



**The Parliamentary Committee
as Promoter of Human Rights:**

The UK's Joint Committee on Human Rights

A Case Study for Commonwealth Parliaments

**COMMONWEALTH HUMAN RIGHTS INITIATIVE
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THE PARLIAMENTARY COMMITTEE
AS PROMOTER OF HUMAN RIGHTS:

THE UK'S JOINT COMMITTEE ON HUMAN RIGHTS

INTRODUCTION

All Commonwealth countries are bound by human rights obligations whether they come from national or international law. Many states find it challenging to make those obligations real in practice. Parliamentary Human Rights Committees can provide a check on the government's record and provide guidance on improving it.

By establishing such committees, Parliament can ensure that laws are compliant with human rights principles. Because it is not practical for Parliaments as a whole to take on detailed oversight tasks, such as scrutinising bills, budgets, and implementation, Parliamentary Committees are often empowered to do these things as well as recommend improvements in law. The Committees themselves can also model human rights values of diversity, representation of minority and disadvantaged sections of society, and public consultation.

In order to make recommendations that could apply to any Commonwealth parliament thinking of establishing a Human Rights Committee, this booklet will look at the activities of the United Kingdom's Joint Committee on Human Rights during its first session of existence (2001 – 2005).

Why Parliamentary Committees are Effective Tools for Promoting Human Rights

All Commonwealth countries must follow human rights laws coming from treaties, constitutions, and national laws. Many countries have signed the international bill of rights and must also answer to human rights clauses in their own constitutions.

To make good on the human rights promises they have made, states must make sure that human rights are actually respected in the day to day working of government. Advocates must monitor and report on whether government agencies are actually fulfilling the promise of human rights in the way that they operate, and in the results that they produce.

Countries rely on courts and others such Human Rights Commissions and Ombudsman offices to do this task. Human Rights Committees within Parliament may also be especially suited. There are a number of reasons why Parliamentary Committees can be effective tools for promoting human rights:

1. *It may not be practical for Parliament as a whole to monitor and recommend ways to make laws comply with human rights;*
2. *Committees can consider the human rights impact of laws in depth;*
3. *Committees can consult with the public on human rights issues;*
4. *Committee reports make the Parliament more effective and heighten Parliamentary transparency;*
5. *If no national human rights institution (such as a human rights commission or ombudsman) exists in a country, Committees can fill the gap in monitoring and advising on legislation;*
6. *Committees can play a complementary role with national institutions since many of the latter advise on law but have no binding powers.*

The mere act of establishing a parliamentary human rights committee sends a strong message that a country seriously commits itself to complying with its human rights obligations not just on paper, but in reality. Parliamentary human rights committees exist in a number of countries. Within the Commonwealth are Canada, Sierra Leone, Zambia, Cameroon and the UK.

THE UK COMMITTEE

History

The UK Joint Committee on Human Rights (“the Committee”) is a permanent committee consisting of six members of each House appointed by the House of Lords and the House of Commons. It was established at the end of the 1997-2001 Parliament and met for the first time on 31 January 2001.

Although the UK passed legislation in 1998 (The Human Rights Act - HRA) to pass the European Convention on Human Rights into national law, the Human Rights Committee was established in a separate process.

The HRA was designed to preserve Parliament’s ultimate sovereignty over human rights. Under the HRA, courts cannot strike down primary legislation that is incompatible with the HRA. Instead, if a court cannot construe the primary legislation in such a way as to make it compatible with the HRA, the court can make a Declaration of Incompatibility. Parliament is then left with the ultimate responsibility of deciding how to remedy the situation. In light of the Parliament’s sovereignty over human rights, it was felt that the creation of a joint committee focusing on human rights naturally followed.

Mandate

While there was general agreement on the need for a joint committee, debate arose about what functions the Committee would have. Some saw a reactive role, where the Committee would focus on monitoring legislation introduced by Parliament. Others envisioned a more proactive, politically-engaged role for the Committee, where the Committee would engage in public education and consultation and influence the public debate on human rights.

The Committee’s Terms of Reference gave it the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses.

Ultimately, the Committee’s governing Orders of Reference and Standing Order provided that the Committee would be responsible for:

- 1) Matters relating to human rights in the UK only, but excluding consideration of individual cases; – its permissive (optional) power; and
- 2) Proposing changes to laws to make them compatible with human rights (called remedial orders, draft remedial orders, and remedial orders made pursuant to the Human Rights Act) – its mandatory power.

As long as the Committee abides by the two limitations given (to consider only UK issues, and to refrain from handling individual cases), the Committee has broad powers to define the nature and scope of its permissive work.

Although it does not seek redress on behalf of individuals for human rights violations, the Joint Committee otherwise fulfils important functions similar to that of a national human rights institution (such as a human rights commission or ombudsman).

Promoting Human rights through Legislative Scrutiny

REPEALING LAWS INCOMPATIBLE WITH HUMAN RIGHTS

Remedial orders are a type of delegated legislation (not made by Parliament as a whole) that repeals primary legislation that has been found to be incompatible with international law.

If either a UK court or the European Court of Human Rights indicates that a law is incompatible with the European Convention on Human Rights, a Minister can fix this by issuing a remedial order if s/he has compelling reasons. National law (the Human Rights Act) lays out the rules for how this is to be done and how Parliament is to scrutinise the process. Remedial orders can be made through an urgent or non-urgent route.

The Joint Committee on Human rights also has a key role to play, since it must review all proposed, draft, and final remedial orders.

During its first session of Parliament (2001 – 2005) the Committee reviewed and commented upon these procedures in a report entitled *Making of Remedial Orders*.

During 2001 to 2005, the Committee scrutinized the only two remedial orders brought before Parliament—the Mental Health Act 1983 (Remedial) Order 2001, S.I., 2001, No. 3712, and the Naval Discipline Act 1957 (Remedial) Order 2004.

Recommendation	Outcome
Minor procedural amendments to provisions of the HRA and Standing Orders of the House of Commons to assist the Committee and Parliament in scrutinizing remedial orders	<i>Not approved or incorporated by Parliament.</i>
Guidance to Ministers on whether or not to proceed by way of remedial order and whether to choose the urgent or non-urgent route.	<i>Government stated that the recommendations would be included in a revised version of the DCA's guide to Whitehall Departments on the Human Rights Act</i>
Recommended that Ministers inform the Committee within a specific time period after declarations of incompatibility are made in UK courts or judgments are made against the UK in the EctHR.	<i>Government accepted in principle, but did not agree to abide by the specific timeframes</i>
The Committee recommended that they be notified within a specific timeframe of the steps the Government would be taking to remedy the violation or incompatibility.	<i>Government accepted in principle, but did not agree to abide by the specific timeframes</i>
Pressed for time:	

Prevention of Terrorism Bill of Session 2004 – 2005

With regard to this bill, the Committee recorded its regret "that the rapid progress of the Bill through Parliament [...] made it impossible [...] to scrutinise the Bill comprehensively for human rights compatibility in time to inform debate in Parliament".¹

MAKING SURE NEW LAWS COMPLY WITH HUMAN RIGHTS

As something it is allowed, but not required to do, the Committee has made it a priority to **examine primary legislation** introduced into Parliament for its compatibility with Convention Rights as defined in the Human Rights Act and other international human rights treaties which the UK has signed.

The Committee aims to provide advice on the human rights compatibility of proposed legislation in a timely manner so that Parliament can take the advice into account when debating the legislation. The Committee reviews compatibility not only with the European Convention but also with other international human rights treaties to which the UK is a party, even if provisions of these other treaties may not be tried directly in UK courts.

The Committee determines whether a legislative provision presents a "significant risk" or a "risk" of incompatibility with Convention rights, or, if no risk is present, whether it raises human rights concerns.

Committee procedure for scrutinising bills

1. The Legal Advisor of the Committee examines a bill at as early a stage as possible. S/he looks at: importance of the right affected, the severity of the interference with the right, and in the case of qualified rights, the justification for interference and the number of people likely to be affected and their vulnerability.

IF:



¹ Tenth Report of Session 2004-05, *Prevention of Terrorism Bill*, HL Paper 68, HC 334, para 1.

The Committee has successfully lobbied for amendments to numerous bills. The following legislation or draft legislation has been amended to take account of human rights concerns: the Enterprise Bill of Session 2001-2002; the Draft Civil Contingencies Bill of Session 2002-03; the Licensing Bill of Session 2002-03; the Nottingham City Council Bill (a private bill during Session 2003-03); the Courts Bill of Session 2002-03; the Criminal Justice Bill of Session 2002-03; the Crime (International Co-operation) Bill of Session 2002-03; the Housing Bill of Session 2003-04; the Civil Partnership Bill of Session 2003-04; the Draft School Transport Bill of Session 2003-04; and the Mental Capacity Bill of Sessions 2003-04 and 2004-05

The Committee has also been very successful in meeting its goal of reporting on all Government bills before the second reading debate in the second House. The Committee reports that in the last 3 sessions, the only bills that the Committee has not reported on in time have been Consolidated Fund and Appropriation bills (which are fast-tracked and unlikely to raise human rights issues) and those bills which have proceeded through the Houses faster than normal.

The Committee ideally aims to publish its final views on a bill in time to provide advice to the House where the bill is introduced. However, this has not always been possible, given the time constraints the Committee works under and the limited resources of the Committee. The Committee does not have the benefit of advance view of any bills, so it cannot begin consideration of the bill before the bill has been introduced. Similarly, the Committee does not get advance consideration of amendments with human rights implications that are tabled to bills. This can be particularly problematic where amendments with significant human rights implications are tabled at a late stage. The Committee also has no power to formally affect the timing of the passage of the bill. Thus, while external submissions on a bill could greatly assist the Committee in identifying potential human rights problems, the timetable the Committee operates under makes it difficult to invite or incorporate such contributions. Additionally, since the Committee's procedure for scrutinizing bills involves awaiting a response from the Minister in charge of the bill, any delay by the Minister affects the Committee's ability to timely report on a bill. Finally, given the Committee's finite resources, the Committee must prioritise between bills, in order to report early on bills with significant human rights implications.

<i>the Committee determines if a law poses:</i>
<i>Significant risk of incompatibility;</i>
<i>Risk; or</i>
<i>Raises human rights concerns.</i>

Some reports prepared by the Committee are stand-alone reports dealing with a specific bill. However, the trend has been away from stand-alone reports and toward combined scrutiny progress reports, which reported on more than one bill at a time. Between 2001-2005, the Committee published 56 scrutiny reports, commenting on 142 Government bills, 347 private Members' bills, and 23 private bills.

Some of such reports referred to bills covering topics such as Food Poverty (Eradication), Sex Discrimination, Corporate Responsibility, Police Reform, Divorce (Religious Marriages), Age Equality Commission, Criminal Defence Service, Anti-terrorism, Crime and Security, Age Discrimination, and Disabled People (Duties of Public Authorities).

Where time and resources allow, the Committee has commented on draft bills and has collaborated with the specific committee in charge of scrutinizing the draft bill. The Committee has not routinely scrutinized secondary or delegated legislation, although they have frequently noted where the human

rights compatibility of primary legislation depends on the adequacy of safeguards in secondary or delegated legislation. The Committee suggests that their successor committee could scrutinize delegated legislation, guidance, codes of practice and other soft law made pursuant to primary legislation that raises significant human rights issues.

Quality Advice:

In two notable provisions—section 55 of the Nationality, Immigration and Asylum Act 2002 and Part 4 ATCSA 2001—the Committee issued a strong warning that the provision was at risk of violating European Convention rights and courts later proved the Committee correct.²

Successful lobbying to amend bills:

The following legislation or draft legislation was been amended to take account of human rights concerns during the 2001-2005 session:

1. Enterprise Bill of Session 2001-2002; the Draft Civil Contingencies Bill of Session 2002-03;
2. Licensing Bill of Session 2002-03; the Nottingham City Council Bill (a private bill during Session 2003-03);
3. Courts Bill of Session 2002-03;
4. Criminal Justice Bill of Session 2002-03;
5. Crime (International Co-operation) Bill of Session 2002-03;
6. Housing Bill of Session 2003-04;
7. Civil Partnership Bill of Session 2003-04;
8. Draft School Transport Bill of Session 2003-04; and
9. Mental Capacity Bill of Sessions 2003-04 and 2004-05.

Impacting Human rights in a Broader Sense

IMPLEMENTATION OF HUMAN RIGHTS LAW

Human rights law is observed in the United Kingdom through national legislation (the Human Rights Act). Over the five year period 2001 – 2005 the Committee monitored the impact and implementation of the HRA.

In the following subject areas,

Human rights policy

- The Committee took evidence from the Parliamentary Secretary at the Lord Chancellor's Department in March 2002 on the working of the Human Rights Division of the Department of Constitutional Affairs;

² *Secretary of State for the Home Department v Limbuela, Tesema and Adam* [2004] EWCA Civ 540; *A v Secretary of State for the Home Department* [2004] KHL 56.

- The Committee held a general session to receive oral evidence on human rights policy with the Secretary of State for Constitutional Affairs and Lord Chancellor.

Custodial death

- The Committee conducted a major thematic inquiry into this important area where the UK has received criticism.

The Committee conducted a major inquiry into deaths in custody, publishing its findings in a report in February 2005. The Government responded to the report and accepted much of the Committee's analysis of the problem, pointing to policy initiatives in the areas of prison administration, sentencing, guidance, healthcare and mental health care. However, several of the Committee's recommendations, including a recommendation that the Government conduct a public inquiry into the death of Joseph Scholes, were rejected.

The Government did however take under consideration the Committee's recommendation that the Government establish a cross-departmental expert task force on deaths in custody. The Government indicated that it would respond by August 2005. In fact, it established the Forum for Preventing Deaths in Custody that month.

**Custodial death:
Acting more like a
House of Commons Select Committee**

In this area of great concern to the public, the Committee sought to refrain from making legalistic, abstract arguments that would alienate public authorities and put them on the defensive. The goal was to infuse human rights more productively into the policy process. This meant not taking the narrow view (focusing on the right to life) but proactively promoting and ensuring the human rights of people in custody broadly in a way relevant to the daily practice of people who work for and run custodial institutions.

Human rights training of military troops

- The Committee assessed whether the UK gives its proper training in human rights

Following a report from the International Committee of the Red Cross (ICRC), leaked in February 2004, which contained allegations that Coalition troops had committed a range of serious human rights abuses against detained Iraqi nationals, the Committee wrote to the Ministry of Defence to seek information regarding the training and instructions provided to servicemen and women on human rights issues to determine if they had been properly trained regarding human rights matters. The Committee reported that the responses received from the Ministry of Defense were uninformative and did not provide enough information for the Committee to assess whether the Ministry has mechanisms in place to ensure compliance with human rights standards.

Scope of application of human rights law

- The Committee inquired into and reported on which public authorities are impacted by human rights law.

This meant a detailed analysis of the meaning of the words “public authority” in Section 6 of the Act. The HRA makes it unlawful for a public authority to act in a manner that goes against European Convention rights. In a number of legal cases, courts interpreted “public authority” narrowly. In its report on this issue, the Committee argued that a narrow interpretation of “public authority” potentially leaves gaps in human rights protection, which could lead to a breach of the UK’s international obligations. The Committee recommended that the Government intervene in a case as a third party to press for a broad, functional definition of “public authority.”

The Joint Committee entered into public debate about who in government is covered by domestic human rights law (i.e. who the Human Rights Act considers to be a “public authority”)

The Government finally responded in February 2005. It said it would follow the Committee’s recommendation that the Government intervene in a case in which the meaning of public authority was in issue once a suitable case arose at the Court of Appeal level. The Government also indicated that, in line with the Committee’s recommendation, the Government was working with others to produce suitable guidance on the protection of Convention rights in contracts with private service providers.

HUMAN RIGHTS INSTITUTIONS

- The Committee was a strong voice in the debate over whether to create a Human Rights Commission

The Committee conducted an inquiry into the case for establishing a Human Rights Commission, during which it considered both written and oral evidence, visited Northern Ireland to engage in discussions with the Human Rights Commission in Northern Ireland, visited Scotland to discuss proposals to establish a Scottish Human Rights Commission, visited Wales to discuss the idea of a Commission for England and Wales, and held a seminar with human rights experts and practitioners in Westminster at the end of February 2002 to discuss the issue. The Committee also made several valuable overseas visits to human rights commission abroad to discuss and evaluate their methods of working.

The Committee also considered the Government’s consultation paper, entitled *Towards Equality and Diversity*, where the Government endorsed the idea of a single Equality Commission that would consolidate and replace three existing statutory commissions—the Equal Opportunity Commission, the Commission for Racial Equality and the Disability Rights Commission.

In September 2002, the Committee issued a brief report, asserting that such a commission should also promote and protect human rights.

In 2003, the Committee issued a major report entitled *The Case for a Human Rights Commission*. In that report, the Committee considered the functions and powers of a commission and advocated for a single unified equalities commission that would incorporate human rights. The committee's report played an integral role in the debate over whether a commission should be established, and on 30 October 2003 the Government announced that it would set up a Commission for Equality and Human Rights. Next the Committee issued a report in April 2004 on the structure, function and powers of the proposed commission.

After the Government published a White Paper entitled *Fairness for All*, the Committee reviewed the White Paper, noting the differences between the Committee's recommendations and the Government's recommendations, which primarily focused on the proposed powers of the commission and the measures to be put in place for ensuring the committee's independence and accountability. The Committee highlighted these differences in a report issued in August 2004.

The Committees and the Human Rights Commission: mutually supportive roles

The Committee envisions the Human Rights Commission's role as one that would involve public educational and promotional activities in relation to human rights. The Committee does not itself have the resources to undertake such activities, and, even if such resources existed, the Committee would be hesitant to engage in such activities for fear of affecting the impartial judgment necessary for the Committee's primary work of legislative scrutiny. The Committee envisions a relationship between itself and the Human Rights Commission where the Committee would receive advice from the Commission on proposed legislation and the Committee would monitor and report on the activities of the Commission.

- The Committee helped strengthen the Northern Ireland Human Rights Commission

After analysing the work of the Northern Ireland Human Rights Commission (NIHRC) the Committee produced a report on the NIHRC in July 2003 in which it made recommendations with respect to the NIHRC's independence and impartiality, resources, strategic focus, and investigatory powers.

The Committee received a response from the NIHRC and the Government. The NIHRC took a review of its powers in 2001 and in 2002 the Government issued a consultation paper on the review. The government later announced that the NIHRC should be granted access to detention centres, and the power to compel evidence and witnesses in its investigations. The Committee awaited a more detailed response to the NIHRC's recommendations that arrived in November 2005 in the form of a public consultation paper soliciting contributions through February 2006. While the Committee supported the Government's initial (2002) response, the Committee criticized the Government for the time it took the Government to respond to this matter.³

- The Committee urged that England create a Children's Commissioner

The Committee also advocated for the creation of a Children's Commissioner for England. The Committee recommended that such a commissioner should consider the Government's and public authorities' provision of services to children in light of the principles in the Convention on the Rights of the Child, and should promote children's interests through advocacy and investigation.

With respect to the Committee's recommendation that the Government to establish a Children's Commissioner, the Government responded positively and the Children Act of 2004 provided the

³ For further updates on the second consultation paper see :
<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/112/11208.htm#n156>

statutory basis for the creation of this new post. The Committee analyzed the bill, and following amendments made in the House of Lords, determined that the bill provided appropriate functions and powers for the proposed Commissioner. However, the Commons later reversed many of the positive changes that had been made to the bill.

INTERNATIONAL TREATIES

- The Committee recommended that the UK take on additional obligations under human rights treaties

Between 2002-2004, the Government reviewed the UK's obligations and reservations under international treaties and considered whether to take on additional obligations. In July 2004, the Committee examined the conclusions reached by the review and received written and oral evidence.

In a report on Protocol No. 14 to the European Convention on Human Rights, the Committee expressed their view that Parliament should be more involved before the Executive ratifies human rights treaties, and the Committee has stated that it will take the responsibility of reporting to Parliament on all such treaties.

While it praised the fact that the UK allows individual petitions under the Convention on the Elimination of Discrimination Against Women (CEDAW), the Committee recommended that the Government set a clear timetable for reviewing rights of individual petition under other UN treaties (besides CEDAW) to which UK is a party. It recommended specifically that the UK consider ratifying the Revised European Social Charter which it signed in 1997 and Protocols 4 (freedom of movement) and 12 (right to equality) to the European Convention on Human Rights.

The Committee also reviewed the UN treaty bodies' concluding observations on the UK's compliance with the following international treaties: a) the Convention on the Rights of the Child (CRC); b) the International Covenant on Economic Social and Cultural Rights (ICESCR); and c) the Convention on the Elimination of Racial Discrimination (CERD).

In general, the Committee was concerned that the Government does not consult sufficiently with relevant organizations, such as interested NGOs, when preparing periodic reports to the UN, and once concluding observations are received, the Government has not sufficiently disseminated the observation to relevant public bodies and NGOs. The Committee also believed that there needs to be a clear process for taking the recommendations of the UN forward and putting them into practice. The Committee recommended that the Human Rights Division of the Department of Constitutional Affairs take on this function, as well as the function of coordinating responsibility for preparing reports and disseminating concluding observations, with respect to all the international treaties to which the UK is a party. The Committee noted that this is starting to take place, since the DCA recently took over reporting responsibility for the ICESCR.

After reviewing the concluding observations with respect to the Committee on the Rights of the Child, the Committee issued a report in June 2003 covering topics such as general, procedural and structural issues, children and the criminal justice system, health and welfare, education, care and protection and civil rights and freedoms.

In response to the Committee's report on the concluding observations made under the UNCRC, the Government published its Green Paper on services for children, entitled *Every Child Matters*. While the Committee was pleased with the Government's decision to establish a children's commissioner for England, the Committee was disappointed with the Government's policy on holding children in custody and with the Government's unwillingness to frame its actions within the context of the rights and goals of the CRC.

The concluding observations under the ICESCR were issued in June 2002 and in March 2003 the Committee issued a call for written evidence responding to the concluding observations. The Committee issued a report in November 2004 in which it emphasized that the social and economic rights contained in the ICESCR should not be divided from the ECHR's civil and political rights and should not be given lesser status than civil and political rights. The Committee also disagreed with the Government's position that the rights in the ICESCR should be viewed as aspirational goals rather than enforceable rights.

At the time of publishing its 2001 -2005 report, the Committee still awaited a full response to its report on the ICESCR.

The Joint Committee disagreed with the Government view that the ICESCR contains aspirations, not enforceable rights

In August 2003, the UN issued concluding observations under the CERD and raised a number of issues regarding the structure of UK anti-discrimination law and discrimination against ethnic minorities, asylum seekers, gypsies and travellers. In response, in October 2004, the Committee took written and oral evidence on these issues from a number of individuals and published a report in March 2005. The report applauded the Government's decision to establish an Equality Review to consider the economic and social causes of inequality, the establishment of a review of equality legislation, and the government's *Race Equality and Community Cohesion Strategy*. The Committee recommended that both the review of equality legislation and the strategy take into account the CERD concluding observations. The Committee also made recommendations for changing the law on discrimination permitted in immigration services and the discrimination affecting accommodation for gypsies and travellers.

Treaty recommendations

Economic, Social and Cultural Rights

- Reminded that they are indivisible from and equally important as civil & political rights
- Disagreed with government view that economic & social rights are unenforceable

Children's Rights

- Urged the UK to withdraw its reservations to the CRC and ICCPR that allow children to be detained with adults where no suitable facilities exist.
- Called for a timetable for when full separate detention facilities for children will exist

- Expressed concern for the UK's reservation dealing with children in armed conflict in the Optional Protocol to the CRC.
- Reported on a range of themes relating to children (health, education, crime, etc.) that are impacted by treaty obligations

Elimination of Racial Discrimination

- Urged that the Government's equality legislation review and *Race Equality and Community Cohesion Strategy* take into account the CERD committee's concluding observations.
- Recommended changes in laws on discrimination permitted in immigration services and discrimination affecting accommodation for gypsies and travellers.

MONITORING OF COURT JUDGMENTS

- The Committee monitored judgements by the European Court of Human Rights (ECtHR) that bind the UK, and declarations of incompatibility with the Human Rights Act issued by UK courts.

In June 2002, the Committee began to review the measures taken by the Government to implement adverse judgments made by the ECtHR. If an adverse judgment appeared to raise a general issue, the Committee wrote to the Government Department to find out how the Department was implementing or proposing to implement the judgment. Similarly, the Committee monitored the Government's attempt to address declarations of incompatibility. Only one declaration by a court remained unresolved as of 2005 (when the Committee wrote a report of its activities). This was the declaration (in *M v. Secretary of State for Health*) that the Mental Health Act of 1983 was incompatible with Article 8 of the European Convention on Human Rights. The Committee enquired into the Government's plans for solve the incompatibility, and was told at first that remedial order would be taken and later that a new Mental Health bill would be introduced, and pre-legislative scrutiny sought.

As noted above, with respect to declarations of incompatibility, either the Committee has independently noted them or the Government has formally informed the Committee of them, and most of the incompatibilities have been remedied. However, the same cannot be said of Strasbourg judgments that raise implementation issues in the UK. The relevant Government Departments have not been conscientious about informing the Committee of their intended actions in response to judgments and the Committee has had to persistently follow up with the Departments to get the relevant information. The Committee, therefore, suggests that the Government commit that all Departments will improve and systematise their provision of information to the Committee, and where the Government chooses not to proceed by remedial order, it should formally notify the Committee that the incompatibility has been remedied.

The Committee has other concerns in relation to implementation of Strasbourg judgments. First, the Committee notes that the system is subject to delays caused by a variety of factors, including a backlog in the Committee of Ministers of the Council of Europe (which supervises the domestic implementations of judgments), discussions between Government departments, and disagreements between the Committee of Ministers and the UK Government as to the proper method of implementation. Second, the Committee has found that there is insufficient information available on the progress of implementation negotiations in the Committee of Ministers or in the Government. Third, the Committee believes more effort needs to be made to distribute judgments and educate and train relevant groups about the consequences of the judgments.

To remedy these problems, the Committee suggests that the Department of Constitutional Affairs take charge of ensuring that other relevant Government departments take adequate and prompt implementation measures following an adverse Strasbourg judgment or declaration of incompatibility in UK courts. The DCA should also consolidate information on the status of judgments and the measures taken to implement them. The Committee also suggests that when incompatibilities need to be remedied by legislation, the UK Government should consider making more use of the fast track (remedial order)⁴ route under the HRA. Finally, the Committee suggests that the new Commission for Equality and Human rights should have the responsibility of educating and updating relevant groups on the consequences of adverse Strasbourg judgments and declarations of incompatibility, and the Commission should independently monitor the effectiveness of action taken by the DCA.

CONCLUSIONS

Overall, the Committee has made a valuable contribution to human rights law in the UK, pushing Government departments to provide greater protection for human rights and serving as a reminder to all Government departments that human rights must be taken into account. The Committee serves as a watchdog within the Government, monitoring the Government's action and inaction on issues relating to Human Rights and then raising questions and demanding accountability from the Government. As described above, the Committee has been successful in promoting human rights by influencing the Government to amend bills that initially raised human rights concerns, by influencing the debate over the establishment of a UK Equality and Human Rights Commission and a Children's Commissioner for England, and by putting pressure on government departments to ensure that judgments of incompatibility with Convention rights by UK courts or the ECtHR are remedied.

The Committee, however, is limited in what it can accomplish because it ultimately has no power other than the power of persuasion. While some Government departments respond to the Committee and take the recommendations of the Committee seriously, others delay responding, provide inadequate responses, or, while acknowledging the points raised by the Committee, fail to ultimately follow the Committee's advice. When such occurs, the Committee can publicise the lack of response, but otherwise the Committee has no authority to force the relevant Government department to act.

Another potential problem with the Committee lies in the vagueness of the Committee's Orders of Reference (see page 7, above). Because the Orders of Reference are broad, the Committee is largely left to define its own role and activities. While the members of the Committee during the 2001-2005 Parliament have used this flexibility as an asset to hone in on particular matters in need of a human rights focus, others may take advantage of the flexibility to ignore those areas that most require human rights attention. When the members of the Committee change, there is nothing to ensure that the new members will take as proactive of a role in promoting human rights as the Committee in the 2001-2005 Parliament has done. Perhaps the Committee should incorporate some of the activities and goals set by the Committee in the 2001-2005 Parliament into the Committee's Standing Orders and Terms

⁴ see page 7

of Reference, thus ensuring that future Committee members follow the path set by the Committee in the 2001-2005 Parliament.

Because the Committee is composed of members of the Government who work closely with the Government, there is a concern that as members of the Committee change, the Committee could become a rubber stamp for the Government. Perhaps if the Committee developed stronger relationships with NGOs, the NGOs would serve as a check on the Committee. Additionally, NGOs could assist the Committee with projects that the Committee currently does not have the resources to undertake.

The Committee should also consider reviewing the UK's obligations under the Harare Principles or other human rights treaties that the UK is subject to, in addition to its current work reviewing UN international treaties.

RECOMMENDATIONS

Commonwealth Parliaments should:

Establish Human Rights Committees, particularly where there is no national institution, law reform commission, or similar body tasked with ensuring laws comply with human rights

Give Human Rights Committees **broad mandates** so that they can establish effective processes for monitoring human rights compliance of laws and practice in keeping with local circumstances. Wherever possible Committees should interpret their mandates as broadly as possible to take a pro-active approach;

Consider giving Committees **binding powers** rather than merely advisory ones that can be ignored by Government

Human Rights Committees should:

Interpret their mandates as **broadly** as possible to take a pro-active approach

Seek to make any non-mandatory roles a permanent part of the Committees' activities by putting them into Terms of Reference. This will ensure that **continuity** of activity is **not lost** between each new Committee (session of parliament)

Examine all bills introduced in parliament for compatibility with human rights. This should be done in a timely manner to provide advice to the House where the bill is introduced. Advance consideration of bills before they are introduced should be negotiated if possible to allow time for incorporating external submissions

Monitor the status of bills that they comment on to determine the **impact** of their recommendations

Whenever possible and with deference to the role of national institutions and other appropriate bodies, Committees should **monitor the implementation and impact** of domestic human rights law

Argue for the creation of national and sub-national **human rights institutions** and/or specialist commissions (for children, women, disabled, etc) and **complement** their work and **review their functioning** from time to time.

Review the appropriateness of a state's **treaty obligations and reservations** and if necessary recommend additional obligations be taken on

Monitor relevant court judgments (national, regional, international) of incompatibility with human rights to track measures taken by Government to implement adverse decisions

Not avoid any particular issue as “too **political**”

Work in tandem with national human rights institutions including the parliamentary ombudsman

Commonwealth Governments should:

Encourage states to set up human rights committees in parliament.

To assist human rights committees in assessing bills, given time pressure and limited resources, **provide the Human Rights Committees with a Human Rights Memorandum** that identifies any treaty rights engaged, the specific provisions of the bill that engage those rights, an explanation why there is no incompatibility with the rights engaged, or, if the rights are qualified the pressing need that justifies interference with the right, and any evidence the appropriate Department has taken into account to support its assessment

Provide information to Committees in a systematic manner to inform them **how incompatibilities** between law and treaty obligations raised by court judgments are **to be remedied**

Civil society should:

Advocate for the setting up of parliamentary committees to oversee human rights compliance

Work closely with parliamentarians to provide them information on human rights standards, obligations and developments as well as provide them and other relevant committees of parliament with input on issues of thematic concern, systemic incompatibility and individual cases of human rights abuse.

Monitor and publicise Committees' work

RESOURCES

Commonwealth Parliamentary Association/ Commonwealth Human Rights Initiative, **Human Rights Module**, Unit 10: Using the Parliamentary Committee System, [2006, undated] available at:
http://www.cpahq.org/uploadedFiles/Programmes_and_Activities/Human_Rights/CPACHRIHUMANRightsmodule.pdf

House of Lords House of Commons Joint Committee on Human rights, **The Work of the Committee in 2001 – 2005 Parliament**. HL Paper 112, HC 552, 26 May 2005 available at:
<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/112/11202.htm>

National Democratic Institute for International Affairs, “Parliamentary Human Rights Mechanisms”, March 2004.