



INTER-PARLIAMENTARY UNION
110th Assembly and related meetings
Mexico City, 15 - 23 April 2004



Standing Committee III -
Democracy and Human Rights

C-III/2004/R.1
20 December 2003

**FURTHERING PARLIAMENTARY DEMOCRACY IN ORDER TO PROTECT
HUMAN RIGHTS AND ENCOURAGE RECONCILIATION AMONG PEOPLES
AND PARTNERSHIP AMONG NATIONS**

Draft report prepared by the Co-rapporteurs
Ms. L. Salas Salazar (Costa Rica)
Mr. Kobsak Chutikul (Thailand)

The future of democracy is contingent upon the effective operation of parliament, the outstanding characteristics of which are: *its commitment to freedom, its independence, its tolerance of all shades of opinion, the adoption of measures to secure social progress, a deep-seated respect for political freedom, a belief in the law, faith in education and respect for democratic institutions.*

By its very nature, composition and working methods, parliament is the reflection of successful reconciliation. Apart from its law-making functions (including amnesty laws, laws intended to reform public institutions including the judiciary, as well as laws guaranteeing freedoms), parliament should reflect the diversity of the nation. Equitable representation of men and women is essential in a democracy.

Parliament as the result of the expression of the will of the people, is a guarantor of civil peace. This role is especially important during and following civil strife when often the position of parliament has been weakened. It is often compelled to accept or authorise restrictions to fundamental freedoms (freedom of expression, freedom of movement, freedom of the press, emergency tribunals, martial law, etc.). Sometimes, it has even been abolished.

As a rule of thumb, the end of a conflict comes with a new balance of political forces which should lead to the democratic election of a new assembly that is representative of the changes that have been brought about by the strife.

Existing, transitional or provisional assemblies thus have a pre-eminent role to play in the process of national reconciliation. As guarantors of public freedoms, in the immediate post-conflict period, their involvement is particularly justified because serious violations of human rights have taken place. This involvement should be seen in the context of the fundamental conditions of reconciliation: truth, justice and reparation. Of course, parliament's role in the long term is to contribute to the establishment of a real democratic society and to stabilisation as well as reconstruction.

In many countries, the bicameral system has been adopted as an instrument of reconciliation, insofar as it allows for integration of components of society which may be left aside by the normal electoral process. Apart from its other merits in terms of ensuring better quality legislation and contributing to the better separation of powers, bicameralism is thus seen by its proponents as an instrument for social and political integration. The existence of a second house of parliament allows for a more representative and diversified parliament.

Citizens have become aware of their role in the social and political construction of State institutions within the democratic system, and are now demanding a leading role in their operation. In the case of parliament, all its functions echo the demands, needs and aspirations of the citizens of tomorrow.

Few would deny that the coming century will be defined for the citizens of the world as the century of the globalised information society. The inescapable implication is that parliaments, political parties, pressure groups, State agencies, non-governmental organisations and citizens will have opportunities for exchanges of the most diverse nature in the arena that has become known as cyberspace.

In an increasingly interdependent world, proper management of the inexhaustible knowledge and information now available opens up unimagined possibilities and productive options. As a result, parliament's perception of democratic development and respect of human rights is moving slowly towards giving priority to social issues, not just as a result of outside pressure, but in response to the country's national interest, which requires all available resources, especially in the foreign policy sphere, to be mobilised behind healthcare, education and the environment. These are the areas in which society's needs are currently the greatest, and the challenge facing us is to create a more favourable climate for improving the well-being of the population at large.

Parliaments' aim should be to sharpen awareness of democratic development and the protection of human rights in an increasingly interdependent world. It is vital that we find an accommodation between these new trends and the public interest, which is increasingly coming to be identified with a better quality of life

Legislative role of parliament

Those who believe in government by legislation are reaffirming the role of parliament in conjunction with the Executive which, as the branch responsible for the functioning of government, needs legislative initiatives in order to carry out many of its projects.

The way in which legislation evolves is influenced by society, which expresses its interests in the process, as part of the ongoing dynamic between the demands of civil society and the response offered by the parliamentary system.

Representative role of parliaments

Fulfilling a representative role means providing space for any agencies and individuals capable of identifying and reconciling the differing demands and converting them into lasting political solutions. Accordingly, the aim of transforming living conditions for everybody on an equitable basis can be achieved only through discussion and agreement between the various factions in parliament.

Parliaments are rooted in diversity and their overriding responsibility is to influence and work together with the civil society they represent in order to teach respect for diversity.

Parliament and human rights

Modern parliaments face the challenge of devising a coherent response to the demands of the democratic system, in which the overriding imperative is the defence and promotion of human rights. As a political entity within the democratic system, parliament needs to conduct its human rights activities in a modern, integrated and flexible manner, adapting its political mission to the issues affecting society; this calls for a strictly selective, timely and effective approach. Without forsaking the political dimension born out of each country's experience, parliaments and parliamentarians can innovate and improve upon the efforts of the State within which they exercise joint responsibility for overseeing human rights.

The parliament's role is not just to adopt legislation, but also to analyse and examine it in depth to ensure that it provides a cogent response to the demands of the people it has the duty to represent.

The communications revolution is transforming the world into a global village, with the result that events in every part of the world are reported as they happen. This globalisation of politics is leading to a redefinition of the human rights role of parliaments.

A new opportunity for democracy has arisen, comprising a set of tools enabling governments and parliaments, interest groups and individuals directly or indirectly to influence policy and public opinion in the sphere of the protection and development of human rights.

Parliamentary action on human rights responds to the concern to see the national interest take account of the development of peace and democracy as essential foundations for an autonomous, sovereign and independent State.

Parliament and reconciliation

The legislature must work creatively with the executive, the former promoting the ongoing monitoring of social policy while the latter implements it in a pragmatic manner, in order to reap the full benefits of reconciliation between people and alliances between nations.

Is it possible for parliaments to legislate on the outcome of a reconciliation process? The answer to that question will refer directly to the continuing debate surrounding the organisation, functioning, composition and responsibilities of democracy.

If we exploit its full potential, parliamentary action may enable us to boost the capacity of States to respond to the challenge of reconciliation between people. This task is wholly consistent with our responsibility to monitor and audit the decisions taken in our countries to ensure they are compatible with the goals of national development and respect for our identity. Monitoring of human rights policy inevitably implies effective monitoring of internal policy.

As mentioned above, the necessary conditions for reconciliation include truth, justice and compensation.

Truth

There can be no forgiveness without the establishment of the truth. The establishment and dissemination of the truth as part of a collective therapy is essential to reconciliation. This can and should lead to amnesty with or without a public confession or judgement.

It is neither always possible nor desirable for parliaments to be involved in the establishment of truth commissions. In fact, the composition of parliaments following a conflict depends on the nature of the political transition. It depends on whether the end of the conflict is as a result of a military victory of one of the parties to the conflict, a negotiated agreement or a voluntary transfer of power and the holding of free elections under international supervision.

By definition, as already stated, parliament should be representative of the diversity of the nation, irrespective of the mode of elections. As a result of the complex nature of the post conflict situation, it may not always be possible to meet this condition. Furthermore, the truth commission needs to be established as soon as possible following the peace agreement or the democratic transition. This allows for the broad-based consensus and reduces the amount of time required for investigations which allow for the truth to be established. For this reason, it is not always possible to put together a representative parliament. Most truth commissions have therefore been created by the executive arm of the government, by the UN or even by NGOs. The exception is the South Africa Truth and Reconciliation Commission which was created by an act of parliament.

Parliament may be called upon to give its blessing to the establishment (composition and mandate) of the commission, either collectively or through its bureau. The parliament's role is especially important in the designation of the membership of the commission by ensuring that it is representative of all the components of society. Indeed, because of the delicate nature of the task to be accomplished, it is important that the members are widely recognised as impartial personalities who can guarantee the establishment of the truth. Credibility is therefore essential to success. Needless to say, the representation of women should be ensured. Civil society, especially NGOs, should be represented.

Parliament should also see to it that adequate resources are allocated to the commission, where this commission depends on the State for its funding. Furthermore, parliament can contribute substantially to publicizing the work and findings of the commission. Above all, parliament should see to it that the findings and recommendations of the commission are recognised and taken into account by the government. Lastly, parliament's oversight role is important in monitoring the implementation of these recommendations up until total reconciliation.

Justice/amnesty

Reconciliation presupposes forgiveness which means that each party needs to forget the faults and crimes of the other. The underlying principle of amnesty is within the prerogatives of parliament. This is consistent with the 1949 Geneva Conventions which call upon the authorities of a country that has just come out of civil strife to grant the widest possible amnesty to persons who have taken part in the armed conflict or who may have been deprived of their freedom in the context of the armed conflict.

The international community, especially the UN, has clearly chosen not to sacrifice justice on the altar of reconciliation, but rather to make justice a tool of reconciliation. The UN and its

various bodies have maintained a constant position: all reprehensible acts should be taken into account to achieve reconciliation. However, it is important to distinguish between crimes of an international character (for instance, crimes against humanity) for which amnesty should not be granted, and other crimes (essentially for political ends) which can be forgiven following a process of 'truth and reconciliation'. This presupposes confession and fair reparation for the damage inflicted on the victims. This report focuses on this latter aspect.

It is of paramount importance, in post-conflict situations, that the judicial system is impartial and independent. The right to defence, a fair trial, and equitable conditions of detention should be enshrined in the law.

Parliament's role is also crucial in the process of granting amnesty. It should reject any laws that provide for amnesty for crimes that are forbidden under international law. Where such laws exist, it should work towards repealing them.

Tolerance/dialogue

Parliament is fundamentally the forum wherein tolerance is institutionalised and is the instrument for the peaceful resolution of conflicts and the mediation of differences. It is the forum where the cardinal principle is respect for and acceptance of the other. This is reflected in the IPU's Guidelines for the role and responsibility of the opposition in parliament (Libreville, May 1999) which reaffirms that parliament is the institution that embodies society in the diversity of its composition and its opinions and which relays and channels this diversity in the political process. Its vocation is to regulate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity. Its role is to legislate, *inter alia* by allocating financial resources, and oversee the action of the Executive. Parliament must accommodate the participation of all people in homogeneous as well as heterogeneous societies in order to safeguard diversity, pluralism and the right to be different in a climate of tolerance. Hence the importance of political forces and individuals representing the opposition being able to participate in the work of the parliament. This will require recognition of and respect for human rights in general as well as for their specific rights and duties.

Parliaments must reaffirm their willingness to engage in dialogue and consultation, revisiting their country's past in order to avoid the extremes of intolerance

Parliament achieves its full legitimacy when its actions secure the recognition and acceptance of the people, when it rises above political differences, when it acts as a safety valve in times of tension and as an instrument for resolving conflict, and when its stability derives not just from the representative nature of the various factions concerned, but also from its credibility in channelling and settling political conflict. Legitimacy is about more than just legality of power, it is its most solid underpinning. On it depends to a large extent the political balance in any democracy.

It is the people who confer on the law-makers the power to contribute to the immensely responsible task of enacting sound legislation to further the country's economic development, and to act as mediators in social conflict. However, if parliament confines its activities to passing legislation, it is ignoring its real political importance as a representative body.

Democracy, and especially parliaments, are reacting to a globalised world, identifying as a core principle that globalisation is neither achievable nor sustainable unless we respect the identities

of individuals and groups within our society. Only by respecting men and women, their customs, language, history and religion, can we prevent violence and war.

Conclusion

Tolerance, dialogue and cooperation form the cornerstones of parliamentary activity. Practising them in a productive manner contributes to the development of parliamentary action on human rights aimed at offsetting the globalising trend towards atomisation and economic, social and regional inequalities. It is our ethical and political duty to society to promote a form of globalisation which is inclusive rather than exclusive. Creating opportunities for everyone poses a challenge which parliaments can help meet by promoting the principles of justice and solidarity.

The work of the IPU is taking place against a changing backdrop, in terms of both the style and form of law-making and the search for common objectives. We are all involved in this, in view of the internationalisation of our societies, which not only presents an opportunity to create new democratic institutions, but at the same time offers real scope for reinforcing social ties and people-centred ethical values.

As parliamentarians, we strive to achieve mutual benefit and mutual respect. Let us listen to the voice of reason. Let us sow trust, promote optimism and, wisely but determinedly, assume our rightful position in the world, respecting the principle that all peoples have the right to live in dignity.

Recommendations

The following recommendations are formulated for parliaments' action:

Reconciliation

- Establish, where possible truth and reconciliation commissions
- See to fair representation of all components of society, especially women, in these commissions
- See to it that truth and reconciliation commissions have adequate resources to carry out their work
- See to it that the work and findings of the commissions receive appropriate publicity
- Monitor the implementation of the commissions' recommendations by the government
- Monitor the implementation of the recommendations in general.

Amnesty

- Recognise that serious human rights crimes are not covered by amnesty
- Repeal existing laws or amend amnesty bills which provide for amnesty for crimes that are not statute barred under international law
- Ratify the statutes of the International Criminal Court

Human rights

- Ratify international human rights instruments
- Support the work of the IPU committee on the human rights of parliamentarians
- Create in each parliament a human rights body