

The Role of Parliament in Monitoring Compliance with Australia's International Human Rights Obligations

Introduction

1. Compliance with obligations arising under both international and domestic human rights laws requires effective monitoring systems. The Human Rights Law Resource Centre considers that further parliamentary and executive mechanisms that should be established to monitor implementation of and compliance with Australia's human rights obligations.
2. In particular, the HRLRC considers that the Government should establish domestic mechanisms to monitor and report on the implementation of human rights obligations, including establishing a Joint Parliamentary Committee on Human Rights or conferring additional functions on the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

International Human Rights Review Mechanisms

3. Currently, Australia is subject to periodic review by UN treaty bodies established under each of the ICCPR, ICESCR, CAT, CRPD, CEDAW and CERD. These reviews provide an opportunity for a comprehensive analysis of the state of human rights in Australia and for a constructive dialogue as to how best to promote and protect these rights between the Government and independent international human rights experts.
4. Australia has also accepted the jurisdiction of the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women to hear and determine individual complaints regarding Australia. The Government is also taking steps to ratify the *Optional Protocol on the Convention on the Rights of Persons with Disabilities* which would empower the Committee on the Rights of Persons with Disability to determine individual complaints under the CRPD.
5. In addition, the Special Procedures of the UN Human Rights Council may issue findings and recommendations on Australia under either country or thematic mandates.
6. While international scrutiny and accountability are important aspects of the promotion and protection of human rights, there are currently no formal domestic mechanisms to independently monitor and report on the implementation of the Concluding Observations of UN treaty bodies.

7. In the case of Individual Communications, the Committee's Views are not enforceable or justiciable under Australian law and no effective domestic mechanisms have been established to ensure and monitor implementation of and compliance with Views.

Joint Parliamentary Committee on Human Rights

8. The Government should establish a Joint Parliamentary Committee on Human Rights (**JPCHR**) to lead parliamentary engagement with and understanding of human rights issues and to monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council. Alternatively, additional functions and resources should be provided to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade to undertake this task.
9. Parliamentarians are 'essential actors' in the protection and promotion of human rights. According to a recent report by the Inter-Parliamentary Union titled 'Parliament and Democracy in the Twenty-First Century':¹

parliamentary activity as a whole - legislating, adopting the budget and overseeing the executive branch - covers the entire spectrum of political, civil, economic, social and cultural rights and has thus an immediate impact on the enjoyment by the people of their human rights...
10. It is therefore important that a parliamentary body exist to monitor and take responsibility for the role of the legislature in protecting and promoting human rights.
11. The position in Australia with respect to the role of parliament in the implementation of Concluding Observations and Views of treaty bodies can be contrasted with monitoring and implementation mechanisms developed in other jurisdictions, including South Africa, the Netherlands and the United Kingdom.
12. In the United Kingdom, for example, the work of the Joint Parliamentary Committee on Human Rights includes:
 - (a) 'scrutinising Government responses to adverse judgments by the European Court of Human Rights'; and
 - (b) scrutinising the Government's reports to the UN treaty bodies, the Concluding Observations of those treaty bodies, and the Government's implementations of the recommendations contained therein.
13. The Council of Europe has recommended the model and modalities of the UK Joint Parliamentary Committee on Human Rights as a model for other member states.²

¹ Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century* (2006) available at: http://www.ipu.org/PDF/publications/democracy_en.pdf

14. In South Africa all national reports submitted under human rights treaties are debated in parliament. In the course of debate, parliament holds public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens' groups. Members of parliament are included in national delegations to the treaty bodies, ensuring that they better understand the treaty bodies' recommendations.³
15. In the Netherlands the law requires the government report to Parliament every four years on the implementation of the CEDAW before presenting its report to the Committee on the Elimination of Discrimination against Women. The concluding comments of the Committee are also presented to Parliament.⁴
16. To enhance parliamentary engagement in human rights and, in particular, to promote parliamentary oversight of implementation of the findings and recommendations of international human rights bodies, the HRLRC makes the following recommendation:

Recommendation:

The Government should establish a Joint Parliamentary Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues and to monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council.

² Further information about the work of the Committee is available in their 2007 Annual Report at <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/38/3802.htm>.

³ Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century*, above n 1 at 160.

⁴ *Ibid* at 160.