal nature of human rights was questioned. This twofold movement was accelerated by the 2001 attacks and those of Madrid.

Let us take the flagship countries of the Security Council and see how they contrive to shield themselves from any criticism. As regards China, the question of Tibet has never been raised in the CHR. Where the United States is concerned, there will be no discussion of Guantánamo. For Russia, there will be vague mention of Chechnya but without any tangible effect. We are today in a configuration where the leading States of the international community set the tone and enable the other States to take cover behind the war on terrorism in their policies of repressing fundamental freedoms.

I shall cite another two examples. The first is the prevailing atmosphere of conservatism, particularly when the rights of homosexuals are flouted. Last year Brazil proposed a resolution on sexual orientation and, among most of the Muslim countries and the Vatican delegation, there was a discernible movement of convergence to block the adoption of that resolution.

My second example is the machinery of solidarity between regional groups. In Algeria there have been 200,000 deaths in 10 years, but no resolution; and thanks to regional solidarity no condemnation of Zimbabwe last year.

I heard Irene Khan, the Secretary General of Amnesty International, say that the CHR should be depoliticised. As it happens, the CHR is a political body. So it must on the contrary be taken for what it is, and in this matter parliamentarians have an important part to play. The resolutions adopted by the CHR must be implemented. Parliamentary committees have a role to fulfil in monitoring these resolutions. There is also the work to be done up the line: it is for parliamentarians to put pressure on their governments to ensure that the most serious problems are addressed by the Commission on Human Rights.



▶ **PART 3**

**PARLIAMENTARY HUMAN RIGHTS BODIES AND THEIR RELATIONSHIP WITH NATIONAL HUMAN RIGHTS INSTITUTIONS, NGOs AND CIVIL SOCIETY**

- The role of the UN (UNDP and OHCHR) and the IPU in supporting parliaments to protect, promote and realise human rights

**MR. CLARENCE DIAS**

**Consultant, United Nations Development Programme (UNDP)**

This is a historic meeting. It brings together for the very first time the chairpersons of parliamentary human rights bodies.

The Human Rights Strengthening Programme (HURIST) is a joint programme of the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). HURIST includes a segment which studies how parliamentary strengthening programmes can also contribute to the promotion and protection of human rights at the national level, i.e., how it can be possible to strengthen the realisation of human rights at the national level by developing programmes aimed at strengthening parliaments. Within such a context, the programme has undertaken a number of case studies. All of these case studies are essentially concerned with the need for balance between different approaches and the need to enhance complementarity between them.

**The different approaches**

Much of HURIST's work supporting parliaments is founded on an approach based on an institutional focus. This is an internal approach. For work regarding human rights bodies, we have built upon the institutional approach by focusing directly on support for human rights commissions established by parliaments or for parliamentary committees.

There is also an inter-institutional dimension involving the role of parliament vis-à-vis the other branches of government - the executive and the judiciary, and the relationship between them. The importance of parliament derives from its unique role in the separation of powers. A strong parliament is the best guarantee for a strong parliamentary human rights body.

Along the same lines, there is another form of balance: the balance within human rights work between a reactive approach centred on violations, and a proactive approach which focuses on prevention, protection and the actual realisation of human rights. The two approaches need to be complementary; there is no question of choosing between them. It is from the violations approach that we learn about the patterns of structural violations that require reform in governance.

There is a third form of balance: a balance between dealing with national, regional and global issues.

Lastly, a fourth balance must be struck regarding follow-up. This involves striking a balance between parliamentary bodies working bilaterally and those working multilaterally, especially within the United Nations human rights system.

Human rights work by parliamentary bodies must cut across party lines. It has to be non-partisan; it has to be built upon national concerns and a national consensus that crosses party lines. Nevertheless, those who sit in parliamentary human rights bodies should represent different political parties.

I am going to give three practical examples of very recent human rights-based programming work in the field of parliamentary strengthening: the cases of the Islamic Republic of Iran, Indonesia and the Lao People's Democratic Republic.

We have seen a trend in developing countries towards disproportionate strength of the executive branch of government vis-à-vis the judicial branch (which is often virtually non-existent in many countries). However, there has also been a similar trend vis-à-vis the legislative branch. In the three countries in question, the parliaments are not strong. Under their constitutional traditions, there has essentially been a tendency, and indeed a reality, of law-making by the executive branch of government.

In the Islamic Republic of Iran, the parliament consists of a large number of elected members and a smaller number of appointed members. The elected members have less authority to make and reject laws than the appointed members. UNDP has chosen a strategy of trying to support and strengthen the elected members. The appointed members are named by the religious authority in the country. There is a research centre in the Islamic Republic of Iran that has been created to undertake research for the parliament. UNDP has supported the creation of a hotline for raising legal awareness, where people can phone to find out about the laws relating to a particular issue. In the activities of the hotline, there is a heavy focus on the international human rights treaties that the Islamic Republic of Iran has ratified. UNDP is also supporting research that will enable the elected members of parliament to be very sharp in their comments on the bills they put forward, as well as in respect of the bills put forward by the non-elected members. Part of the research is going to focus on a review of all the laws in the country in terms of their compliance with the anti-discrimination provisions in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This research is being conducted in a tripartite effort, together with the executive agency dealing with women's affairs and a university-based human rights centre.

The Government of Indonesia has committed to ensuring that Indonesia is a State based on the rule of law, in which the values of transparency and accountability will prevail.

The Indonesian Government has moved from being a presidential dictatorship towards a parliamentary democracy, in which sharp divisions in party politics have undermined the ability of parliament to function as a law-making body. Under a presidential decree, a National Law Reform Commission was created. UNDP supports this National Commission, which is outside of parliament but which must rely on parliament to implement whatever law reform proposals it draws up. The Commission has developed 16 law reform proposals after holding participatory hearings around the country on the subject of the reform. It is now working closely with parliamentary bodies to sponsor law reform proposals which transcend party differences.

The Lao People's Democratic Republic is a country where law-making has historically not been done by the legislative branch, but by the single party in power. In this kind of situation, after the Republic's transition to a State based on the rule of law, UNDP's strategy has not been to go straight to the newly created legislature, which has very little law-making authority in the first place, but to support the Ministry of Foreign Affairs in a programme to encourage the Government to ratify international law treaties, including human rights treaties. The Ministry of Foreign Affairs is working with the legislative branch on the national legislative agenda that should flow from the ratification of these international conventions.

Within UNDP, one trend that the human rights-based approach to parliamentary strengthening has spawned is that UNDP has started working with parliaments by focusing on the three main roles of parliament: the legislative role, the oversight role and the representational role. Earlier, UNDP programming focused on the legislative role and on building parliamentary capacity to draft legislation. Increasingly, as a result of adopting a human rights-based approach, UNDP is moving towards emphasising the oversight role as a means for providing access to resources for the poor and disadvantaged. It is also moving to step up programming to enhance the representative character of parliaments by supporting parliamentary relations with the constituency.

**MR. PATRICK VAN WEERELT**

**United Nations Development Programme (UNDP)**

There is still a great deal to be done to incorporate human rights work into regular technical assistance support for development, including parliamentary development. This certainly goes beyond merely supporting parliamentary human rights bodies. Work in the field of human rights should touch upon both the process and the content of parliamentary development by strengthening parliamentary legitimacy and effectiveness.

The United Nations Development Programme (UNDP) as a whole has become increasingly involved in advocating human rights as part of its development activities, especially since the World Conference on Human Rights was held in 1993 and the United Nations Secretary-General announced reforms in 1997 and 2002. In each case, human rights were highlighted as the bedrock requirement for successful development. As a consequence, all programmes and operations within the United Nations system must integrate human rights into their programming.

What does this mean, and how can it be done?

A human rights-based approach to development programming is finding its way into the work of United Nations agencies. In 2003, an interagency workshop was held on implementing a human rights-based approach during reform of the United Nations, and the United Nations system as a whole endorsed a "common understanding on a human rights-based approach to development cooperation". This set out, in three simple but important elements, what that should mean for development programming:

- All programmes of development cooperation should further the realisation of human rights as laid down in international instruments;
- Human rights standards and principles should guide all development programming in all sectors and in all phases of the programming process. This includes non-discrimination, universality, accountability and the rule of law;
- Capacity development should focus on helping duty bearers to meet their obligations and helping rights holders to claim their rights.

United Nations agencies now face the challenge of applying such policies consistently to all types of programme support. Hence, what does this mean for support for parliamentary development? A start was made by developing a number of case studies addressing specific issues. We are however, only at the starting point. UNDP is keen to explore, in cooperation with parliamentarians, the actual application of a human rights-based approach in parliamentary development. The following text presents some of the very early lessons that we have learned.



**MR. GIANNI MAGAZENI**

**Senior Human Rights Officer, Office of High Commissioner  
for Human Rights (OHCHR)**

Human rights are crucial to peace, security and economic and social development. Very often human rights violations are the root causes of conflicts, of refugee movements or other humanitarian catastrophes. Addressing those issues is crucially important; we have all learned from the lesson of the 1994 genocide in Rwanda. Rwanda had been a model of development cooperation, and yet it was undermined by human rights problems. We have all seen how the infrastructure of development could be destroyed over time, and how much suffering could take place in the course of two months because of the fact that the fundamental issues of human rights violations had not been addressed, and human rights were therefore undermined. It is therefore crucially important to look at human rights as the foundation on which peace and security efforts, as well as economic and social efforts, can be sustained and can be successful over time.

I would like to refer to two significant developments. First, the fact that the United Nations, over the past 50 years, has developed a very comprehensive legal framework. The seven main international human rights instruments and conventions are known to you. We have also developed a sophisticated machinery of implementation, in particular the monitoring by Committees of the implementation of the major conventions at the country level, as well as the mechanisms of the Commission on Human Rights which focus on country situations or on thematic issues, such as torture, disappearances, executions, arbitrary detention, education and poverty worldwide. This very comprehensive machinery that oversees the application of international standards at the national level and also makes specific recommendations in order to reduce the gaps between the international norms to which States subscribe and the realities at the country level. The core issue for the United Nations today is implementation, making sure that these international norms are actually translated into practice in a meaningful way. Over the past ten years we have developed a very comprehensive programme of technical cooperation, along with field activities and field operations. We have cooperative endeavours with over 40 countries. Their purpose is to provide assistance at the request of member States in significant areas of human rights, including the administration of justice, human rights education, the establishment and work of national human rights institutions and the creation of national human rights protection systems. This programme is quite comprehensive and has given us the opportunity to gain experience which is now being shared more broadly, so that the lessons learned can be described and best practices can be established. There are also opportunities for countries from within the same sub-region or region to learn from one another's experiences. This programme is increasingly being utilised. As part of the reform that United Nations Secretary-General Kofi Annan started in 2002, we are now working much more closely with colleagues within the United Nations system in United Nations country teams. Such teams are active in most of your countries.

OHCHR can do much to support the efforts of parliaments, including those aimed at legislative reform and the translation of ratified international norms into practice and law at the country level. This is possible thanks to the generosity of United Nations Member States that provide funding for these activities. Most of what we do at the country level is financed through voluntary contributions, which this year amounted to about US\$ 25 million.

OHCHR provides technical cooperation and ensures a presence in the field; it has six regional representations covering the major regions of the world. The latest one was set up in Central Asia, in Almaty, and we are currently planning to add others in the Pacific, in addition to those that already exist in Africa, Latin America and Asia.

They provide important and significant opportunities for our office to be closer to the realities on the ground. We hope that what we have done and what we can do to support and sustain the implementation of international human rights standards at the country level and the application of international norms and their translation into laws and practices can be better understood and more widely known.





**MR. MARTIN CHUNGONG**

**Director, Division of Promotion for Democracy, Inter-Parliamentary Union**

At the IPU, it is our mandate to make sure that parliaments around the world can perform their constitutionally assigned roles in an effective manner. We do this on the premise that whatever parliament does, in its law-making, oversight or representational functions, it is working to protect and promote human rights. It is our mandate to make sure that in performing those functions, parliament can be as efficient as possible. That is why in the early 1970s, the IPU established its Technical Cooperation Programme. This Programme seeks to mobilise international resources in support of parliaments, especially in developing countries and in the emerging democracies. Over the years, we have worked consistently with one of our major partners, the United Nations Development Programme (UNDP).

We provide parliaments with advisory services on various aspects of the role, structure and working methods of parliamentary institutions; we provide assistance in terms of professional development for parliamentarians, and training for parliamentary staff. We also assist parliaments in carrying out reforms designed to streamline their functioning and services. Establishing and strengthening documentation, library and research services are also a major area of focus.

Given the advocacy role that parliament plays, we are increasingly called upon to provide, in addition to assistance on parliamentary practice and procedure, capacity-building assistance on substantive issues that parliaments have to deal with. For instance, training seminars are held on such issues as the role of parliaments in defending and promoting human rights. Encouraging gender partnership in the political process is another area of emphasis.

In Rwanda, we supported the women parliamentarians caucus in ensuring that gender concerns were written into the new Constitution. As you may know, Rwanda's National Assembly is now the leading parliament in the world in terms of women's representation. We have increasingly worked to ensure that national budgets reflect gender concerns. In this context, we have organised a series of national and regional seminars on the role of parliament in the budget process, including from the gender perspective. These seminars are intended to assist parliaments in reflecting gender concerns in national budgets and policies.

Lastly, I would also like to mention the series of handbooks we have been producing for use by parliamentarians, addressing topics such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the worst forms of child labour, on international humanitarian law and HIV/AIDS.



**MRS. INGEBORG SCHWARZ**

**Human Rights Programme Officer, Inter-Parliamentary Union**

**Defending the human rights of members of parliament: The Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union**

**1. Establishment of the Committee on the Human Rights of Parliamentarians**

Members of parliament can fulfil their tasks as representatives of the people and guardians of their human rights only if they themselves enjoy their human rights. They must in particular enjoy freedom of expression. However, as experience shows, this is not always the case. In too many countries, parliamentarians who speak out freely may run into trouble and end up being silenced in one way or another. Moreover, when democracy breaks down in a country, the first victim is almost invariably the parliament, which is generally dissolved. This was particularly the case when military dictatorships took over in the 1970s in Latin America. It resulted in the arrest, arbitrary detention, if not murder and enforced disappearance of many parliamentarians, which prompted the Inter-Parliamentary Union (IPU) to take concrete action in defence of the human rights of members of parliament, and hence in defence of the institution of parliament as such.

After conducting a study on how such action could best be carried out, the IPU Governing Council decided to set up a special mechanisms, and in 1976 adopted a resolution establishing the Procedure for the Treatment of Complaints concerning Violations of the Human Rights of Members of Parliament. It entrusted its implementation to the Committee on the Human Rights of Parliamentarians, which was established by the same resolution. The resolution sets out the thinking which underpinned the setting up of this mechanism. In paragraph 2, it stressed that the "protection of the rights of parliamentarians is the necessary prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries, and that, in addition, the representative nature of a parliament closely depends on the respect of the right of the members of that parliament". In 1977, the Committee on the Human Rights of Parliamentarians held its first session.

**2. Composition of the Committee**

The Committee is composed of five parliamentarians representing the major regions of the world. They are elected by the Governing Council in their personal capacity for a mandate of five years. The Committee meets four times a year; twice at the Headquarters of the IPU in Geneva, and twice during the biannual statutory Assemblies of the IPU.

**3. Mandate and Procedure of the Committee**

The Committee's mandate extends to all members of national parliaments who are or have been subjected to arbitrary actions during the exercise of their mandate, whether the parliament is sitting, in recess or has been dissolved as the result of unconstitutional or extraordinary measures. It is therefore not competent to take up cases concerning members of regional or local parliaments. The Committee may not choose the cases it examines; it can only act upon receipt of a formal complaint. Such complaints may be submitted directly by the parliamentarians concerned, or through their lawyers or family members, or they may be submitted by a member of any national parliament, by non-governmental organisations having consultative status with the Economic and Social Council of the United Nations (ECOSOC), such as Amnesty International, or by any other source which the Committee deems to be reliable.

Once it has declared a complaint admissible, the Committee seeks the views of the authorities of the country in question, first addressing the parliamentary authorities. It makes sure that it hears all parties and to this end may meet with representatives of the authorities and with the complainant, known as the source of information, or with the source's representatives. During sessions held during IPU Assemblies, it therefore regularly meets with delegations of the countries in which it is examining cases. Another important means of gathering relevant information is through on-site missions which the Committee may carry out with the consent of the authorities.

The Committee's aim is not to denounce human rights violations, but rather to put an end to any arbitrary action to which the members of parliament concerned may be exposed and to obtain a settlement which is in line with national and international or regional human rights law. To this end, the Committee may appeal to the Governing Council, by submitting to it a public report on certain cases and inviting it to adopt a resolution on them. This so-called "public procedure" enables the parliamentarians of the IPU's Member Parliaments to intervene in favour of their colleagues who are the subject of a resolution, and thus to contribute to a settlement. Parliamentary solidarity is an important feature of the Committee's procedure which distinguishes it from other human rights mechanisms at the regional or international level. The Committee continues examining a case as long as it deems that a satisfactory settlement can be reached. Cases often remain on its agenda for many years. Wherever possible, the Committee seeks to cooperate with other international and regional human rights bodies in its efforts to put an end to arbitrary actions concerning members of parliament.

### **Conclusion**

The Committee's case load has continuously increased. When it held its first session in 1977, it examined the cases of 40 parliamentarians in 10 countries. At its last session, held in January 2004, it examined 50 cases concerning 192 parliamentarians in 30 countries all over the world. Seventeen of these cases were public cases. The reasons for this increase are not easy to identify; they no doubt are somewhat related to the spreading of democracy and parliamentary systems in recent years, and possibly also to the fact that the Committee is now better known than it was when it first came into being. Whatever the reason, the IPU has always appealed to Member Parliaments to support the Committee's work, as such support has often proven to be instrumental in obtaining a settlement. Clearly, as members of parliamentary human rights bodies, you have a special interest in ensuring that parliamentarians all over the world can freely carry out the mandate entrusted to them. On the Committee's behalf, I therefore would like to appeal to you, whenever your mandate enables you to do so, to take action in favour of parliamentarians who are at risk because they have spoken out, and to follow up on resolutions adopted by the IPU and its Committee on such cases.

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GENEVA, PALAIS WILSON, 15-17 MARCH 2004



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