

NATIONAL PARLIAMENTARY HUMAN
RIGHTS COMMITTEES AS HUMAN RIGHTS
ACTORS: THE COMMITTEE ON HUMAN
RIGHTS INQUIRY*
İNSAN HAKLARI AKTÖRLERİ OLARAK
ULUSAL MECLİS İNSAN HAKLARI
KOMİSYONLARI: İNSAN HAKLARINI
İNCELEME KOMİSYONU

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ABSTRACT

There has been a growing international consensus on the importance of national parliaments in the protection and realisation of human rights. National parliaments may interpret and apply human rights especially when holding the executive to account and in the laws they make. Therefore, they should be seen as a key institutional element of domestic human rights systems. In today's national parliament structures, parliamentary work is carried out mainly in parliamentary committees. In the context of human rights, mostly, a parliamentary committee with a specific human rights mandate is set up or such a human rights mandate is added to an existing committee's remit. The United Nations and its organs have also recognized the importance and emphasised the potential contribution of national parliaments in a number of outcome documents. They underlined that the establishment of a parliamentary committee with an exclusive human rights mandate should be encouraged and included set of standards that cover the mandate, responsibilities, functions and composition of a parliamentary human rights committee. The Grand National Assembly of Turkey have established the Committee on Human Rights Inquiry with the Law No. 3686 in 1990 and it functions in accordance with this Law and the Rules of Procedure of the Grand National Assembly of Turkey. It is true that the existence of a specialised parliamentary human rights committee is important. However, there is also a need to ensure that national parliamentary human rights committees, in this case the Committee on Human Rights Inquiry, have adequate responsibilities, power, functions, mandate and working methods to realise and mainstream human rights in an effective way.

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Accordingly, with all these explanations, in this study it is aimed to examine whether the Committee on Human Rights Inquiry has necessary and sufficient powers and opportunities and whether it plays an active role in protecting and realising human rights. In the study, first, the importance of national parliaments and national parliamentary human rights committees in the context of human rights has been mentioned, then international developments at the United Nations level have been explained, and the Committee on Human Rights Inquiry has been discussed from different aspects such as authority, power, responsibility and working methods. As a result of the study, various suggestions have been made to make the Committee on Human Rights Inquiry more effective and functional.

Keywords: National parliaments, Human rights, National parliamentary human rights committees, United Nations, Grand National Assembly of Turkey, Committee on Human Rights Inquiry

ÖZET

Ulusal meclislerin insan haklarının korunmasında ve gerçekleştirilmesinde önemi konusunda artan bir küresel anlayış ve yönelim bulunmaktadır. Ulusal meclisler, özellikle yürütmeyi sorumlu tutabildikleri konularla ve yaptıkları yasalarla insan haklarını çeşitli şekillerde yorumlayabilmekte ve uygulayabilmektedirler. Bu nedenlerden ötürü, ulusal parlamentolar yurtiçi insan hakları sistemlerinde önemli kurumsal unsurlar olarak görülmelidirler. Günümüzün ulusal meclis yapılarında meclis çalışmaları esas olarak meclis komisyonlarında yürütülmektedir. İnsan hakları bağlamında, çoğunlukla, belirli bir insan hakları yetkisine sahip bir meclis komisyonu kurulmakta veya varolan bir komisyonun görev alanına böyle bir insan hakları yetkisi eklenmektedir. Birleşmiş Milletler ve organları da bir dizi sonuç belgelerinde ulusal meclislerin önemini kabul etmekte ve potansiyel katkılarını vurgulamıştır. Münhasır insan hakları yetkilerine sahip bir meclis komisyonu kurulmasının teşvik edilmesi ve bir meclis insan hakları komisyonunun görev, sorumluluk, işlev ve birleşenlerini kapsayan standartları içermesi gerektiğinin altını çizmişlerdir. Türkiye Büyük Millet Meclisi 1990 yılında 3686 sayılı Kanun ile İnsan Haklarını İnceleme Komisyonunu kurmuştur ve Komisyon bu Kanuna ve Türkiye Büyük Millet Meclisi İçtüzüğüne uygun olarak faaliyet göstermektedir. İhtisaslaşmış bir meclis insan hakları komisyonunun varlığı önemli olmakla beraber ulusal meclis insan hakları komisyonlarının, bu vakada İnsan Haklarını İnceleme Komisyonunun, insan haklarını etkin bir şekilde gerçekleştirebilmeleri ve yaygınlaştırabilmeleri için yeterli sorumluluk, güç, işlev, yetki ve çalışma yöntemlerine sahip olmalarını sağlama gerekliliği de vardır.

Tüm bu açıklamalar doğrultusunda bu çalışmada, İnsan Haklarını İnceleme Komisyonunun gerekli ve yeterli yetki ve olanaklara sahip olup olmadığı ve insan haklarının korunup gerçekleştirilmesinde etkin bir rol üstlenip üstlenmediğinin incelenmesi amaçlanmaktadır. Çalışmada ilk önce genel olarak ulusal meclislerin ve ulusal meclis insan hakları komisyonlarının insan hakları bağlamındaki öneminden bahsedilmiş, ardından bu konuda Birleşmiş Milletler nezdinde yaşanan uluslararası

gelişmeler açıklanmış, sonrasındaysa İnsan Haklarını İnceleme Komisyonu yetki, güç, sorumluluk ve çalışma yöntemleri gibi farklı yönlerden tartışılmıştır. Çalışma sonucunda İnsan Haklarını İnceleme Komisyonunun daha etkin ve işlevsel olması yönünden çeşitli önerilerde bulunulmuştur.

Anahtar Kelimeler: *Ulusal meclisler, İnsan hakları, Ulusal meclis insan hakları komisyonları, Birleşmiş Milletler, Türkiye Büyük Millet Meclisi, İnsan Haklarını İnceleme Komisyonu*

1. Introduction

It is true that national parliaments' role in the protection and realisation of human rights have historically been neglected. However, it has been seen a growing international consensus on the importance of national parliaments in this topic in recent years. As one of the primary institutions of the state, national parliaments share a responsibility to protect and realise human rights and to implement the state's obligations, alongside the executive and the judiciary. In contrast to the executive and the judiciary, national parliaments are uniquely well placed for the realisation and safeguarding of human rights law. In their law-making function, national parliaments may ensure that effective measures are taken to prevent human rights violations and provide practical and effective means by which remedies may be sought for alleged violations of human rights. In addition, they may ratify international human rights treaties to ensure that norms set forth in those treaties are made into national law and applied. Apart from law-making power, national parliaments may use their scrutiny and oversight powers to keep international standards in the minds of executive authorities.¹ With these important functions and powers, national parliaments monitor the executive and its performance with responsibilities to realise human rights. National parliaments are the place where government policies are discussed and these policies are balanced to ensure respect for human rights. Lastly, national parliaments have the power to approve the budget and by that way, adequate funds can be provided for human rights implementation.²

While national parliaments' role has historically been neglected, this is beginning to change. National parliaments globally have become increasingly aware that they have a special responsibility to promote and protect human rights standards and to work towards the creation of a human rights culture in their countries. However, democratic national parliaments share the key characteristics and functions of representation, legislation and oversight; each of them may have different parliamentary traditions and approaches to roles and functions of national parliaments. For example, unicameral and bicameral models might adopt very different rules of procedure and approaches. Thus, a single approach to parliamentary strengthening is unlikely to yield the same result across different regions and different parliamentary traditions.³

2. National Parliamentary Human Rights Committees

In today's national parliament structures, parliamentary work is carried out mainly in parliamentary committees. Committees are usually described as the 'engine

1 David Feldman, "Can and Should Parliament Protect Human Rights?", *European Public Law*, Volume 10, Issue 4, 2004, p. 651.

2 National Democratic Institute for International Affairs, *Parliamentary Human Rights Committees*, A Rule of Law Series Paper, 2005, p. 8.

3 Brian Chang; Graeme Ramshaw, *Strengthening Parliamentary Capacity for the Protection and Realisation of Human Rights-Synthesis Report*, Westminster Foundation for Democracy, p. 3.

rooms' of parliaments.⁴ In different national parliamentary committees, legislative proposals are studied, government policy and conduct overseen and recommendations are made to the Plenary. There are normally two types of parliamentary committees: permanent and non-permanent. The majority of parliamentary business is mostly carried out in permanent (standing) committees that operate on a continuing basis from one parliamentary term to the next and carry out the bulk of parliamentary business. On the other hand, non-permanent (ad hoc/ select/ study or investigative) committees are created to inquire into and report on a particular matter.⁵ They may be established at any time by a resolution of parliament and sometimes certain procedural aspects. Such parliamentary committees have a limited time period and usually cease to exist upon the presentation of their final report to the Plenary.

In the context of human rights, today's national parliaments address two main approaches to deal with and integrate human rights. In the first approach, the 'human rights mainstreaming' model,⁶ human rights are taken as a horizontal cross-cutting issue that should be taken into account by all parliamentary committees because each parliamentary committee is considered a "human rights committee" in its own specialized area.⁷ This approach may allow human rights to be considered in all areas, entrench the 'mainstreaming' of human rights, broader knowledge and consideration of rights across parliament. On the other side, it may have some cons such as potentially unfocussed examination or possibility of differing application of standards.⁸ In the second approach, a parliamentary committee with a specific human rights mandate is set up or such a human rights mandate is added to an existing committee's remit. This model is based on the belief that the establishment of a parliamentary committee with an exclusive human rights mandate sends a strong message, not only to the people but also to the government and other state organs. In addition, with this approach, it is considered that such parliamentary committees provide an effective means of ensuring that specific human rights knowledge exists within parliament, which make it more independent from governmental expertise.⁹ Furthermore, it is claimed that standing human rights committees are able to continuously monitor and act upon human rights concerns through domestic political cycles and/or international human rights reporting cycles and these committees can also help build the capacity and knowledge of members, by allowing them to focus on and cover all human rights

4 The Commonwealth and Universal Rights Group, *The Global Human Rights Implementation Agenda: The Role of National Parliaments*, 2018, p. 29.

5 Report of the Committee on Legal Affairs and Human Rights, *National parliaments: Guarantors of Human Rights in Europe*, Rapporteur: Mr Christos Pourgourides, Parliamentary Assembly of the Council of Europe, 6 June 2011, § 25.

6 *Supra*, *The Global Human Rights Implementation Agenda: The Role of National Parliaments*, p. 29.

7 *Supra*, *National parliaments: Guarantors of Human Rights in Europe*, Rapporteur: Mr Christos Pourgourides, § 27-29.

8 Philippa Webb; Kirsten Roberts Lyer, *Effective Parliamentary Oversight of Human Rights: A Framework for Designing and Determining Effectiveness*, The Dickson Poon School of Law-King's College London, 2014, p. 12.

9 *Supra*, *Parliamentary Human Rights Committees*, p. 10.

issues in an interconnected and interdependent manner. By that way, this awareness and expertise can then be passed onto other committees. Finally, the establishment of a single human rights committee promotes institutional clarity, creating a single focal point for parliament's multifaceted role in implementing, monitoring and reporting on international/regional obligations and commitments.¹⁰ On the other hand, it is discussed that leaving human rights scrutiny to a single specialised body might discourage the integration of human rights into the work of other parliamentary committees and the existence of such a specialised committee does not always guarantee effective implementation.¹¹ Dedicated human rights committees may lead human rights standards to be divorced from mainstream policy debates.¹²

Nonetheless, there exists no blueprint for the ideal configuration of parliamentary structures and mechanisms for ensuring compliance with human rights standards in between these two main approaches. In a weak parliamentary system, which is characterised by a strong party discipline and dominance by a single political party, mainstreaming human rights might have little effect and run the risk of thin commitment to implementation.¹³ In countries dominated by one political party, a special human rights committee may have to give up independence or risk being marginalized politically. Moreover, human rights may not be prioritised by the parliament with an ineffective parliamentary committee which has a weak mandate, subjects to political whims and lacks of sufficient expertise. On the other side, in countries 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 have a specialised human rights committee which is independent of the executive and can develop both systematic oversight mechanisms and human rights expertise among its members and staff.

10 *Supra*, The Global Human Rights Implementation Agenda: The Role of National Parliaments, p. 30.

11 Alice Donald, The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms, Parliamentary Assembly of the Council of Europe, Strasbourg, 2014, § 12-14.

12 The Westminster Consortium, Human Rights and Parliaments: Handbook for Members and Staff, 2011, p. 209.

13 Open Society Justice Initiative, From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions, Open Society Foundations, 2013, p. 68.

3. Draft Principles on Parliaments and Human Rights

The United Nations¹⁴ and its organs have recognized the importance and role of national parliaments in a number of outcome documents. Since 2010, a series of UN General Assembly¹⁵ and Human Rights Council¹⁶ resolutions expanded and clarified the potential for parliamentary engagement. These resolutions emphasised the potential contribution of national parliaments to domestic implementation, how parliaments can contribute to the application of international human rights obligations through their legislative roles and the use of the parliamentary oversight function with respect to the executive.¹⁷ Resolutions adopted by HRC¹⁸ and GA¹⁹ always state that national parliaments are cornerstones of national human rights protection systems and they have acknowledged the crucial role that national parliaments play in translating international commitments into national policies and laws and strengthening the rule of law. They also recognised that much work remains to be done to strengthen these roles in the future.

Moreover, on 13 June 2018, the UN Office of the High Commissioner for Human Rights²⁰ released its report,²¹ which includes set of standards that mainly cover the mandate, responsibilities, functions and composition with working methods of a parliamentary human rights committee. In this report it is stated that while human rights are a cross-cutting issue that should be taken into account by all parliamentary committees, the establishment of a parliamentary committee with an exclusive human rights mandate sends a strong political message and should be encouraged.²² According to Draft Principles on Parliaments and Human Rights, which is annexed to this report, to strengthen national parliaments' role in the promotion and protection

14 Hereinafter, UN.

15 Hereinafter, GA.

16 Hereinafter, HRC.

17 Kirsten Roberts Lyer, "Parliaments as Human Rights Actors: The Potential for International Principles on Parliamentary Human Rights Committees", *Nordic Journal of Human Rights*, Volume 37, Issue 3, 2019, p. 198.

18 Contribution of parliaments to the work of the Human Rights Council and its universal periodic review (2013), UNHRC, Resolution 22/15; Contribution of parliaments to the work of the Human Rights Council and its universal periodic review (2014), UNHRC, Resolution 26/29; Contribution of parliaments to the work of the Human Rights Council and its universal periodic review (2015), UNHRC, Resolution 30/14; Contribution of parliaments to the work of the Human Rights Council and its universal periodic review (2017), UNHRC, Resolution 35/29.

19 Cooperation between the United Nations, national parliaments and the Inter-Parliamentary Union (2011), UNGA, Resolution 65/123; Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union (2012), UNGA, Resolution 66/261; Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union (2014), UNGA, Resolution 68/272; Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union (2016), UNGA, Resolution 70/298.

20 Hereinafter, OHCHR

21 Contribution of parliaments to the work of the Human Rights Council and its Universal Periodic Review: Report of the Office of the United Nations High Commissioner for Human Rights, UN OHCHR, 17 May 2018.

22 *Ibid*, § 11.

of human rights, the establishment of a permanent internal committee should be considered. For realising this aim, some principles should guide parliaments in the setting up of parliamentary human rights committees, as well as in ensuring their effective functioning. First, a parliamentary human rights committee shall be given as a broad mandate as possible, covering all human rights as defined in national and international law. The mandate of the parliamentary human rights committee shall also provide clear terms of reference setting out its purpose and goals.²³

When it comes to its responsibilities, a parliamentary human rights committee shall encourage the ratification of or accession to international and regional human rights instruments; introduce and review bills and existing legislation to ensure compatibility with international human rights obligations and propose amendments when necessary; lead the parliamentary oversight of the work of the executive in fulfilling its human rights obligations, as well as political commitments made in international and regional human rights mechanisms; provide human rights related information to members of parliament during debates on legislation, policy or executive actions; review draft national budgets from the perspective of the implications on the enjoyment of human rights; ensure that development assistance and cooperation funds support the implementation of recommendations from international and regional human rights mechanisms in countries recipient of such funds; call for the elaboration of national human rights action plan and oversee its implementation; engage and consult with the national human rights institutions and civil society representatives on human rights issues, developments, concerns and cases; lead parliamentary action in response to national human rights developments and issues, including through legislative initiatives, parliamentary inquiries, public hearings, public debates, and the issuing of reports on national human rights issues and developments; hold public hearings, request information and documentation, summon and hear witnesses, provide reports and recommendations to the plenary of the parliament, and initiate parliamentary debate on its reports or subjects of its choosing and conduct training and awareness raising of parliamentarians on human rights-related issues.²⁴

Regarding the international human rights system, a parliamentary human rights committee shall participate in the national consultations held in preparation of and during the drafting process of reports to the international and regional human rights mechanisms; review and comment on the executive draft reports which the state is required to submit to the international and regional human rights mechanisms; participate in the national mechanism for reporting and follow-up as a designated focal point and ensure that recommendations of international and regional human rights mechanisms that require legislative reform, the adoption of new laws, or budgetary adjustments are identified and given priority consideration; lead the parliamentary oversight of the work of the executive in implementing recommendations of international and regional human rights mechanisms.²⁵

23 Contribution of parliaments to the work of the Human Rights Council and its Universal Periodic Review: Report of the Office of the United Nations High Commissioner for Human Rights, Annex I: Draft Principles on Parliaments and Human Rights, UN OHCHR, 17 May 2018, § 1.

24 *Ibid*, § 2.

25 *Ibid*, § 3.

Lastly, in the context of composition and working methods, a parliamentary human rights committee shall be comprised of members of parliament with human rights expertise, having due regard to the principle of pluralism, non-partisanship, respect for all human rights and gender-balance;²⁶ it shall develop and publish terms of reference to define its working methods, the frequency of its meetings, a procedure for agenda setting, means of communication, modalities of consultations with stakeholders, etc.²⁷ This committee shall also be transparent in its operations and decision-making. In principle, it shall publicise its work and hold hearings in public.²⁸ In addition, a parliamentary human rights committee shall be provided with sufficient financial and human resources by the parliament to enable it to carry out its functions effectively; have access to external independent human rights advice, as required; and conduct its work in such a way as to provide opportunities for meaningful civil society participation.²⁹

4. The Committee on Human Rights Inquiry³⁰

National parliaments should have adequate internal structures, in this case parliamentary human rights committees, to enable them to fulfil their responsibility to protect and realise human rights. These internal structures should ensure regular and systematic monitoring of the executive's performance of its responsibilities to secure the rights and freedoms recognised in national law and in the state's international obligations.³¹ In the light of this aim, the Committee on Human Rights Inquiry³² was the first mechanism at national levels to protect human rights in Turkey. It was established with the Law No. 3686 in 1990 and functions in accordance with this Law and the Rules of Procedure of the Grand National Assembly of Turkey.³³ It is true that the existence of a specialised parliamentary human rights committee is important. It sends a strong political message that human rights are to be taken seriously by the parliament, as well as ensuring that human rights concerns feature prominently and regularly in parliamentary discussions. On the other hand, there is also a need to ensure that these parliamentary structures have adequate responsibilities, power, functions, mandate and working methods to realise and mainstream human rights in an effective way. Because of that reason, it is worth to evaluate and review the CoHRI from these different perspectives.

26 *Ibid*, § 4.

27 *Ibid*, § 5.

28 *Ibid*, § 6.

29 *Ibid*, § 7-9.

30 This chapter of the article is substantially inspired by the valuable and significant work of Brian Chang; Graeme Ramshaw, *Strengthening Parliamentary Capacity for the Protection and Realisation of Human Rights-Synthesis Report*, Westminster Foundation for Democracy.

31 *Ibid*, p. 4.

32 Hereinafter, CoHRI.

33 Hereinafter, GNAT.

4.1. Mandate, Independence and Pluralism

Apart from its existence, one of the key principles for a parliamentary human rights committee is that it should be established by the parliament, and not the executive, with their permanent existence enshrined in the parliament's standing orders or laws. By that way, the parliamentary human rights committee's independence will be protected from the executive.³⁴ The CoHRI was established with the Law No. 3686 issued on 5/12/1990 and functions in accordance with this Law and the Rules of Procedure of the GNAT. The CoHRI is also one of the standing committees that listed in the Rules of Procedure of the GNAT.³⁵

Secondly, a parliamentary human rights committee should have a mandate that is broadly defined that concerns human rights in the domestic context and allows the committee to take into account all relevant sources of human rights principles in both national and international law. A broad remit that enables the committee to consider all human rights issues in the domestic context is necessary for the committee to function effectively. Ideally, this mandate will also be limited to human rights in the domestic context so that the committee focuses its resources and time on human rights domestically. Otherwise, the committee may pay more attention to the human rights situation in other states and neglect to look into their national systems.³⁶ The CoHRI was established with a view to ensuring harmonization of practices with the developments in the field of human rights by means of monitoring these developments in Turkey and abroad and evaluating personal applications. Its mandate mainly covers the human rights and liberties defined in the Constitution of Turkey and multilateral agreements such as the Universal Declaration of Human Rights and the European Convention on Human Rights and the human rights recognized at international level.³⁷ As it can be seen, the CoHRI has ability to take into account of human rights standards in both national and international law. However, its remit is not only limited to human rights issues in the domestic context but also includes abroad.³⁸

Lastly, the parliamentary human rights committee should be composed in a way to guarantee their independence and pluralism. This is important for the committee's credibility and legitimacy to its findings. There are several ways has been suggested to guarantee the independence and pluralism in a parliamentary human rights committee, such as:

34 *Supra*, Chang; Ramshaw, p. 8.

35 Rules of Procedure of the GNAT, Article 20.

36 Gianni Magazzeni, Keynote speech at conference on the role of Parliaments in the protection and realisation of the rule of law and human rights, 7 September 2015, https://www.law.ox.ac.uk/sites/files/oxlaw/gianni_magazzeni_keynote_speech_07_09_15.pdf, (Date Accessed: 07.05.2020).

37 Law on the CoHRI, Law No. 3686, Article 1-2.

38 For example, in 26th Legislative Term; the CoHRI established a sub-committee on Hostility to Islam in Some Western Countries. In 24th Legislative Term; the CoHRI has published Inquiry Report on the Murders Committed by Neo-Nazis in Germany Between 2000-2006, Inquiry Report Regarding the Implementations of the Germany, Netherlands, and Belgium Youth Care Agencies Towards the Turkish Origin Children, Inquiry Reports on Racist and Xenophobic Acts Against People of Turkish Origin in Europe, etc.

- National parliament should guarantee the independence and pluralism of the committee from both the executive and all non-state actors.
- The composition of the committee should be defined to ensure that there could be no executive majority on the committee.
- The composition of the committee should be as inclusive as possible of all the political parties represented in the parliament.
- The composition of the committee should reflect the principle of gender balance.
- Members of the committee should be elected transparently.
- Members of the committee should have previous expertise in human rights.
- Ministers should be ineligible to be members of the committee.
- The Chair of the committee should be elected by members of parliament and he/she should be a senior parliamentarian of proven independence.³⁹

According to the Law on the CoHRI, the political party groups and independent members shall be represented in proportion to the number of their seats in the parliament. The CoHRI shall elect one chairperson, two deputy-chairperson, one spokesperson and a secretary according to the proportion of the political party groups. This election is carried out by the secret vote of the absolute majority of those present in the CoHRI gathered by the absolute majority.⁴⁰ According to the Rules of the Procedure of the GNAT, political parties with twenty deputies at least have the right to establish groups in the GNAT.⁴¹ There is no specific references in the Law about executive majority, gender balance or the expertise of members and the Chairperson in human rights. In the 27th Legislative Term, five political parties which have right to establish groups are represented at the CoHRI and no independent members are represented. Thirteen of twenty-six members and the Chair of the CoHRI are from ruling party. Six of twenty-six members are women and only eight members have expertise in law and/or human rights.⁴² In the 26th Legislative Term, four political parties which have right to establish groups are represented at the CoHRI and no independent members are represented. Fifteen of twenty-six members and the Chair of the CoHRI are from ruling party. Eight of twenty-six members are women and only nine members have expertise in law and/or human rights.⁴³ In the 24th Legislative Term, four political parties which have right to establish groups and one independent

39 *Supra*, Chang; Ramshaw, p. 10.

40 Law on the CoHRI, Article 3.

41 Rules of Procedure of the GNAT, Article 18.

42 For the List of the Members of the CoHRI on 27th Legislative Term, Türkiye Büyük Millet Meclisi Resmi İnternet Sitesi, https://www.tbmm.gov.tr/develop/owa/komisyon_uyeleri_sd.uyeliste?p1=14&p2=12, (Date Accessed: 07.05.2020).

43 For the List of the Members of the CoHRI on 26th Legislative Term, Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 26. Yasama Dönemi II. Devre Faaliyet Raporu, p. 10-11, https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2018/ihik_faaliyet_raporu_25072018.pdf, (Date Accessed: 07.05.2020).

member are represented at the CoHRI. Fifteen of twenty-six members and the Chair of the CoHRI are from ruling party. Two of twenty-six members are women and only ten members have expertise in law and/or human rights.⁴⁴

However, it is right to say that, even in all legislative terms, the Chair of the CoHRI was/is from ruling party, one of the two deputy-chairpersons was/is always from the main opposition political party. In addition, ministers are ineligible to be members of the CoHRI. To be a member of the CoHRI, the person should also be a member of parliament and if a member of the GNAT is appointed as a minister, he/she shall lose his/her membership.⁴⁵

4.2. Powers, Functions and Working Methods

Another key principle is that the national parliamentary human rights committees should have powers in order to carry out its mandate effectively. For an effective parliamentary human rights committee, it should have powers to:

- initiate inquiries of its own choosing,
- compel witnesses to attend, including ministers,
- hold oral evidence hearings,
- conduct visits, including visits abroad,
- access places of detention without notice,
- report to parliament,
- make recommendations to the executive,
- initiate parliamentary debates on its reports or on subjects of its choosing,
- propose amendments to legislation and introduce bills into parliament concerning matters within its remit.⁴⁶

When it comes to functions, the first function of the national parliamentary human rights committee should be to inform parliament about human rights issues by its reports. Other than informing and advising their parliaments, national parliamentary human rights committees should have other functions as much as possible, such as:

- to scrutinise all draft legislation and amendments, laws and secondary legislation for compatibility with human rights and implementation of treaty obligations, recommendations of the treaty bodies and judgements of national and international courts concerning human rights,
- to scrutinise the executive's response to human rights judgements of national and international courts,

44 For the List of the Members of the CoHRI on 24th Legislative Term, Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 24. Yasama Dönemi 4. Yasama Yılı Faaliyet Raporu, p. 7-8, https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2015/24yd_faaliyet_raporu_09072015.pdf, (Date Accessed: 07.05.2020).

45 Constitution of the Republic of Turkey, Article 106.

46 *Supra*, Chang; Ramshaw, p. 12.

- to scrutinise proposed human rights treaties and other international treaties with implications for human rights, and to report to parliament prior to ratification,
- to conduct thematic inquiries on topical issues concerning human rights, particularly in areas where there is concern about the country's compliance with its human rights commitments, whether national or international,
- to scrutinise policies generally for human rights compatibility to assist parliament to perform its function of oversight of the executive,
- to monitor the adequacy of the national system for the protection and realisation of human rights.⁴⁷

Lastly, national parliamentary human rights committees should have definite and clear working methods to function properly. So a national parliamentary human rights committee shall:

- be generally independent of executive on its work,
- review bills and report to parliament within an effective time frame,
- produce reports that perceived to be motivated by principled deliberations and consensus,
- report regularly to parliament on its activities in the performance of its functions,
- report on the outcome of every review of its working practices,
- publish the reports adopted by the committee on the committee's or parliament's website,
- expect the executive to respond within a reasonable time to recommendations it makes in its reports,
- seek to follow up its reports and recommendations, including by seeking opportunities for parliamentary debate or executive action,
- publish a statement of working practices, together with detailed guidance for relevant executive actors involved in the law-making and policy-making functions, in order to help them to understand the work of the committee and influence them to internalise human rights considerations into the law-making and policy-making process.⁴⁸

According to the Law on the CoHRI, the CoHRI has the competence to request information from the ministries, the general and annexed budget administrations, local authorities, village headmen, universities and other public or private institutions; to carry out an inquiry in those on-site and to convoke and to obtain information from their staff. It may, if called for, consult relevant experts and carry out its duties out

47 *Ibid*, p. 14.

48 Janet Hiebert, "Parliament and the Human Rights Act: Can the JCHR facilitate a culture of rights?", *International Journal of Constitutional Law*, Volume 4, No 1, 2006, p. 15; *Ibid*, p. 25-27.

of Ankara.⁴⁹ The CoHRI may also establish subcommittees to hold its inquiries. The CoHRI shall submit its reports to the Presidency of the GNAT. These reports may be put on the agenda of the Plenary upon the proposal of the Board of Spokesmen and the Plenary shall take cognizance of it by reading or by debating it. The CoHRI reports shall be forwarded to the related ministries and relevant authorities. If the CoHRI decides its necessity, for prosecution or legal proceedings according to the general principles regarding the subjects of the inquiries.⁵⁰

Main functions of the CoHRI are:

- to follow the developments regarding the internationally recognized human rights,
- to determine the amendments in the Constitution of Turkey and national law and practices in order to harmonize with the international treaties which Turkey is a party of in the field of human rights and to propose legal amendments,
- to discuss and debate private members' bills and Presidential decrees issued during the state of emergency referred to them by the Office of the Speaker, submit its opinion and advice regarding the issues on the agenda of the other Committees of the Parliament upon a request,
- to monitor the harmonization of human rights practices of Turkey with the Constitution, acts and international treaties which Turkey is a party of and, to this end, to hold inquiries, to propose improvements and solutions,
- to evaluate the applications on human rights violations sent to the Committee and to refer them to the relevant authorities if called for,
- to inquiry the human rights violations in foreign countries and to draw attention to them of the members of the relevant parliaments directly or through the parliamentary forums, if called for,
- to prepare a committee report on annual activities, on results as well as on the human rights practices in Turkey and abroad.⁵¹

The CoHRI has important powers and functions that look good on paper. However, how often the CoHRI uses these powers and functions and how effective their outcomes are open to debate. The CoHRI frequently uses its competence to request information from the ministries, the general and annexed budget administrations, local authorities, village headmen, universities and other public or private institutions, especially on evaluating the applications on human rights violations claims sent to the CoHRI. In the 26th Legislative Term, 10500 individual applications has been made to the CoHRI.⁵² In the 24th Legislative Term, 8760 individual applications has been made

49 Law on the CoHRI, Article 5.

50 Law on the CoHRI, Article 6.

51 Law on the CoHRI, Article 4.

52 Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 26. Yasama Dönemi I. Devre Faaliyet Raporu, p. 23, https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2018/29_yy_faaliyetraporu1_07022018.pdf, (Date Accessed: 07.05.2020); *Supra*, 26. Yasama Dönemi II. Devre Faaliyet Raporu, p. 25.

to the CoHRI.⁵³ Despite this huge amount of individual applications, responses from the ministries and other authorities are usually unsatisfactory.

Second, the CoHRI can establish subcommittees to hold its inquiries. In the 27th Legislative Term, the CoHRI has established the Subcommittee on Migration and Harmonisation, the Subcommittee on Rights of Detainees and Prisoners⁵⁴ and the Subcommittee on Rights of the Child.⁵⁵ In the 26th Legislative Term, the CoHRI has established the Subcommittee on Migration and Harmonisation, the Subcommittee on Rights of Detainees and Prisoners, the Subcommittee on Hostility to Islam in Some Western Countries, the Subcommittee on Occupational Safety and Health and the Subcommittee on the Diyarbakır Prison No:5 Which Established After 12nd September Military Coup.⁵⁶ In the 24th Legislative Term, the CoHRI has established the Subcommittee on Violence against Women and Family Members, the Subcommittee on Rights of the Disabled Persons and Inquire Violations of Rights of the Disabled Persons, the Subcommittee on Inquiry the Violations of Right to Life within the Scope of Acts of Terrorism and Violence, the Subcommittee on Inquiry the Deaths Resulting from the Air Operation at the Iraqi Border in Uludere District of Şırnak, the Subcommittee on Problems of Refugees, Asylum Seekers and Irregular Migrants in Turkey, the Subcommittee on Penal Execution Institutions and Prisons, the Subcommittee on Rights of Victim of Crimes and the Subcommittee on the Inquiry of the Allegations of Blacklisting in Hozat District of Tunceli.⁵⁷ The CoHRI did submit its reports of these subcommittees' to the Presidency of the GNAT. However, there is no data that these reports have been put on the agenda of the Plenary and the Plenary did take cognizance of it by reading or by debating it. In addition, the CoHRI did forward these subcommittee reports to the related ministries and relevant authorities. Likewise, there is no data if and the degree to which related ministries and relevant authorities paid attention to the CoHRI's recommendations and determinations. At this stage, the effectiveness and efficiency of the CoHRI shall be discussed.

Moreover, according to the Law on the CoHRI, two of the main functions of the CoHRI is to follow the developments regarding the internationally recognized

53 Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 24. Yasama Dönemi 1. ve 2. Yasama Yılları Faaliyet Raporu, p. 32, https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/24_Donem_1_ve_2_Yasama_Yillari_Faaliyet_Raporu.pdf, (Date Accessed: 07.05.2020); Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 24. Yasama Dönemi 3. Yasama Yılı Faaliyet Raporu, p. 28, https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/24_donem_3_yasama_yili_faaliyet_raporu.pdf, (Date Accessed: 07.05.2020); *Supra*, 24. Yasama Dönemi 4. Yasama Yılı Faaliyet Raporu, p. 24.

54 Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi, Dönem:27 Yasama Yılı: 2, 17 October 2018, p. 13-14 and 31, https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=2183, (Date Accessed: 07.05.2020).

55 Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi, Dönem:27 Yasama Yılı: 2, 3 July 2019, p. 47-48, https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=2338, (Date Accessed: 07.05.2020).

56 *Supra*, 26. Yasama Dönemi II. Devre Faaliyet Raporu, p. 14-23.

57 *Supra*, 24. Yasama Dönemi 1. ve 2. Yasama Yılları Faaliyet Raporu, p. 191-192; 24. Yasama Dönemi 3. Yasama Yılı Faaliyet Raporu, p. 44-47; 24. Yasama Dönemi 4. Yasama Yılı Faaliyet Raporu, p. 13-17.

human rights and to prepare a committee report on annual activities, on results as well as on the human rights practices in Turkey and abroad. Unfortunately, there is not any established mechanism or system to follow international human rights developments, so the CoHRI underutilise this function. In addition, the CoHRI prepares annual committee reports but these reports only include activities of the CoHRI and they are not on human rights results and practices in Turkey and in the world.

According to Article 4 of the Law on the CoHRI, one of the main function of the CoHRI is to discuss and debate private members' bills and Presidential decrees issued during the state of emergency referred to them by the Office of the Speaker and to submit its opinion and advice regarding the issues on the agenda of the other committees of the Parliament upon a request. Regrettably, this main function is by no means effective in practice. In the 27th Legislative Term, the Office of the Speaker referred 102 private members' bills to the CoHRI as secondary committee⁵⁸ but none of these private members' bills were debated at the CoHRI and it did not submit its opinions. In the 26th Legislative Term, 114 private members' bills were referred as secondary committee and one government bill as primary committee. The CoHRI only debated the Government Bill on Human Rights and Equality Institution of Turkey and did submit its report.⁵⁹ In the 24th Legislative Term, 80 private members' bills and 14 government bills were referred as secondary committee and one private members' bill and one government bill as primary committee. The CoHRI only debated five government bills as secondary committee and one government bill as primary committee and did submit its reports.⁶⁰

4.3. Relationships with Other Actors and Training Services

Human rights is a multifaceted and sophisticated issue that national parliamentary human rights committees shall work together not only with other state actors but also different types of non-state actors and institutions to protect and promote human rights in real terms. So national parliamentary human rights committees need to develop and maintain with other key actors, including: the executive, the courts, the national human rights institutions,⁶¹ non-governmental organisations,⁶²

58 According to Article 23 of the Rules of Procedure of the GNAT, the committee whose report will constitute the basic document for the Plenary debates is called the primary committee. Secondary committees are those that present their opinions on the parts or articles of the matter, within the remit of the committee. The matter is referred to the primary committee and other committees simultaneously by the Office of the Speaker. If the aspects and articles on which the secondary committees are supposed to express their opinions are not specified in the referral, the secondary committees will present their views on topics they deem related to them. The failure of the secondary committees to submit their report within the prescribed period does not constitute an obstacle for the primary committee to conclude its report.

59 *Supra*, 26. Yasama Dönemi I. Devre Faaliyet Raporu, p. 21-22; 26. Yasama Dönemi II. Devre Faaliyet Raporu, p. 23.

60 *Supra*, 24. Yasama Dönemi 1. ve 2. Yasama Yılları Faaliyet Raporu, p. 27-29; 24. Yasama Dönemi 3. Yasama Yılı Faaliyet Raporu, p. 24; 24. Yasama Dönemi 4. Yasama Yılı Faaliyet Raporu, p. 20.

61 Hereinafter, NHRIs.

62 Hereinafter, NGOs.

the regional and international human rights mechanisms, universities and other academic institutions. First, national parliamentary human rights committees should help the executive to understand how parliaments fulfil its responsibilities to protect and realise human rights. This may help the executive to internalise human rights considerations in their work. Second, national parliaments and parliamentary human rights committees should take into consideration judiciaries' decisions, especially constitutional court decisions, to amend laws to fit with those judgements. On the other hand, national parliamentary human rights committees shall be well connected with relevant NGOs to provide opportunities for civil society to have an input into parliamentary consideration of human rights issues. National parliamentary human rights committees shall also establish and maintain a close relationship with the relevant regional and international human rights mechanisms to follow recent developments in human rights area. Lastly, close relationships with universities, academic institutions and human rights research institutes may help to inform on human rights legislation with policies and inform about human rights concerns.⁶³

The CoHRI has the competence to request information from different actors and consult relevant experts if it finds necessary.⁶⁴ Especially the CoHRI uses this competency and authority in its subcommittees' work. For example, in the 27th Legislative Term, the Subcommittee on Migration and Harmonisation,⁶⁵ the Subcommittee on Rights of Detainees and Prisoners⁶⁶ and the Subcommittee on Rights of the Child⁶⁷ have invited different officials, experts and people from the executive, the NGOs, public institutions, academia, etc. to ask for information from them. Moreover, when a subcommittee report is discussed in a main committee meeting, the officials of the relevant ministries and other actors are invited this meeting so the members of the CoHRI ask their questions about report face to face. The CoHRI also may invite these people to debate a specific topic to their main committee meetings.⁶⁸ Aside from these interactions, the chairperson of the CoHRI frequently meets and accepts representatives from the executive, public institutions, NGOs, etc. In the 26th Legislative Term, 30 national delegations and 58 international delegations;⁶⁹ in the 24th Legislative Term, 38 national delegations and 46 international delegations⁷⁰ had

63 *Supra*, Chang; Ramshaw, p. 28-30.

64 Law on the CoHRI, Article 5.

65 For the list of official guest speakers, https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=10266&pDonem=27, (Date Accessed: 07.05.2020).

66 For the list of official guest speakers, https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=10228&pDonem=27, (Date Accessed: 07.05.2020).

67 For the list of official guest speakers, https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=10227&pDonem=27, (Date Accessed: 07.05.2020).

68 For the list of 27th Legislative Term official guest speakers, https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=14&pDonem=27, (Date Accessed: 07.05.2020).

69 *Supra*, 26. Yasama Dönemi I. Devre Faaliyet Raporu, p. 33-40; 26. Yasama Dönemi II. Devre Faaliyet Raporu, p. 33-39.

70 *Supra*, 24. Yasama Dönemi 1. ve 2. Yasama Yılları Faaliyet Raporu, p. 29-31; 24. Yasama Dönemi 3. Yasama Yılı Faaliyet Raporu, p. 24-27; 24. Yasama Dönemi 4. Yasama Yılı Faaliyet Raporu, p. 21-23.

paid visits to the CoHRI. However, despite of these different types of relationships and interactions, there is no data or information to measure or assess their effectiveness and outcome.

Second, training in human rights for parliamentarians, especially for the members of the human rights committees and committees' staff is essential as it will help them identify human rights issues in the course of their work and learn how to address them. Therefore, national parliaments and human rights committees should therefore arrange appropriate, regular and periodic human rights training courses for their members and staff. This training should also include the understanding and knowledge of international human rights mechanisms. For that, national parliaments and human rights committees may seek to avail appropriate technical assistance available from international organisations to assist them to build and improve their capacity.⁷¹

Unfortunately, there is neither induction nor regular human rights training programmes for the members and the staff of the CoHRI. The GNAT does not arrange appropriate induction or periodic trainings or seek any appropriate technical assistance from international human rights institutions. So members of the CoHRI and legislative experts who constitute the staff of the CoHRI have to train and improve themselves through their own means and commitments.

5. Closing Remarks

The powers available to national parliaments put them in a position to take decisive action nationally and this is why increased parliamentary engagement with human rights issues is very important. National parliaments have particularly important roles as 'guardians of human rights'⁷² in contextualising international standards through their legislative powers, oversight function and budgetary responsibilities. They are also in a strong position to work with other actors such as NGOs, the NHRIs and other independent bodies. These factors are central and beneficial to improve domestic implementation of international human rights standards.⁷³ With the established and dedicated parliamentary human rights committees, which have a range of powers and functions, national parliaments may also undertake the role of promotion and protection of human rights and enhance domestic implementation of international human rights standards more instrumentally and significantly.

In the case of the CoHRI of the GNAT, there are a lot of things to do to make established system more functional. First, speaking of mandate, independence and pluralism, the CoHRI's mandate may be limited to human rights in the domestic context so that the CoHRI can focus its resources and time on human rights domestically. On

71 *Supra*, Chang; Ramshaw, p. 32.

72 *Supra*, The Global Human Rights Implementation Agenda: The Role of National Parliaments, Policy Brief, November 2018, p. 8.

73 *Supra*, Roberts Lyer, p. 199.

the contrary, the CoHRI might pay more attention to other states than Turkey and neglect to look into its national problems. Moreover, in the name of pluralism and independence to sustain the CoHRI's credibility and legitimacy, with the amendments to the Law on the CoHRI, the composition of the CoHRI can reflect the principle of gender balance and previous expertise in human rights can be a condition for being a member of the CoHRI. Second, the CoHRI may be more active on informing the GNAT about human rights issues by its reports. Other than submitting its reports the Presidency of the GNAT, the CoHRI may find other ways and be insistent on putting its reports on the agenda of the Plenary for debating. In addition, the CoHRI may develop methods to follow up if related ministries and relevant authorities pay attention to the CoHRI's reports and recommendations. Furthermore, the CoHRI may review its function on evaluating the applications on human rights violations claims sent to the CoHRI and decide if this function is not necessary and useful anymore with the establishment and development of other individual application procedures, such as the Ombudsman Institution, Human Rights and Equality Institution of Turkey, etc. Additionally, one of the important function of the CoHRI is to discuss and debate private members' bills and Presidential decrees issued during the state of emergency referred to them by the Office of the Speaker. However, in practice, this main function is by no means effective. So, the CoHRI may make more effort on that function and debate bills and decrees that referred and submit its opinions and proposals. Third, the CoHRI may find other operational ways to develop and maintain relationships with the executive, the NHRIs, the regional and international human rights mechanisms other than formal meetings. A continuous and meaningful network may be formed between them and the CoHRI and opportunities may be provided for them to have an input into parliamentary consideration of human rights issues. In regards to training in human rights for the members of the CoHRI and its staff, induction and periodic human rights training courses may be organized. Also for the members and staff, people who are disposed to work and make a change on human rights may be nominated and tasked with.

Besides these, another important issue that shall be mentioned is the effectiveness of the CoHRI. It is true that this is an easier said than done challenge and there is no universally agreed definition of what is "effectiveness" in the context of parliamentary protection of human rights. However, this does not mean that it is an impossible task and for that, the CoHRI may develop a methodology or find other ways for assessing its effectiveness in the protection and realisation of human rights.⁷⁴ Not only for the CoHRI, but also for other national human rights mechanisms and bodies, without a focus on effectiveness, national parliamentary human rights committees risk being a tick-box exercise or being undermined by a partisan political process' and just being a 'rubber stamp' for the human rights actions of the executive. Ineffective national parliamentary committees may face a number of risks for including a weak mandate subject to political whims, lack of

74 *Supra*, Chang; Ramshaw, p. 34.

sufficient expertise, partisanship, compartmentalisation of human rights and reduced political influence where human rights are not prioritised by the parliament.⁷⁵ The effectiveness for national parliamentary human rights committees requires a clear goal which should be publicly and clearly set out in order to provide a baseline for expectations and motivation for those working in the mechanism and stakeholder engagement, which shall take into account the need for it to be perceived as legitimate in its activities for both.⁷⁶ The clear goal of a parliamentary human rights committee should have an aspiration to help ensure increased compliance with human rights and a better life for all the people in its country; and an aim to publicly examine existing or potential human rights deficits identified by parliamentarians, international human rights organisations, the NHRIs, human rights NGOs and other stakeholders, make changes on areas for improvement and call the executive to account for the human rights violations.⁷⁷ A parliamentary human rights committee should also take into account the relevant stakeholders, their needs and interactions with them. These will include victims, NHRIs, NGOs, international organisations, the executive, etc. Some working methods and ethics such as transparent operations, public processes, the need for consultations with stakeholders and ensuring ‘meaningful’ civil society participation may help to succeed.⁷⁸ The CoHRI may develop a methodology to assess its effectiveness in the protection and realisation of human rights. It should not be forgotten that effectiveness is central to a national parliamentary human rights committee’s ability to act for the promotion and protection of human rights.

75 *Supra*, Roberts Lyer, p. 215.

76 Kirsten Roberts Lyer; Philippa Webb, Parliaments as Human Rights Actors-Proposed Standards from the UN, EJIL: Talk!, 21 June 2018, <https://www.ejiltalk.org/parliaments-as-human-rights-actors-proposed-standards-from-the-un/>, (Date Accessed: 07.05.2020).

77 *Supra*, Webb; Roberts Lyer, p. 1.

78 *Supra*, Roberts Lyer: Webb.

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