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The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms

Background memorandum

prepared by the Secretariat*

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Introduction

1. This document provides an overview of how a number of national parliaments verify European Convention on Human Rights (ECHR) standards, as well as the implementation of judgments of the European Court of Human Rights (ECtHR). It is based on the premise that a priority must be placed, by States Parties to the ECHR, on strengthening domestic mechanisms of implementation. This is necessary in order to reinforce the Convention system, both by stemming the flood of applications to the Court and ensuring the full, rapid and effective execution of ECtHR judgments, especially those revealing systemic or structural problems.

2. In cases of the non-implementation, delay or (rarely) refusal to implement a judgment, or where legislative reform is required, the role of parliaments is indispensable. Parliaments are uniquely well-placed to press executive bodies to justify their actions or inaction during the implementation process. National parliaments, as a branch of the state, have an obligation to ensure compliance with the Convention, including judgments of the ECtHR. Nevertheless, many parliaments in States Parties to the Convention do not have adequate (or any) mechanisms for fulfilling this function. Moreover, even once parliamentary mechanisms have been created, they may be vulnerable to being weakened or discontinued if there is a change in the political climate.¹ Members of the Parliamentary Assembly appear ideally placed to fulfil the dual mandate which they possess by virtue of belonging both to PACE and their national parliament; for example, by promoting understanding and application of Convention standards at the domestic level.

3. In response to this situation, Parliamentary Assembly Resolution 1823 (2011) (see Appendix) has called for national parliaments to create adequate procedures to verify the compatibility of draft legislation with ECHR standards and monitor the implementation of the Strasbourg Court's judgments.

4. The role of parliaments has also been recognised at the inter-governmental level, as reflected in the Brighton Declaration of April 2012,² and, in particular, the Brussels Declaration of March 2015,³ which urged states to facilitate the role of national parliaments.

5. Accordingly, this memorandum examines:

- The variety of **existing parliamentary structures** for assessing human rights compliance;
- **Reporting mechanisms** that systematise dialogue between the executive and parliament;
- **Principles** underpinning the role of national parliaments in the verification of Convention standards and implementation of ECtHR judgments;
- **Laws on implementation**, which stipulate the role of the various domestic actors involved in human rights implementation, including parliaments;
- **Opportunities** that exist to strengthen the capacity and impact of parliamentary activity.

1. Parliamentary structures

6. The Parliamentary Assembly has recommended that:

*“National parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, **such as dedicated human rights committees or appropriate analogous structures**, whose remit shall be clearly defined and enshrined in law”* (emphasis added).⁴

¹ For example, in February 2014, the Justice and Human Rights Committee and the Foreign Affairs Committee of the Sejm (the lower house) in Poland jointly established an eleven-strong permanent Sub-Committee on the execution of judgments of the ECtHR. This followed discussions, which also involved the Committee of Human Rights, Rule of Law and Petitions in the Senate (the upper house), on the need to systematise arrangements for parliamentary oversight of the execution process. However, the Sub-committee was largely inactive and the current parliament, elected in October 2015, failed to restore it, demonstrating the importance of human rights structures having a permanent status and clearly-defined remit. See Dominika Bychawska-Siniarska, ‘Polish Parliament – failed guardian of the Convention’, European Implementation Network newsletter, 27 October 2016; available at <http://european-implementation.net/ein-voices/2016/10/23/polish-parliament-failed-guardian-of-the-convention> .

² On the parliamentary dimension, see High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, 20 April 2012, paras 9.c.ii; 29.a.iii; and 29.e.

³ High-level Conference on the ‘Implementation of the European Convention on Human Rights, our shared responsibility’, Brussels Declaration, 27 March 2015, paras B 1.b; B.2.a; B.2.f; B.2.h; and B.2.j

⁴ PACE Resolution 1823 (2011), National parliaments: guarantors of human rights in Europe: Appendix - Basic principles for parliamentary supervision of international human rights standards, para 1 (reproduced in the Appendix to this memorandum).

1.1. A specialised human rights committee

7. In this model, a single standing parliamentary committee exists with a remit which is mainly or exclusively concerned with human rights. The committee's remit may expressly include (or be interpreted by the committee to include) specific functions such as the vetting of legislation for compliance with domestic, regional or international commitments, and oversight of the execution of ECtHR judgments.

➤ EXAMPLE: United Kingdom

The Joint Committee on Human Rights (JCHR) epitomises the specialised human rights committee model.¹ It began work in 2001 and has 12 members drawn equally from the House of Commons and House of Lords. The JCHR currently has two dedicated legal advisers with human rights expertise who intensively service its members. The Committee's formal remit is extremely broad, covering 'matters relating to human rights' in the UK, excluding individual cases. The Committee has interpreted its mandate expansively. Among other activities, it:

- selectively scrutinises government Bills (and, where possible, draft Bills) for human rights compatibility, and proposes amendments to Bills in order to remove any incompatibility identified in its reports.² The JCHR's legislative (or pre-legislative) scrutiny is assisted by a 'human rights memorandum' prepared by the relevant Government department detailing the Bill's compatibility with the ECHR and other international human rights obligations;
- conducts scrutiny of the executive response to adverse ECtHR judgments, on the basis of criteria set out by the JCHR (e.g. a requirement that the Government should provide detailed plans as to its response within four months and make a final decision as to how the incompatibility will be remedied within six months);³
- conducts thematic inquiries into issues where there is cause for concern about the UK's human rights record;
- selectively monitors the UK's compliance with its international human rights obligations under UN human rights treaties, both pre- and post-ratification.

➤ EXAMPLE: Albania

In Albania, the Committee on Legal Issues, Public Administration and Human Rights (which also has a Sub-Committee on Human Rights) within the Parliament performs a legislative vetting role; however, it has no specific mechanism for monitoring the execution of ECtHR judgments, which is purely an executive matter.⁴

➤ EXAMPLE: Finland

The Finnish Parliament has a Constitutional Law Committee whose principal function is to issue statements on bills (or other matters) sent to it for consideration regarding their constitutionality and their bearing on international human rights instruments, including the ECHR. Once a legislative proposal has been submitted, the Committee elicits the views of civil servants and external experts at a formal hearing, before adopting a reasoned opinion or report. If incompatibilities are identified, the Committee proposes amendments to eliminate the problem. Opinions of the Committee are, as a matter of constitutional custom, treated as formally binding on Parliament. The Committee often refers to judgments of the ECtHR.⁵ The Foreign Ministry sends all ECtHR decisions against Finland to the secretariat of the Committee for information; they are not circulated unless requested. The Parliamentary Ombudsman submits an annual report to the Parliament, including a short section on Finnish cases in Strasbourg, all relevant cases decided in relation to Finland, new cases and figures for of compensation. The report is scrutinised by the Constitutional Law Committee; however, the Committee has never taken a position on that section of the report.

¹ See <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>.

² For the JCHR's legislative scrutiny in the 2015-16 parliamentary session, see: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/legislative-scrutiny/>

³ From 2007 to 2010, the JCHR published annual progress reports detailing its assessment of the Government's implementation of human rights judgments (both domestic and ECtHR). In the 2010-15 parliament, reports were less frequent. For the most recent, see JCHR, Seventh Report of Session 2014–15, *Human Rights Judgments*, HL Paper 130, HC 1088 (2015), available at <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/130/130.pdf>

⁴ Information provided at Parliamentary Assembly of the Council of Europe capacity-building seminar on the ECHR (execution of judgments), Strasbourg, 4-5 September 2014.

⁵ Information provided by Kimmo Sasi, Chair of the Constitutional Law Committee (2003-11), member (2011-15)

➤ **EXAMPLE: Greece**

In late 2013, the Greek Parliament established a Special Permanent Committee on Monitoring the Decisions of the ECtHR.¹ The Committee's remit is to vet legislation for Convention compliance and conduct oversight of the execution of ECtHR judgments. The Committee had not begun its work as of October 2014, but was reported to be meeting regularly in the Parliament elected in January 2015.

➤ **EXAMPLE: Hungary**

Within the Hungarian National Assembly, human rights are the responsibility of the Committee on Justice, which has 12 members. This was formed in 2014 by a merger of two previous Committees which had existed since 1990: the Constitutional, Judicial and Standing Orders Committee and the Committee on Human Rights, Minorities, Civil and Religious Affairs (which previously had primary responsibility for ensuring compliance with Hungary's international human rights obligations). The Committee on Justice receives an annual report by the Government Agent before the ECtHR on judgments against Hungary and the state of execution of judgments (see also section 2.1).

➤ **EXAMPLE: Latvia**

Within the Latvian Parliament, the Human Rights and Public Affairs Committee is formally responsible for monitoring the implementation of international human rights norms. There are no institutional arrangements for monitoring the implementation of ECtHR judgments. However, approximately once a year the Latvian Government Agent reports to the Committee about the state of execution.²

➤ **EXAMPLE: Montenegro**

Within the Parliament of Montenegro, the Committee on Human Rights and Freedoms deals with human rights issues. It does not have a systematic follow-up mechanism on the execution of ECtHR judgments. However, it has drafted an information report to the President of the Parliament on proceedings against Montenegro before the European Court for Human Rights with proposals for follow-up.

1.2 *A specialised sub-committee with a human rights remit*

8. A variant of the specialised committee model is where a specialised **sub-committee** with a human rights remit is formed under a standing committee with a wider mandate.

➤ **EXAMPLE: Czech Republic**

The Constitutional and Legal Committee in the Chamber of Deputies (lower house) of the Czech Parliament has established a Subcommittee on legislative initiatives of the Ombudsman and the European Court of Human Rights.³ The Ombudsman, also known as the Public Defender of Rights, mediates between complainants and public bodies. In addition, the Committee on Petitions has a Sub-committee on Human Rights.⁴ The Sub-committees are effectively working groups of their parent Committee, and meet in private. The Sub-committee on legislative initiatives of the Ombudsman and the ECtHR discusses the annual report prepared by the Government Agent on judgments against the Czech Republic and their state of execution. The Constitutional and Legal Committee and Committee on Petitions play the leading role in vetting the conformity of government and non-government bills with international human rights treaties, including the ECHR.⁵

➤ **EXAMPLE: Ireland**

In December 2014, the Justice, Defence and Equality Committee, a joint committee of the two houses of the Irish Parliament, established a Sub-committee on Human Rights relative to Justice and Equality Matters.⁶ The orders of reference of the sub-committee are to 'examine issues, themes and proposals, legislative or otherwise, in regard to compliance with the human rights of persons within the State'.⁷ They do not expressly include monitoring the implementation of human rights judgments.

➤ **EXAMPLE: Romania**

In 2009, the Committee for Legal Matters, Discipline and Immunities ('the Legal Committee') in the Chamber of Deputies (the lower house) created a Sub-committee to monitor the execution of ECtHR judgments. The Sub-committee is formed of seven MPs drawn from all parliamentary groups and has dedicated legal advisers attached to it. Among other activities, the Sub-committee meets and corresponds

¹ See: <http://www.hellenicparliament.gr/en/Koinovouleftikes-Epitropes/CommitteeDetailView?CommitteeId=4742dd94-c817-45dd-b1ab-6355b1416bd1>

² Information provided by Boriss Cilevics MP, Vice-Chair of the Committee on Human Rights and Public Affairs.

³ See <http://www.psp.cz/en/sqw/hp.sqw?k=4024>.

⁴ See <http://www.psp.cz/en/sqw/hp.sqw?k=3920>.

⁵ Information supplied by the Parliamentary Institute, August 2015.

⁶ See Sub-Committee on Human Rights relative to Justice and Equality Matters, Orders of Reference (undated).

⁷ Orders of Reference available at <http://www.oireachtas.ie/parliament/media/sub-Committee-on-HRRJEM-Orders-of-Reference.pdf>.

with Government representatives on specific cases raising problems of implementation, holds public hearings and receives regular reports from the Office of the Government Agent.

In view of the large number of applications and judgments against Romania, the Sub-committee has proposed the setting up of a joint parliamentary standing committee of the Chamber of Deputies and the Senate in order to exercise stronger oversight of the Government in respect of the enforcement of judgments and compliance with Convention standards.¹

1.2.1 A cross-cutting or fully 'mainstreamed' model

9. In the cross-cutting model, no single committee or sub-committee has a remit covering human rights matters, which are instead dealt with by different parliamentary committees as they arise within their respective mandates. The term 'mainstreamed' is also often used; this term implies that human rights oversight is, in practice, embedded in the work of all committees, which is not the case in all parliaments that have a cross-cutting committee structure. In that sense, mainstreaming may be understood in many parliaments as more of an aspiration than a description of actual practice. Parliaments which adopt this approach include those in Estonia, Iceland, Luxembourg, Norway and Switzerland, in addition to the following:

➤ EXAMPLE: Denmark

In the Danish Parliament, each committee deals with human rights within its respective sphere of competence. The Legal Affairs Committee maintains contact with, and discusses the annual reports of, the Danish Institute for Human rights and the Ombudsman. The Parliament has no formal procedures for monitoring the implementation of ECtHR judgments and there is no system of executive reporting to Parliament on implementation.²

➤ EXAMPLE: Netherlands

In the Netherlands, no parliamentary committee has an explicit remit to scrutinise legislation for Convention compliance or to conduct oversight of the execution of ECtHR judgments. Nor is there a specialised human rights unit at the disposal of members of parliament. However, each house of Parliament (the House of Representatives and the Senate) has both a permanent Justice Committee and a legal service, which place emphasis on verifying legislation for compliance with the ECHR.

Government Bills are accompanied by an explanatory memorandum, which identifies any issues of conformity with the ECHR or other international human rights standards. In addition, every Bill, before it is submitted to Parliament, must pass before the Council of State (a constitutionally-established advisory body to the Government) for an opinion on matters including human rights compliance, to which the Government in turn responds. This material informs subsequent legislative scrutiny by the relevant parliamentary committee(s). Parliamentarians may also seek advice from the Council of State or from civil servants within the Ministry of Justice, who receive training in human rights. The Government also reports annually to Parliament on the execution of judgments (see section 2.1).

➤ EXAMPLE: Russia

The State Duma has 30 committees, none of which deals specifically with human rights matters. Questions relating to Convention compliance and ECtHR judgments fall primarily, though not exclusively, within the remit of three Committees: on Civil, Criminal, Arbitration and Procedural Legislation; on Constitutional Legislation and State Building; and on Foreign Affairs. There is no institutionalised parliamentary mechanism to monitor the implementation of judgments. Since 2011, in accordance with a presidential decree, annual reports are prepared by the Ministry of Justice for the attention of the President, which include, among other things, a list of the laws which have had to be adopted or repealed by the Parliament in order to comply with judgments of the ECtHR.³

➤ EXAMPLE: Sweden

No act of law or other provision may be adopted which contravenes Sweden's undertakings under the European Convention. Legislative proposals are generally submitted by the Government. Such proposals may be evaluated by officials from the ministry concerned, a commission of inquiry or a one-person committee. Inquiry bodies, which operate independently of the Government, may include or co-opt experts, public officials and politicians. Before the Government takes up a position on the recommendations of a commission of inquiry, its report is referred for consideration to the relevant bodies, e.g. central government agencies, special interest groups or local government authorities. Any resulting draft bills are submitted to

¹ See Parliament of Romania, Chamber of Deputies, *Parliamentary Sub-committee on monitoring the execution of ECHR judgments* (undated) at p. 3; available at http://www.cdep.ro/pdfs/prezentare_subcomisie_cedo_engleza.pdf

² Information provided by Mette Vestergaard, Secretariat of the Danish delegation to the Parliamentary Assembly.

³ Presidential Decree on monitoring the application of law in the Russian Federation, No. 657), 20 May 2011.

the parliament (or *Riksdag*) for approval. A legislative proposal can also be submitted in the form of a parliamentary motion. The proposal is then referred for scrutiny to a permanent select committee responsible for the relevant subject matter in the *Riksdag*. The Committee on the Constitution has the overall responsibility for human rights issues with a bearing on national and European Union matters. The Committee on Foreign Affairs has the overall responsibility for human rights issues with a bearing on international matters.

The *Riksdag* has no specific mechanism for monitoring the implementation of ECtHR judgments. It becomes involved if the Government considers that legislation is necessary to remedy a violation and introduces a bill via a commission of inquiry or through a parliamentary legislative proposal. Parliamentary questions can also be asked to a specific minister about what action the executive is taking in response to a judgment.

1.2.2 Hybrid models

10. Hybrid models combine elements of both specialisation and mainstreaming. In such models, more than one parliamentary committee or sub-committee has human rights within its mandate, which may or may not include specific functions such as monitoring the execution of ECtHR judgments.

➤ EXAMPLE: Armenia

Within the National Assembly of Armenia, the Committee on Human Rights and Public Affairs and the Committee on State and Legal Affairs each has human rights within its sphere of competence (although legislative vetting is a cross-cutting activity).¹ Neither has a mechanism for monitoring the implementation of ECtHR judgments, and there is no requirement on Government to report regularly to Parliament.

➤ EXAMPLE: Cyprus

In the House of Representatives in Cyprus, two committees - the Standing Committee on Human Rights and Equal Opportunities for Men and Women, and the Committee on Legal Affairs - may each become involved in both legislative vetting and follow-up of ECtHR judgments. Both committees were involved, for example, in monitoring the implementation of the judgment in *Rantsev v Cyprus and Russia*, concerning (on the part of Cyprus) failures to protect a victim of human trafficking, Oxana Rantseva, and (on the part of both states) a failure adequately to investigate her death.²

➤ EXAMPLE: Georgia

The Human Rights and Civil Integration Committee ('Human Rights Committee') in the Georgian Parliament has 'broad powers to monitor and evaluate the human rights situation in the country and the government's compliance with and respect for national laws and international agreements affecting human rights'.³ The Legal Issues Committee may also become involved occasionally when a draft law is required in response to a judgment, usually relating to criminal justice. There is, however, no system of monitoring the implementation of judgments, nor any obligation on the Government to report regularly to Parliament on the matter. The Human Rights Committee developed an Action Plan for 2015-16, which makes no reference to either the Convention or judgments of the Court.⁴

➤ EXAMPLE: Germany

The two committees of the Bundestag (the lower house) which primarily deal with human rights questions are the Committee on Human Rights and Humanitarian Aid, which has 18 members, and the Committee on Legal Affairs, which has 37 members. The Petitions Committee may also consider human rights matters in the course of its review of individual complaints concerning the public impact of legislation.

The Committee on Legal Affairs leads on all matters relating to the Ministry of Justice. The Committee on Human Rights and Humanitarian Aid is rarely the lead committee on a particular issue, as it is not aligned with a specific ministry. Instead, it discusses human rights issues from a broad perspective – both on an international basis and in relation to Germany. Neither committee has an explicit agreed mandate to consider the implementation of European Court judgments; their involvement (or that of other parliamentary committees) will depend on the particular matter of law or policy raised by a judgment. Independent, expert advice is provided to MPs by the research service within Parliament, including on matters of international human rights law.

¹ Information provided by Arpine Hovhannisyan, member of the Committee of State and Legal Affairs

² No. 25965/04, 7 January 2010. Information provided by Eleni Georgiou, International Relations Officer of the House of Representatives of the Republic of Cyprus.

³ See <http://www.parliament.ge/en/saparlamento-saqmianoba/komitetebi/adamianis-uflebata-dacvisa-da-samoqalaqo-integraciis-komiteti/komitetis-sheaxe>.

⁴ Committee on Human Rights and Civil Integration of the Parliament of Georgia, *Action Plan 2015-2016* (2014)

Where new or revised legislation is required to implement a judgment, the issue will be considered by the Committee on Legal Affairs. In those circumstances it is common for the Committee to summon representatives of the Ministry of Justice to attend to explain why they consider it is necessary, and why the draft law is considered to be sufficient to implement the judgment. The Ministry of Justice reports annually to parliament on ECtHR judgments and their state of execution (see section 2.1).

➤ **EXAMPLE: Italy**

In the bicameral Italian Parliament, both the Chamber of Deputies and the Senate have Constitutional Affairs Committees, while the Senate also has an Extraordinary Commission for Protection and Promotion of Human Rights.¹ These three committees examine judgments of the ECtHR with the aim of evaluating and adopting necessary legislative reforms. The Committees also receive an annual report on judgments from the Prime Minister's office (see also section 2.1). They are not, however, responsible for legislative vetting for compliance with the ECHR, which is a mainstreamed activity.

➤ **EXAMPLE: Lithuania**

The Lithuanian Parliament has two committees with an interest in human rights: the Committee on Human Rights² and the Committee on Legal Affairs.³ Both Committees play an oversight role with respect to the implementation of ECtHR judgments. Once or twice a year, the Committees consider a report by the Lithuanian Government Agent on judgments against Lithuania and newly-communicated cases (see also section 2.1).

1.3 Advantages and disadvantages of specialisation and mainstreaming

11. There obviously exists no blueprint for the ideal configuration of parliamentary structures and mechanisms for ensuring compliance with ECHR standards and ECtHR judgments.

12. The Open Society Justice Initiative (OSJI) has ventured to suggest that in a weak parliamentary system, characterised by strong party discipline and dominance by a single party, 'mainstreaming human rights might have little effect'.⁴ Similarly, it adds, 'tacking human rights on to the mandates of other standing committees runs the risk of thin commitment to, and insufficient time and resources for, implementation'. In states where the execution of judgments and the verification of legislation for human rights compatibility is poorly coordinated within the executive, there may be advantages to having a specialised human rights committee or sub-committee, which is independent of the executive and can, over time, develop both systematic oversight mechanisms and human rights expertise among its members and staff.

13. In bicameral parliaments, if the decision is taken to have a specialised human rights committee, there appear to be merits in making it a joint committee of both houses in order to maximise the potential for both detailed scrutiny and political influence.

14. Despite the potential advantages of having a specialised human rights committee or sub-committee, there is a risk that leaving human rights scrutiny to a single specialised body may create a 'silo' within parliament and discourage the integration of human rights and related rule of law issues into the work of other committees. Moreover, the mere existence of a specialised committee does not guarantee effective implementation; rather, the effectiveness of such structures is dependent upon factors such as political will and the availability of expert legal advice. For example, the Azerbaijani Parliament has a standing Committee on Human Rights yet there is scant evidence of effective oversight activity on its part in relation to Convention standards or ECtHR judgments.⁵

15. Whatever the particular committee structure, it has often been underlined that it is important for parliamentarians have access to specialised secretariat support and politically-independent advice on human rights law. ECtHR judgments are very often a low priority for MPs who have many competing demands on their attention and may view judgments as politically unpalatable. It is to be expected that few parliamentarians have specialised human rights expertise – or the time to develop such expertise. The development of a professional parliamentary staff provides continuity between parliaments and ensures the creation of an 'institutional memory' attached to the work of parliamentary committees, both in relation to

¹ See https://www.senato.it/3723?shadow_organo=1170075.

² See http://www3.lrs.lt/pls/inter/w5_show?p_r=6150&p_k=2.

³ See http://www3.lrs.lt/pls/inter/w5_show?p_r=6147&p_k=2.

⁴ Open Society Justice Initiative, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions* (New York, Open Society Foundations, 2013), p. 68; available at: <http://www.opensocietyfoundations.org/sites/default/files/from-rights-to-remedies-20130708.pdf>.

⁵ Information provided by members of the Human Rights Legislation Division of the Parliament to the Parliamentary Assembly's Parliamentary Project Support Division, which states that proposals on amending or revoking existing legislation or adopting new legal provisions in response ECtHR judgments are submitted directly to the Head of the Parliament Office.

substantive issues and working methods. This is much less likely to occur where advisers are transient political appointees of either individual MPs or party groups.

2. Reporting mechanisms

2.1 Annual reports

16. Where systematic reporting by the executive to parliament takes place, this usually consists of an annual report prepared either by the responsible ministry (usually Justice or Foreign Affairs) or by the Government Agent on adverse ECtHR judgments and the steps taken by the executive to execute them.

17. Annual reports may be too infrequent to enable parliament to influence the executive response to judgments in 'real time'; however, such reporting mechanisms appear to possess several significant advantages:

(i) The anticipation of scrutiny can itself have a galvanising effect on executive bodies, which may act in order to pre-empt parliamentary or wider public criticism.

(ii) Regular reporting mechanisms can prompt governments to streamline and systematise coordination within the executive branch, thereby increasing the efficiency of the execution process. Such a process can also highlight problems that occur, e.g. where the Government Agent (before the Court) appears to lack the 'political status' required to influence or obtain information from other arms of the executive.

(iii) In the medium- to long-term, regular executive reporting may have the beneficial effect of normalising the execution process and preventing it from becoming unduly politicised.

18. As noted above, some form of reporting takes place in, among other states, the Czech Republic, Finland, Italy, Latvia, Lithuania and Romania. Other examples are provided below: some are recent innovations (Croatia and Hungary) while others are longer-established (Germany, the Netherlands and the United Kingdom).

➤ **EXAMPLE: Croatia**

In 2013, the Government Agent was called upon by the Parliament of Croatia to submit a report concerning the issue of representing the Republic of Croatia in ECHR proceedings and on execution of ECHR judgements. The Parliament of Croatia received this report, the first of this kind, on 18 October 2013 and according to a new regulation, the Agent must report at least annually to the Croatian Government and to the Parliament.

➤ **EXAMPLE: Germany**

The German Ministry of Justice has reported on ECtHR judgments annually since 2004 to both the Committee on Human Rights and Humanitarian Aid and the Committee on Legal Affairs (see also section 1.3).¹ Initially, the report covered judgments and decisions against Germany. Since 2007, it has covered the implementation of judgments. Since 2010, a separate annual report has also been produced covering judgments against other states which have potential implications for Germany. There is no formalised parliamentary procedure to respond to these reports. Parliamentary committees may put it on to their agenda for discussion (although this is not done routinely) and they may summon government representatives for questioning.

➤ **EXAMPLE: Hungary**

The Government Agent reports annually on Hungarian cases and their implementation status to the Justice Committee (see also section 1.1). These reports are discussed in Committee meetings with the State Secretary of Ministry of Justice, in the presence of the press and representatives of non-governmental organisations.

➤ **EXAMPLE: Netherlands**

In the Netherlands, a Government report on adverse judgments was initiated in 1996 at the request of the House of Representatives.² Since 2006, it has included information on the implementation of judgments and since 2009 it has included information about judgments against third countries which have immediate

¹ See, e.g., Bundesministerium der Justiz und für Verbraucherschutz, *Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte und die Umsetzung seiner Urteile in Verfahren gegen die Bundesrepublik Deutschland im Jahr 2014* (undated); available at http://www.bmju.de/SharedDocs/Downloads/DE/PDF/Bericht_ueber_die_Rechtssprechung_des_EGMR_2014_DE.pdf?blob=publicationFile&v=2

² See, e.g., Ministry of Foreign Affairs (International Law Division) *Rapportage 2015: Internationale Menschenrechtenprocedures* (2016); available at: <https://www.rijksoverheid.nl/documenten/rapporten/2016/03/21/rapportage-2015-internationale-mensenrechtenprocedures>

implications for Dutch law or policy. Since 2010, it has included updates about reasoned inadmissibility decisions by the ECtHR in Dutch cases. The 2013 report has a broader remit, covering all international human rights proceedings concerning the Netherlands, including the European Committee for Social Rights and United Nations treaty bodies.

➤ **EXAMPLE: United Kingdom**

In 2011, the Government initiated the production of an annual report on responding to human rights judgments, as had been requested by the Joint Committee on Human Rights since 2008.¹ In relation to the ECtHR, the report includes sections on the UK's general approach to the implementation of Strasbourg decisions and updates on the execution of specific judgments.

2.2 Action plans and action reports

19. An action plan sets out the measures which a state intends to take to implement a judgment of the Court. An action report describes the measures which have been taken by a state to implement a judgment and/or explains why a state considers that no measures (or no further measures) are necessary. Action plans/reports were introduced by the Committee of Ministers in 2004 and have become embedded in the supervision process since 2009. Under both the standard and enhanced supervision procedures of the Committee of Ministers, states are required to submit an action plan or report on the case at the latest within six months from the date upon which the judgment became final.

20. Once submitted to the Committee of Ministers, action plans/reports are public documents. Moreover, they should be considered as working documents which may need to be revised or updated as required.

21. It has been suggested that regular parliamentary scrutiny of action plans/reports would not only facilitate retrospective monitoring of executive action but would also have the additional advantage of galvanising executives to improve the quality and timeliness of action plans/reports from the outset. Although the Committee of Ministers has since 2011 published all action plans/reports on its website, this does not always happen immediately or in a way which makes action plans easily accessible. Of interest to note, in this connection, is the idea that parliamentary committees should press executive bodies to send action plans or reports to them at the same time as they are submitted to the Committee of Ministers, in order that parliamentary staff may review them and selectively draw MPs' attention to action plans or reports which merit greater scrutiny, as happens in the UK.

3. Principles underpinning the parliamentary role in ensuring human rights compliance

22. Whatever the specific committee structures adopted by national parliaments, certain principles underpin their role in ensuring compliance with international (as well as domestic) human rights standards. These principles pertain to the status, functions and powers of parliamentary bodies. Cross reference can, in this connection, be made to issues and priorities identified by the Parliamentary Assembly (see especially for Resolution 1823 (2011), appended to this memorandum), as well as international organisations such as the Inter-Parliamentary Union.² In addition, a set of 'Draft Principles and Guidelines on the Role of Parliaments in the Protection and Realisation of the Rule of Law and Human Rights' has been drafted by Murray Hunt, Legal Adviser to the JCHR, and is under consultation with a view to its adoption by national, regional and international institutions.³

23. For brevity, the term 'committee,' in this section, refers to any committee or sub-committee that regularly considers human rights matters, whether as a specialised function or as part of a broader mandate.

- Does the committee have a permanent status?
- Is the remit of the committee clearly defined and enshrined in the parliament's standing orders (or equivalent)?
- Is the remit of the committee sufficiently broad so as to reflect the imperative for parliament both to protect and realise human rights in the state concerned?
- Does the remit of the committee expressly include, or could it be interpreted by its members to

¹ For the latest, see Ministry of Justice, *Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government Response to Human Rights Judgments 2013-14*, CM 8962 (2014); available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389272/responding-to-human-rights-judgments-2013-2014.pdf.

² Inter-Parliamentary Union and Office of the United Nations High Commissioner for Human Rights, *Human Rights Handbook for Parliamentarians* (IPU and OHCHR: Geneva, 2005).

³ See Hunt, Hooper and Yowell (n 23) pp. 485-95.

include:

- systematic verification of the compatibility of draft legislation with international human rights obligations;
 - systematic monitoring of the implementation of judgments of the European Court of Human Rights, including the requirement for governments to regularly submit reports on human rights judgments and their implementation;
 - the power to initiate legislative proposals and amendments to laws; and
 - subpoena powers over witnesses and documents relevant to its remit?
- Does the committee have access to independent advisers with expertise in human rights law?
 - Is the committee adequately resourced to carry out its functions, including dedicated secretariat support?
 - Does the method of appointment of the committee ensure that it is independent from the executive?
 - Does the membership of the committee reflect the principle of political pluralism, i.e. does it reflect the balance of power between political groups within the Parliament?
 - Does the committee maintain regular dialogue with other bodies, at national level (e.g. national human rights institutions or ombudsmen)¹ and international level (e.g. Parliamentary Assembly, the Council of Europe Commissioner for Human Rights, European and other international human rights monitoring bodies)?
 - Does the committee regularly invite non-governmental organisations to contribute to its work, e.g. by submitting evidence to thematic inquiries, assisting the committee to determine priorities for its inquiries, or providing evidence about the impact of legislation on the enjoyment of human rights?

4. National implementation laws

24. Parliaments may contribute to the implementation of human rights standards by passing legislation which enshrines the authorities and duties of all national actors with responsibility for ensuring human rights compliance. Such legislation may also clarify how regional and international human rights conventions should be applied within the domestic legal order.

25. The mere existence of a legislative framework does not, necessarily, guarantee smooth implementation of Strasbourg Court judgments: see, in this connection, the situation with respect to Italy and Ukraine.²

26. That said, as OSJI notes, formal regulation of the implementation process may bring several advantages.³ For example, it may:

- enshrine the role of parliament in the execution process, e.g. by ensuring timely and systematic reporting on the implementation of judgments by the executive to parliament (see section 3);
- stipulate timeframes within which judgments are to be implemented;
- simplify complex or contradictory administrative procedures;
- ensure that the Government Agent has the necessary power and authority to acquire relevant information; liaise with those responsible at the national level for deciding on the measures required to execute a judgment; and, if required, take necessary measures to accelerate the execution process;⁴ and
- ensure that domestic processes for ensuring Convention-compliance are not vulnerable to changes from one administration to the next.

¹ See Belgrade Principles on the relationship between national human rights institutions and parliaments, February 2012: <http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>.

² At the end of 2015, there were just under 11,000 judgments pending before the Committee of Ministers. See 9th Annual Report of the Committee of Ministers 2015, p. 56 ; available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168062fe2> d. [A leading case is one that reveals a new structural or systemic problem in a respondent State, and which therefore requires the adoption of general measures to remedy the violation.](#)

³ Open Society Justice Initiative, *Rights to Remedies*, pp. 59-61.

⁴ As required by Committee of Ministers' Recommendation CM/Rec(2008)2 at para. 1.

➤ **EXAMPLE: Italy**

Italy passed an implementation law (the 'Azzolini law') in 2006, which defines the relationship between the main domestic actors involved in executing ECtHR judgments.¹ Among other things, the law enumerates the duties of the Prime Minister for communicating judgments in a timely fashion to Parliament and reporting annually to parliament on the state of implementation.

➤ **EXAMPLE: 'The former Yugoslav Republic of Macedonia'**

In 'the former Yugoslav Republic of Macedonia', two parliamentary committees have a human rights-related remit: the Committee on Political System and Inter-Ethnic Relations and the Standing Inquiry Committee on Protection of Civil Freedoms and Rights. In 2009, a Law on Enforcement of ECtHR Judgments was adopted (which was amended in 2014). This followed a review which had revealed that the state lacked a defined process for executing judgments. Under the law, an Inter Departmental Commission (comprised of senior officials in all relevant ministries; the Presidents of the Judicial Council and the Public Prosecutors' Council; the Ombudsman; and the Government Agent) was established. The Commission drafts analyses of ECtHR judgments; recommends individual and general measures to remedy the violation(s); proposes legislative reform; and monitors the enforcement of the Court's judgments. The Commission is obliged to report annually to the Standing Inquiry Committee on Civil Freedoms and Rights in the Assembly.

➤ **EXAMPLE: Ukraine**

In 2006, Ukraine introduced a law imposing specific obligations on state actors after a judgment of the ECtHR against Ukraine has become final.² Among other provisions, within ten days, the Government Agent is required to summarise the judgment for publication in an official newspaper. The Agent must also disseminate translated summaries of judgments against Ukraine to the Ombudsman (Parliamentary Commissioner for Human Rights) and to state bodies, officials and others directly affected. The Agent must send a quarterly 'motion on general measures' to the Cabinet of Ministers. The 2006 Law requires administrative acts to be adopted and relevant draft laws to be submitted by the Cabinet of Ministers to Ukraine's unicameral Parliament within three months of the Prime Minister's instruction to the relevant ministries.

5. Opportunities for strengthening the parliamentary role

27. In summary, this memorandum has provided an overview of various ways in which parliaments may - and in several instances have been able to - strengthen their role in helping states comply with Convention standards and, when need arises, Strasbourg Court judgments. Issues which may merit further reflection include steps that may be taken to:

- ensure that parliamentary structures exist with the appropriate remit and powers to verify legislation for compliance with the ECHR and conduct effective oversight of the implementation of ECtHR judgments; this may include a specific law on implementation;
- press for executive bodies to report regularly (and at least annually) on adverse judgments of the ECtHR and their state of execution;
- press for executive bodies to send action plans or reports to parliament at the same time as they are submitted to the Committee of Ministers; parliamentary staff could, in turn, scrutinise these action plans and highlight inadequacies to parliamentarians;
- use existing powers to exercise human rights scrutiny; for example, the power to question ministers, hold hearings or initiate amendments to draft laws;
- maintain regular dialogue with other human rights-related institutions such as national human rights institutions and ombudsmen, as well as with civil society organisations; and
- ensure that members of delegations to the Parliamentary Assembly are called upon to promote awareness and application of Convention standards, and that their work is coordinated with that of the relevant parliamentary committee(s).

¹ Law No. 12/2006 (Italian Official Bulletin No 15, 10 January 2006).

² Law on the Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights Judgments 2006, Law No 3477-IV of 23 February 2006. Certain, largely technical amendments were made under Law No 3135-VI (2011). For an unofficial English translation of the 2006 law, see OSJI, *Rights to Remedies* at Appendix II, pp. 171-179. Appendix II also contains unofficial translations of comparable laws from Peru and Colombia.

APPENDIX

Resolution 1823 (2011)¹

Adopted by the Parliamentary Assembly of the Council of Europe on 23 June 2011

National parliaments: guarantors of human rights in Europe

1. The Parliamentary Assembly recalls that Council of Europe member states are responsible for the effective implementation of international human rights norms they have signed up to, in particular those of the European Convention on Human Rights (ETS No. 5, hereafter “the Convention”). This obligation concerns all state organs, whether executive, judicial or legislative.

2. National parliaments are often overlooked in this context. Their potential needs to be further explored. They are key to the effective implementation of international human rights norms at national level and fulfil their duty to protect human rights through legislating (including the vetting of draft legislation), involvement in the ratification of international human rights treaties, holding the executive to account, liaising with national human rights institutions and fostering the creation of a pervasive human rights culture.

3. The members of the Assembly, having a double mandate – as members of the Assembly and of their respective national parliaments – are under a particular duty to contribute to such action.

4. The Assembly notes that the United Nations “Paris Principles” of 1993 have become the internationally accepted benchmark for core minimum standards for the role and functioning of independent national human rights institutions; similar benchmarks should be drawn up for parliamentary bodies.

5. With respect to the implementation of judgments of the European Court of Human Rights (hereafter “the Court”), the Assembly:

5.1. believes that national parliaments are uniquely placed to hold governments to account for swift and effective implementation of the Court’s judgments, as well as to swiftly adopt the necessary legislative amendments;

5.2. regrets that the post-Interlaken debate on the future of the Convention system does not sufficiently take into account the potentially important role of parliaments and deplores the silence of the Izmir Declaration in this respect;

5.3. points to the positive examples in several member states, notably the United Kingdom, the Netherlands, Germany, Finland and Romania, which have set up parliamentary structures to monitor the implementation of the Court’s judgments.

6. Furthermore, the Assembly:

6.1. encourages parliamentarians to monitor the determination and enforcement of human rights standards by the domestic judicial and administrative authorities;

6.2. urges parliamentarians to exercise their responsibility to carefully scrutinise the executive in their countries when it comes to the implementation of, in particular, international human rights norms;

6.3. calls on governments to involve national parliaments in the negotiation process of international human rights agreements and in the process of implementation of judgments of the European Court of Human Rights;

6.4. calls on all member states to provide for adequate parliamentary procedures to systematically verify the compatibility of draft legislation with Convention standards and avoid future violations of the Convention, including regular monitoring of all judgments which could potentially affect the respective legal orders;

6.5. urges parliaments to step up their efforts in contributing to the supervision of the Court’s judgments by overseeing steps taken by the competent authorities to execute adverse judgments, including scrutiny of the actual measures taken;

6.6. calls on parliaments to set up and/or to reinforce structures that would permit the mainstreaming and rigorous supervision of their international human rights obligations, on the basis of the principles below.

¹ Assembly debate on 23 June 2011 (25th Sitting) (see Doc. 12636, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 23 June 2011 (25th Sitting).

7. The Assembly therefore invites parliaments to implement the following basic principles for parliamentary supervision of international human rights standards.

Appendix - Basic principles for parliamentary supervision of international human rights standards

1. Appropriate framework and responsibilities

National parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, such as dedicated human rights committees or appropriate analogous structures, whose remits shall be clearly defined and enshrined in law.

These remits should include, inter alia:

- the systematic verification of the compatibility of draft legislation with international human rights obligations;
- the requirement for governments to regularly submit reports on relevant judgments of the European Court of Human Rights and their implementation;
- the initiation of legislative proposals and amendments to laws;
- subpoena powers over witnesses and documents concerning their remit.

Such committees shall have the responsibility to ensure that parliaments are properly advised and informed on human rights issues. Human rights training should also be provided for parliamentarians and their staff.

2. Independent advice

Human rights committees or appropriate analogous structures shall have access to independent expertise in human rights law.

Adequate resources shall also be made available to provide specialised secretariat support.

3. Co-operation with other institutions and civil society

Co-operation and regular dialogue shall be maintained, as appropriate, with relevant national (for example, national human rights institutions, parliamentary commissioners) and international bodies (for example, the Parliamentary Assembly, the Council of Europe Commissioner for Human Rights, European and other international human rights monitoring bodies), as well as with representatives of well-established non-governmental organisations which have significant and relevant experience.