Utilizing Regional Mechanisms and National Human Rights Institutions to promote Equality and Non-Discrimination

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I am grateful to be speaking on this panel and for the opportunity to share some perspectives and experiences from the Commonwealth on utilizing regional mechanisms and national human rights institutions to promote equality and non-discrimination. In speaking to you I will focus on the Commonwealth approach; some of the niche spaces in which we take forward work streams such as the Universal Periodic Review and the role of parliamentarians; and national human rights institutions and their relationship with Parliaments. I end with some entry points for change and challenges for action.

The Commonwealth Charter, to which Heads of Government have committed our member states, underscores that ‘equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies’. I submit that these principles should underpin all legislative work, not least because human rights and democracy are complementary, each related to the meaningful and effective enjoyment of the other. For this reason, we work with key institutions such as parliaments and national human rights institutions. We bear in mind that 39 of our member states still criminalize same sex consensual relations between adults.

The UN Human Rights Council’s Universal Periodic Review is a peer review mechanism through which states assess the human rights situations in their countries, share good practices with other states, and make recommendations on specific actions and measures that the state under review can take to improve the enjoyment of human rights. Parliamentarians are regarded as key stakeholders in the UPR process, yet they do not have a defined role and they have limited engagement in the actual process itself. An Inter-Parliamentary Union survey of first cycle UPR recommendations concluded that between 60-70% require legislative
action to implement, underscoring the importance of parliamentarians in the UPR process and the protection of human rights more generally. Commonwealth members have received a wide range of recommendations on sexual orientation and gender identity under the UPR. Examples of such recommendations requiring parliamentary action include:

- Include sexual orientation as a prohibited ground of discrimination in its Constitution Reform process
- Review its Constitution and legislation to ensure that discrimination on the basis of sexual orientation and gender identity is prohibited
- Criminalize public incitement of acts against persons on the basis of sexual orientation or gender identity

Such recommendations underscore the crucial relevance of parliamentarians in the UPR process, particularly in the post-review period, and the protection of human rights more generally.

We have steadily added our voice to efforts to increase the involvement of parliamentarians in the protection and promotion of human rights. Specifically, we have been developing the capacities of parliamentarians through a series of regional seminars convened in collaboration with the Commonwealth Parliamentary Association. Part of the seminar programme allowed for a focus on equality and non-discrimination including sexual orientation.

These seminars have resulted in substantive outcomes. The Africa seminar, for example, saw the adoption of the Mahé Declaration by attending parliamentarians. The Declaration established the Commonwealth Africa Parliamentary Human Rights Group, composed of parliamentarians who pledged to promote inter-parliamentary cooperation with a view to ensuring good practices, strengthened engagement with national human rights institutions, and effective implementation of recommendations received and accepted under the UPR. One of these parliamentarians is with us today, Hon Lenny Lebon of the Seychelles National Assembly. His presence here underscores our technical support to this regional network and providing them with relevant platforms such as the conference here this week to share their good and promising practices.

We have also seen unexpected knock-on impacts of our work with parliamentarians. The most notable is the establishment of a parliamentary human rights caucus in the Kenyan Parliament by Hon Agostinho Neto who is also a member of the Africa regional group and his innovative work through the caucus to strengthen the relationship between parliament and the national human rights commission.
Recently, the Kenya parliamentary human rights caucus partnered with the Kenyan National Commission for Human Rights to ensure the promotion and protection for human rights in Kenya. Recognising the important roles of national human rights institutions and parliamentarians in the promotion and protection of human rights, they have adopted an action plan for 2016/2017. An important area of focus for their partnership is to ensure effective financial and human resource allocation for the recently adopted Kenyan National Human Rights Policy and Action Plan (NHRPAP). The NHRPAP sets time-related goals for the full realisation of human rights and also provides guidance to all state actors regarding specific actions that need to be undertaken, advanced or mainstreamed in all aspects of the Kenyan development agenda. Of particular importance for sexual orientation and gender identity rights is the express inclusion of rights for marginalised or minority groups. While the NHRPAP does not specifically mention sexual orientation and gender identity, it does speak to social exclusion. Key challenges highlighted by the NHRPAP denotes:

“The social exclusion of some groups in Kenya today is a by-product of the socio-economic order inherited from the British colonialism, which embraced Western economic, social, organizational, linguistic, religious and cultural traits. The common denominator among Kenya’s excluded communities is poor access to resources and opportunities, insecurity of tenure and alienation from the state administration.”

Proposed government interventions are the formation and implementation of policy, legislative, administrative and affirmative actions to ensure the realisation of social, economic, political and cultural rights of minorities and marginalised groups. This is an opportunity for the government of Kenya to introduce measures that seek to protect and prevent violence and discrimination experienced by LGBTI Kenyans. These include legislative measures for the decriminalisation of consensual same-sex sexual conduct and express constitutional LGBTI protections.

As important partners of ours, the Kenya parliamentary human rights caucus and the KNCHR are ideally located to advance the national discussion on the promotion and protection of human rights of LGBTI individuals and open up new platforms for dialogue. As elected representatives, the caucus could further dialogue within the constituencies they serve and seek to build localised consensus for the inclusion of LGBTI rights protections. As an independent institution that supports democracy, the KNCHR is ideally placed to independently evaluate, comment and make recommendations on government policies. These recommendations are critical to the realisation, promotion and protection of LGBTI rights in Kenya.
The Commonwealth believes that the role of parliamentarians in the work of the UPR is critical to the promotion of the rights of vulnerable groups. In terms of global advocacy on a strengthened role for parliaments in the work of the Human Rights Council, we have also been working with academic and civil society partners. We share the view that there may be merit in a set of guiding principles and standards for parliaments, inclusive of the rule of law and human rights, similar to the Paris Principles which sets the gold standard for national human rights institutions and are the subject of resolutions in the Human Rights Council and the UN General Assembly. Improved engagement with the UPR by Parliamentarians is rooted in strengthened domestic rights protection mechanisms, like the Kenya parliamentary human rights caucus. These types of bodies are the engine room for the oversight of UPR recommendations implementation and evaluation, particularly those related to LGBTI rights.

In conclusion, may I recommend the following entry points for your consideration:

- Advocacy around parliamentary representation on the delegations to Geneva to deliver the UPR country report and engagement with the Human Rights Council - some of our member states have already begun to do this in recognition of the fact that parliament plays a crucial role in the implementation of recommendations accepted by Government;

- Relationships with your national human rights institutions and the scope to strengthen this relationship in compliance with the Belgrade Principles;

- You may wish to consider strengthening your relationship with regional mechanisms including the Organisation of American States, the Inter-American Commission on Human Rights, the Caribbean Court of Justice; and

- The passage of legislation is only part of the answer to strengthened rights protection. Specific legislative actions and functions through which parliamentarians can also protect human rights include, but are not limited to, translating international commitments into national policies and laws; amending existing laws and introducing motions; hold hearings, reporting to Parliament and making recommendations to Government; awareness raising through parliamentary questions; influencing policies and budgets at the national level; monitoring policy implementation programmes at local levels; addressing the needs and concerns of their constituencies; and acting as a catalyst in the realisation of rights domestically and internationally.

Thank you.