About the Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. We are committed to our vision of a modern Britain where everyone is treated with dignity and respect, and we all have an equal chance to succeed. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN level as an ‘A status’ national human rights institution (NHRI) in recognition of its independence, powers and performance.

The Commission has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws, and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights. We hope that our submission will help inform the Committee’s findings and recommendations.

Introduction and summary of recommendations

The Commission is pleased to have the opportunity to provide evidence to the Committee’s inquiry on parliamentary scrutiny of treaties. The inquiry’s terms of reference focus mostly on scrutiny of treaties prior to ratification, and the Commission is particularly interested in this topic from the perspective of seeking to ensure adequate consideration of human rights standards in new trade agreements post-Brexit. The Commission’s role as an NHRI means that we are also particularly interested in the ongoing monitoring, implementation and enforcement of human rights treaties after ratification (including monitoring of reservations/derogations), and our response considers how Parliament can most effectively do this.

Our recommendations are as follows:

- Parliament should have a clearly defined, and meaningful role in the scrutiny of treaties, both pre- and post-ratification.
- Parliamentary Committees should draw on the relevant international obligations when undertaking their scrutiny and inquiry work, for
example by integrating them into Committees’ roles and the Terms of Reference for inquiries.

- As we have previously communicated in correspondence with the Chair of the Parliamentary Joint Committee on Human Rights (JCHR), we would like to see the JCHR conduct routine, formal scrutiny of the UK Government’s compliance with its international human rights obligations to ensure that the Government is held to account on an ongoing basis, and also act as a champion for Parliament’s role in holding the Government to account for compliance with the international human rights framework, by, for example, raising awareness of treaty obligations, building the capacity of other parliamentary committees to integrate international human rights into their scrutiny, and by examining international best practice on parliamentary scrutiny of international human rights obligations with a view to enhancing practice at home.

- Government should establish a National Mechanism for Implementation, Reporting and Follow up of international treaty obligations, which engages both Parliament and civil society

- The UK Government should ensure that future trade policy, at a minimum, guarantees the same level of human rights protections currently established in the EU’s trade and cooperation agreements.

- Parliament should receive regular formal updates on the progress of trade negotiations and scrutinise the work of Government departments in the usual way. Parliamentary approval should be required before any agreement can be ratified.

- The UK Government should produce, in consultation with stakeholders, robust Sustainability Impact Assessments (SIAs) that include thorough analysis of the human rights and other implications of trade policy and negotiations.

- The UK Government should establish a transparent mechanism for consulting with businesses and civil society, which is representative of individuals across the full range of protected characteristics, when developing trade policy and engaging in trade negotiations.

**Parliamentary scrutiny of human rights treaties**

The UK Government has ratified seven of the core international human rights treaties and in doing so has taken on obligations under international law to implement these provisions in domestic law, policy and practice. These treaties cover all aspects of life (civil, political, economic, social and cultural), some apply to all people, and others apply

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2 The UK government has ratified the following international human rights treaties:
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- International Covenant on Civil and Political Rights (ICCPR)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- International Covenant on Economic, Social and Cultural Rights (ICESCR).
to specific groups of people (children, disabled people, women, ethnic minorities). The UK has also ratified the European Convention on Human Rights (ECHR), which is incorporated into domestic law through the Human Rights Act 1998. The UK Government has ultimate responsibility for implementation of these international treaties, but parliamentary scrutiny post ratification is critical for holding Government to account on these international human rights obligations. At present parliamentary scrutiny of compliance with these obligations is limited.

Human rights treaties (and potentially human rights clauses in other treaties) are qualitatively different from most other treaties: treaties in general govern relationships between states, so when a state is in breach another state will challenge it. But human rights treaties concern the relationship between the state and individuals, a fundamentally asymmetrical relationship which makes independent parliamentary monitoring mechanisms (as well as other accountability frameworks such as those provided by NHRIs, civil society and the UN) particularly important. Moreover, although the obligations in international human rights treaties are owed to individuals, people in the UK are unable to seek redress if their rights are breached by the Government because the UK has not given domestic legal effect to the majority of these commitments. Again, this makes Parliament’s role in scrutinising the Government’s compliance with its obligations under international human rights treaties of even greater importance.

International standards emphasise parliaments’ role in monitoring compliance with human rights treaties. The UN High Commissioner for Human Rights has recently noted that parliaments are ‘cornerstones of national human rights protection systems’, and as such, should ‘contribute to the application of international human rights obligations and… [have an] oversight function with respect to human rights’. The role of parliaments in holding government to account on its international obligations has been specified in the Belgrade Principles (2012), which among other things call for parliaments to be involved in monitoring the State’s compliance with its human rights obligations.

Proposals for strengthening Parliament’s role in scrutiny of human rights treaties

3 The distinct and non-reciprocal nature of international human rights treaties and the resulting impact on compliance has been widely examined in academic studies, for example: https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.co.uk/&httpsredir=1&article=4742&context=fss_papers and http://nyujilp.org/wp-content/uploads/2010/06/44-3_Trachtman_Web.pdf. Note also the UN Charter, and the Declaration on Principles of International Law: http://www.un-documents.net/a25r2625.htm which demonstrate the elevated status of human rights


The Commission believes that Parliament should have a role, both in scrutinising treaties (including international human rights treaties) during the process of ratification, and in the ongoing monitoring of implementation.

Of the parliamentary committees, only the Joint Committee on Human Rights (JCHR) has explicit responsibility for scrutinising legislation for its compatibility with human rights, including in relation to international human rights standards, and for scrutinising the UK’s compliance with its international human rights obligations more broadly. Examples of such activity include the inquiry into the implementation of the right of disabled people to independent living and the inquiry on the UK’s compliance with the Convention on the Rights of the Child (2015/16). JCHR has also drawn on the Government’s international treaty obligations in its legislative scrutiny; see for example recommendations on the Children and Social Work Bill.

Whilst such activity is welcome, it does not amount to comprehensive scrutiny of the full breadth of the UK Government’s international human rights obligations on an ongoing basis, nor do other parliamentary committees use the international framework as a lens for their work. The Women and Equalities Select Committee (WEC) plays an important role in holding government to account on its human rights obligations that relate to groups sharing protected characteristics (for example its October 2018 session on CEDAW) but does not routinely take the international human rights framework as its starting point. The Commission believes that the international human rights framework is a valuable and under-used tool for the legislative scrutiny and inquiry work of all parliamentary committees, and that such scrutiny is essential for ensuring that the UK’s obligations in international law are upheld.

As we have previously indicated in correspondence with the JCHR Chair, the Commission believes that there is scope for JCHR to take on an enhanced role, by for example:

- Acting as a champion for the international human rights framework, and building capacity across Parliament by encouraging other parliamentary committees to integrate international human rights into their scrutiny.

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6 According to the JCHR’s website, the Committee’s work includes scrutinising every Government Bill for its compatibility with human rights, including:
   - The rights under the ECHR
   - Common law fundamental rights and liberties
   - The human rights contained in other international obligations of the UK

The website also states 'The Committee also scrutinises the Government’s response to court judgments concerning human rights, and the UK’s compliance with its human rights obligations contained in a range of international treaties' see: [https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/role/](https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/role/)

7 Joint Committee on Human Rights (2011/12) Inquiry into the implementation of the right of disabled people to independent living

8 Joint Committee on Human Rights (2015/16) Inquiries on UK compliance with the CRC and children’s rights

• Conducting routine scrutiny of the UK government’s compliance with international human rights obligations to ensure that the Government is held to account on an ongoing basis.
• Leading parliamentary oversight of the work of the Government in implementing recommendations of international human rights mechanisms.

In November 2018, the Scottish Parliament’s Equalities and Human Rights Committee (EHRiC) published a report which noted the critical role of parliaments in monitoring the implementation of international human rights obligations and how this serves as a reminder to government of the commitments they have made. Work in this area has been led by our sister NHRI the Scottish Human Rights Commission, with EHRC also responding to EHRiC’s consultation. The report makes a series of recommendations aimed at enhancing the Scottish Parliament’s scrutiny of international human rights obligations, including sharing information with other parliamentary committees on treaty obligations and producing guidance to embed and support human rights in the work of the Parliament and its Committees. The Commission would favour the Westminster Parliament carrying out similar activities.

The role of Parliament and Government in the UN’s processes for reviewing the UK’s compliance with its treaty obligations

Formal monitoring of the UK’s international human rights obligations is conducted by UN committees of independent experts nominated and elected by states (‘treaty bodies’). The treaty bodies perform their monitoring role through examinations of each state’s compliance approximately every four years. Before each examination, the state (the UK government) submits a ‘state report’, setting out the laws and policies it has put in place to implement the Treaty. The treaty bodies draw on the state report along with a wide range of other information to inform their examinations. Following the examination, treaty bodies issue ‘concluding observations’ that set out what actions governments must take to comply with the treaties. State parties must take steps to implement these recommendations during the three or four-year ‘follow up’ period between the publication of the UN committees’ concluding observations and the next state examination.

In addition, the UK engages in the Universal Periodic Review (UPR) – a state peer review process set up by the United Nations Human Rights Council in 2006, in which the human rights situation in every country is assessed every five years by its fellow UN member states. The UK was last reviewed in May 2017, and received 227 recommendations.

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At present, Parliament does not play a formal role in these processes. As noted above, JCHR and WEC have conducted some scrutiny of government obligations but this is not routine. Government does not, as a matter of course, lay its reports to the UN before Parliament (though will often make written statements when a report is being submitted to the UN, or on receiving concluding observations). The Commission recommends that Government provide more regular information to Parliament on its compliance with its treaty obligations. Parliament could prompt this by formally scrutinising the Government’s compliance with its human rights treaty obligations at least once in between each UN review.

The UN High Commissioner for Human Rights\(^\text{11}\) and the UN treaty bodies have repeatedly called for the establishment of national mechanisms for implementation, reporting and follow-up on UN human rights treaties (NMIRFs). This would effectively constitute a coordinated approach to implementing the UK’s human rights obligations and reporting to, and engaging with, international and regional human rights oversight mechanisms. There is no ‘one size fits all’ approach to such mechanisms, but they should be standing and include the Government departments responsible for specific policy areas. They could also include representatives from other relevant public bodies, parliament and the judiciary, as well as National Human Rights Institutions and civil society organisations (CSOs). The Scottish Parliament’s EHRiC recently recommended, as an immediate priority, the establishment of a ‘Scottish mechanism for implementation, reporting and follow up, modelled on the NMIRFs recommended by the UN’.\(^\text{12}\) The Commission recommends that Parliament should encourage the Government to establish a similar mechanism, which engages both Parliament and civil society.

**Post-Brexit trade agreements**

The inclusion of human rights and democracy clauses in new trade agreements is a key way of ensuring that the UK continues to show global leadership on human rights after Brexit,\(^\text{13}\) and will require parliamentary involvement both before and after ratification. The Commission considers that the UK’s trade policy should, at minimum, ensure the same level of human rights protections as currently guaranteed through EU trade and cooperation agreements.\(^\text{14}\) The EU’s human rights and democracy clauses allow for ‘appropriate measures’ to be taken if the other party violates human rights or democratic principles,\(^\text{15}\) while procedures that require

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human rights impact assessments for trade arrangements ensure that there is not a race to the bottom in respect of rights and protections. We therefore welcome the Government’s commitment to include human rights protections that are at least equal to the current EU level in any new bilateral agreements.¹⁶

We welcome the requirements in the Trade Bill for parliamentary consideration of future trade agreements, which covers existing trade agreements, and would recommend that Parliament should receive regular formal updates on the progress of new trade negotiations, and scrutinise the work of Government departments in the usual way. Parliamentary approval should be required before any agreement can be ratified. In addition, we consider that robust Sustainability Impact Assessments of trade agreements under negotiation should be undertaken, to ensure proper analysis of the human rights and other implications of ongoing trade negotiations. Parliament should ask for the Government to provide these, to inform its scrutiny of trade agreements.

To enhance the scrutiny of future trade agreements, Parliament should encourage the Government to implement a consultation process that builds on the EU’s current ‘civil society dialogue’. This involves informing interested parties about ongoing developments in trade policy and negotiations, and exchanging views with them. This mechanism for consulting with businesses and CSOs should include representation of a broad range of organisations, including diversity of representation across the full range of protected characteristics, to ensure that trade issues do not negatively affect human rights or equality issues, such as labour rights and others.¹⁷

7 December 2018

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¹⁵ This includes, for example, sanctions or the suspension of the agreement if the other party violates an ‘essential elements’ clause referring to basic human rights and democracy standards.
