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Reforming the UN Commission on Human Rights – Perspectives for Non-Governmental Organisations

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1. Introduction

Since the report of the UN Secretary-General "*In larger freedom*" (March 2005)¹ has been published, the debate on reforming the UN human rights mechanisms has notably accelerated. Kofi Annan emphasised once again that human rights have to be an integral component of the reform goals for the United Nations corresponding to the primacy that the UN Charter accords to it. Human rights should be one of United Nations' basic pillars, together with security and development mutually reinforcing each other. Thus, e.g. any peace building commission or rule of law assistance unit should have a strong human rights component.

Most Non-Governmental Organisations (NGOs) share the concerns that the current Commission on Human Rights (CHR) – the most prominent UN institution on human rights – lacks credibility and efficiency particularly seen from the viewpoint of victims suffering human rights violations². The CHR as a political body has become increasingly paralysed in addressing human rights violations around the world. Kofi Annan went even further stating that the existing CHR had "cast a shadow on the reputation of the UN system as a whole". The shortcomings of the UN's main human rights body are meanwhile well identified and shall be only recapitulated in brief³:

- the general inability to address situations of gross and systematic human rights violations;

- the selectivity, double standards, politicisation (political considerations far from human rights aspects) and obstructive regional divisions which impede adequately addressing serious human rights violations related to particular countries;
- states seeking election to the Commission to protect themselves against criticism or to criticise others;
- states using procedural ploys to prevent debate on human rights concerns⁴.

In his oral statement addressing the 61st session of the CHR at 7 April 2005, Kofi Annan repeated saying that if the mood of the recent years would continue, the CHR would become a useless body compared to its main functions. Also, the High Commissioner for Human Rights, Louise Arbour, challenged the CHR in her closing statement indicating the CHR as a source of encouragement but as a cause of concern as well doubting about CHR's capacity to reform itself⁵. Ironic comments of both NGOs and state delegations joked whether there will be a next meeting of CHR next year under the given auspices and circumstances at all. At least, it has become obvious, that 'business as usual' would be the worst case scenario for the CHR. In that sense, the uncertainty of states about the future of the CHR has been rather an encouraging signal.

2. Embedding the Current Reform Debate

The past experiences on reforming the United Nations human rights mechanisms have been ambiguous. The Vienna Conference in 1993 extended the mechanisms establishing the Special Procedures with the CHR and opened a promising future⁶. However, already during the mid-term review of the Vienna Declaration and Programme of Action in 1998, the 54th session of the CHR adopted a decision on '*Enhancing the Effective-*

¹ Document No. A/59/2005.

² See the joint statements of NGOs to the informal meeting of the 61st session of CHR at 12 April 2005; one delivered by Amnesty International, Association for the Prevention of Torture, Baha'i International, Centre on Housing Rights and Evictions, Colombian Commission of Jurists, Franciscans International, Human Rights Watch, International Commission of Jurists, International Service for Human Rights, Lutheran World Federation, Organisation Mondiale Contre la Torture, Quaker UN Office and Rights Australia, the second by CONGO (Conference of NGOs in consultative status with the UN, a Geneva based network of NGOs), and a third one by the South Asia Human Rights Documentation Centre.

³ Among others see United Nations (2004); *A more secure world: Our shared responsibility. Report of the High-Level Panel on Threats, Challenges and Change. United Nations, New York, Document No. A/59/565; or T. Rathgeber (2005); Strengthening the Commission on Human Rights. Remarks towards a constructive dialogue between South and North. Discussion Paper, Friedrich-Ebert-Foundation Geneva Office*

⁴ China successfully used 'no-action motions' since 1989 to prevent proposed resolutions on the human rights situation in that country. The example has been followed by Zimbabwe, Sudan, Russia and Belarus.

⁵ Statement of Louise Arbour on the closure of the 61st session of CHR, Geneva, 22 April 2005.

⁶ The Vienna Conference already stated that universal respect for human rights improves the conditions for peace and security.

ness of the Mechanisms of the Commission on Human Rights'⁷ watering down the agreements made at the Vienna conference. The CHR additionally adopted a resolution entitled '*Restructuring the Agenda of the Commission on Human Rights*'⁸. It introduced the '*Rationalisation of the Work of the Commission*' as a separate agenda item; what might have been a progress particularly strengthening the implementation aspect. However, one of the key elements of this rationalisation process was excising country specific resolutions from the mandate of the Sub-Commission on Human Rights⁹. Since 2000, the Sub-Commission can no longer adopt country specific resolutions nor mention a country in thematic resolutions. The present mood at the CHR has gone even further as to seek abolishing the so called 'naming and shaming' through country resolutions under Item 9 and to stop the scrutiny by the Special Procedures¹⁰.

While struggling for the scope, the performance of CHR has been changed by new needs and priorities too. The standard setting by the CHR has been one of its real strongholds over the past decades. Nowadays, the CHR is expected to emphasise the implementation of human rights although the standard setting as such is still required¹¹. That demands some reforms on procedure and working methods, in part realised since 1998 like the structured and detailed agenda proposed in advance. As stated before, however, these changes resulted being insufficient and some have been rather blocked by procedural manoeuvres of interested states¹².

Beyond the CHR and its prominent role among the UN mechanisms to protect and promote

human rights, critics stress the 'inefficiency' of the treaty monitoring bodies too, referring to the limited capacity as the reservations made by governments upon ratification. An additional critique on the treaty bodies emphasises the long overdue of initial and periodic reports, what means that the legal obligations of the states parties to submit reports de facto are diluting. There is also a restricted ability of the treaty monitoring bodies in terms of examining only a few periodic reports per year. Finally, no instrument is available for a mandatory follow-up to the concluding observations of the Committees. In general, beyond CHR and treaty bodies, there is concern too, about the low grade of co-ordination among the UN human rights mechanisms; if any.

The debate on improving the UN mechanisms on human rights is not limited to the mechanisms as such but being part of a larger reform attempt in order to make the world more peaceful. This debate seeks to increase global security, to improve the development substance and to finally re-gain these areas for the UN being a central actor. This larger reform¹³ pursues – in brief – to extend the Security Council by increasing the number of members, to adopt by September 2006 a convention on measures to counter terrorism though respecting human rights, to take up measures for barring the further proliferation of nuclear weapons, to implement new rules on using force in relation to preventive strikes and, finally, to establish a peace building commission in order to help those states which suffered from war¹⁴. It is worth to remind that a major impulse for this reform debate started in relation to challenges based on security issues after September 11 in 2001, and states like the USA still prefer to keep that priority¹⁵. In contrast,

⁷ *Decision 1998/122*

⁸ *E/CN.4/RES/1998/84*

⁹ *Composed of more or less independent experts, the Sub-Commission has been more frank in addressing human rights violations compared to the CHR which is lead by diplomats who frequently are closer to the political interests and language of their governments.*

¹⁰ *See details at ACHR Review/68/2005. Kofi Annan sought to strengthen the Special Procedures but failed up to now; see his report "Strengthening of the United Nations: an agenda for further change." Document No. A/57/387, 9 September 2002.*

¹¹ *As the facultative protocol to the International Covenant on Economic, Social and Cultural Rights, on sexual identity, on norms related to the responsibility of transnational companies etc.*

¹² *An overview is given by T. Rathgeber (2005), op. cit.*

¹³ *As Kofi Annan literally proposes in his report "In larger freedom"; freedom from want, freedom from fear, and freedom to live in dignity. See also his explanatory notes in "United Nations Human Rights Council", Explanatory Note provided by the Secretary-General, April 2005.*

¹⁴ *These intentions have been reflected in the High-Level Panel report of December 2004 as well; op. cit.*

¹⁵ *As Newt Gingrich pointed out clearly during a discussion about the outcome of the US Task Force on the United Nations in Berlin, June 1, 2005, at the American Academy ("Reforming the United Nations: The Task Force on the UN Reports to Congress") although he did not officially speak for his government but as Co-Chair of the Task Force.*

the High Level Panel report of 2004 and Kofi Annan meanwhile underlined, that protecting and promoting human rights is indispensable as well in order to make the world more safe and peaceful.

Both the High-Level Panel and Kofi Annan went even further and – together with Jeffrey Sachs' report on the Millenium project¹⁶ – emphasised the need to improve the development substance as well. They acknowledged that poverty is a risk to world's security as well as terrorism is supposed to be. In this context and at the level of United Nations, the Millenium Development Goals are a key element established as a benchmark to be fulfilled 2015. In addition, each country is once again requested to raise its contribution to development aid up to 0.7 % if its Gross Domestic Product. In his report '*In larger freedom*', Kofi Annan combines all three elements – security, development and human rights – in order to propose a comprehensive reform of the United Nations' system and thus, to enhance a more secure world.

While taking the wider scope of reform debate into consideration, we concentrate, nevertheless, in this text on the debate on the CHR. However, the examination of the achievements and the failures of the CHR have been widely exercised and will not be repeated¹⁷. We focus on the discussion and proposals seeking to comprehensively reshape the human rights system. The following considerations should be understood as a contribution to that discussion. We draw special attention to those principles and aspects which – according to our understanding – should be addressed in order to establish a system that swiftly and predominantly responds to the needs of victims as well as of defenders of human rights in all countries, at all times.

3. The Reform Discussion at a Glance

The debate concerning the reform and future of the CHR can generally be characterised by two conflicting tendencies. One tendency can be identified as a genuine effort to strengthen the CHR and its procedures in order to make it an

effective instrument for the promotion and protection of human rights. A second tendency pursues, sometimes using the term 'reform' as pretext, to weaken the CHR and its mechanisms. The latter is e.g. prominently represented by the informal Like-Minded Group with China as its speaker¹⁸. Their reflections are frequently exposed in their contributions to the 'rationalisation of work'. In recent time, a so called 'non-paper' in the name of the Asian Group has been circulated to the 61st session of the CHR and was finally adopted by resolution E/CN.4/2005/L.98. It is now a point of official reference for the further reform debate of the CHR. The paper contains proposals which tend to severely weaken the CHR and its role on human rights protection¹⁹.

UN Secretary-General

The tendency to strengthen the human rights mechanisms has been most prominently represented by the UN Secretary-General, Kofi Annan. Considering the mentioned reports of December 2004 and March 2005, his oral statement to the CHR and his explanations to the proposed Human Rights Council, Kofi Annan's substance to the discussion can actually be centred in relation to this Council. Kofi Annan asked the UN member states to endorse, in principle, the establishment of a Council in the final declaration of the September 2005 Summit. According to Kofi Annan's understanding, the member states should agree to replace the Commission on Human Rights with a smaller and upgraded Human Rights Council. Its mandate and

¹⁸ *In the context of the CHR, the Like-Minded Group is composed of, among others, Algeria, Cuba, China, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Pakistan, Sri Lanka, Sudan, Syria, Tanzania, Tunisia, Uganda and Zimbabwe; that means most countries of Asia and Africa represented in the CHR*

¹⁹ *Asian Group; Enhancing the Effectiveness of the Special Mechanisms of the Commission on Human Rights. Discussion paper circulated in late 2004, Geneva, and containing 21 recommendations for the reform of the Special Procedures in order to 'enhance' their effectiveness. What in reality would mean providing 'rights' to the states and 'duties' to the Special Procedures; e.g. proposing a code of conduct, criteria for admissibility of allegations of human rights violations, guidelines for performing the functions etc. See also Peter N. Prove (2005); Threats, Challenges and Change: Prospects for the future of the UN Commission on Human Rights. German Yearbook on Human Rights, Berlin: DGVN*

¹⁶ Jeffrey D. Sachs (Ed.) [2005]; *Investing in Development. A Practical Plan to Achieve the Millenium Development Goals*. New York.

¹⁷ See e.g. the reference made in footnote 2.

subsistence can be outlined as the Council should:

- consider the situation of all human rights in all countries based on a peer review system²⁰ and on a periodic basis, without impeding the Council from dealing with massive and gross violations that might occur in between;
- request the thematic and country-specific procedure mandates as well as the intergovernmental working groups and the Sub-Commission to report to the Council;
- play a paramount role in contributing to the interpretation and development of international human rights law;
- reconsider, refine or amend its procedures in addition to existing functions, procedures, and working groups of the CHR, which would be left to the Council to endorse, renew, or consider obsolete according to its own terms of reference though e.g. the Special Procedures and NGO engagement should continue with the Human Rights Council;
- be one component of the UN human rights system, which includes the mandate of the High Commissioner, secretariat functions, and the treaty bodies;
- work in close co-operation with the Office of the High Commissioner for Human Rights (OHCHR);
- strengthen other components of the UN human rights system, as the OHCHR, UN agencies and programmes dealing with human rights, the treaty monitoring bodies, the General Assembly, the Security Council, ECOSOC, and the proposed new peace building commission; this involves e.g.
 - to strengthen the UN General Assembly's ability to analyse and draw attention to continuing gaps in the implementation and main-streaming of human rights throughout the UN system,
 - to rationalise the agenda of the Third Committee of the UN General Assembly,
 - to assist in the establishing, supporting, and generating contributions for voluntary funds in order to especially assist developing countries,
- have the authority to recommend policy measures to other organs of the UN that can help in the process of implementation;
- be a standing body retaining the CHR's capacity to meet in extraordinary sessions;
- preserve being a forum for dialogue among member states and civil society on human rights issues stressing the role of national institutions and NGOs as being crucial to provide policy inputs and views from the field;
- be located in Geneva.

In addition and according to Kofi Annan, the membership to the Council would be drawn from a two-thirds vote by the General Assembly. The membership would be smaller compared to the actual CHR in order to allow a more focused discussion and debate.

Office of the High Commissioner for Human Rights

In her recently released report "The OHCHR Plan of Action: Protection and Empowerment" (May 2005), the High Commissioner for Human Rights, Louise Arbour, presents a strategic vision for the future direction of the OHCHR. Based on the mandate to "play an active role in removing the current obstacles and in meeting the challenges to the full realisation of all human rights and in preventing the continuation of human rights violations throughout the world", Louise Arbour emphasises that the Plan of Action should help to bridge the gap between aspiration and reality of human rights by strengthening the profile and capacities of the OHCHR, adopting new approaches, improving planning and management, and significantly expanding its resources.

The Plan of Action refers to challenges which are arising from major human rights problems as poverty, discrimination, armed conflict and violence, impunity, democratic deficits and institutional weaknesses. They all need more attention in terms of implementation aspects and, thus, a focus to provide knowledge, capacity, commitment, and security.

The essential role of OHCHR is seen in protecting and empowering people in order to make them realise their rights.

²⁰ All countries are subject to human rights scrutiny on a regular basis, without exception.

Therefore, the Plan proposes a greater country engagement through e.g.:

- an expansion of the geographic desks and an increased deployment of human rights staff to countries and regions;
- an enhanced human rights leadership role for the High Commissioner and greater interaction with relevant United Nations bodies and actors;
- regular system-wide human rights consultations;
- an annual thematic human rights report;
- country scrutiny should be exercised through an effective, fair and transparent system of peer review and be built on the principle of universal scrutiny;
- the relationship to countries should be principally based on dialogue and engagement with the country concerned in order to address the implementation challenge;
- closer partnerships with civil society and UN agencies;
- more synergy in the relationship between the OHCHR and the various United Nations human rights bodies;
- an inter-governmental meeting to consider options for a unified standing human rights treaty body;
- a review of the special procedures; considering its actual amount and scope, the OHCHR would like to give them greater support, e.g. when they seek a follow-up on their recommendations or on individual cases;
- to relocate CEDAW to Geneva (Committee on the Elimination of Discrimination Against Women);
- a strengthened management and planning for the OHCHR;
- a considerably better equipped Office with financial resources²¹.

The Plan of Action details further tasks of the OHCHR which would mean, among others, to

²¹ At present, the OHCHR receives only 1.8 per cent of the United Nations budget. The bulk of OHCHR resources is covered in form of extra-budgetary contributions. The total annual budget of the OHCHR – currently USD 86.4 million – needs to be doubled over the next five to six years; according to Louise Arbour.

strengthening the rule of law and to contribute to the peace building commission by providing legal and policy expertise. Also, the OHCHR requires leadership in terms of proactively identifying problems and proposing solutions as well as building partnerships, inside and outside the United Nations. In order to help turn the Millennium Development Goals into reality, the OHCHR will establish a unit dedicated to work on the Goals. Louise Arbour concludes that aspects of the Plan could already begin in the coming months, through more effective prioritisation of existing resources and improved planning and policy development, although the full realisation needs considerably more resources as has been mentioned.

Member States

Many countries still do not have a final position to the reform of the CHR. Corresponding considerations are not published or not discussed in public²². This impedes the attempt to present a similar overview as has been conducted in relation to the Secretary-General and the High Commissioner for Human Rights. Nevertheless, the known positions allow a preliminary synopsis of what may be the tendency in the further decision making process²³.

At least the 25 member states of the European Union and most states from Latin America have welcomed Kofi Annan's reform proposal as well as Bulgaria, Cameroon, Canada, Côte d'Ivoire, Croatia, Iceland, Japan, Liechtenstein, Maldives, Norway, Republic of Korea, Senegal, Switzerland, Turkey, United States, New Zealand. They support in principle the proposal to create a Human Rights Council following the explanatory notes of

²² Particularly those expressing scepticism or denying the need for a far seeking reform are actually in a rather defensive role.

²³ Most of the following conclusions have been deduced from statements made to the mentioned informal meeting on reform during the 61st session of CHR. Another part of the analyses is based on interviews and talks with member states during this session. Some information was accessible while following the discussion on Brazil's initiative to draft a resolution on the recommendation of the High Level Panel report 2004 to authorise the OHCHR to prepare an annual report on the human rights situation world wide. For details on further aspects see UN Information Service HR/CN/05/43.

the Secretary-General in April 2005²⁴. These countries in its majority also support an enhanced and transparent working process, a peer review mechanism, periodic reports prepared by the OHCHR, a reinforcement of the OHCHR, a better implementation of resolutions and room for NGO participation in order to play a continuing active role. However, some countries would like to consider an improved structuring of NGO participation. The need to mainstream human rights in the system was widely stressed. Many countries also support a peace building commission in order to assist countries emerging from conflict.

Explicitly negative comments to the proposed reform have been made by Algeria, Bangladesh, Cuba, Egypt, Singapore, Tunisia and Zimbabwe particular towards the Human Rights Council. Many members of the African and Arab Group need further reflection. China sustained that the CHR should not be dismissed such easily. Members of the Non-Aligned Movement and the Like-Minded Group neither consider the Council as a solution for the problem of selectivity and double standards. Many countries of the Non-Aligned Movement and the Like-Minded Group request that equal attention has to be given to economic, social and cultural rights compared to civil and political rights and do not believe that the new Council would tackle the present imbalance automatically. They also underlined the need for due recognition of the right to development. They would rather start with revitalisation of the CHR than necessarily replacing it.

A majority of states composed of the Western group, East Europe, Latin America and some countries from Africa and Asia favours the status of the proposed Human Rights Council as a subsidiary organ to the General Assembly based on a two-thirds majority preferring the easier technical solution. The option of having a standing body was viewed positively by Western orientated states, and the need to improve the capacity of adequately addressing human rights issues was also considered as important. A certain number of these countries also explicitly prefer to retain key functions of the current CHR, as the system of special procedures and to address specific country situations. Nobody agrees to

²⁴ While China and Russia consider it not appropriate to force a decision up to the September Summit.

hand over any coercive powers to a Human Rights Council nor enable it to impose sanctions. No definite tendency can be observed whether the membership should last two or three years.

With regard to the peer review, some options have been discussed following already existing procedures²⁵, but no model has been favoured. At least, a majority perceives the routinely review and discussion of human rights situations in all countries as a method to overcome the selectivity and actual mutual blockade on country scrutiny. In that context, emphasis was given that a new Council also must have means at its disposal to assisting member states in order to improve the human rights situation in their country. Some states reflected upon whether a peer review process should focus on implementation of the recommendations of the treaty bodies without any further tendency. A large majority sustained that if the peer review would be introduced, the non-member states of either the CHR or the Council should have a special status as far as its human rights situation would be judged. Those states being reviewed should not be member of the Council at the same time. In relation to the general question of membership with the Council, nearly no state favours criteria but voluntary pledges²⁶, while nearly all states emphasise that a new body should reflect and respect the criteria of geographical balance.

Non-Governmental Organisations

As stated by the UN Secretary-General and the High Commissioner for Human Rights, among others, civil society organisations are perceived as active sources providing the UN human rights mechanisms with information from the field and giving voice to the victims. Their participation with the human rights mechanisms as well as with the discussion on the reform has been rather encouraged and promoted by many institutional parties. Inversely, leading non-governmental human rights organisations endorse Kofi Annan's plan for a stronger UN human rights system that

²⁵ As conducted by ILO, OECD, or WTO being an extensive and comprehensive assessment made by experts, or as a kind of interactive and constructive dialogue amongst the states with participation of OHCHR.

²⁶ As Indonesia promised to ratify ICCPR and ICESCR in a meaningful time because of chairing the 61st session of CHR.

addresses systematically and effectively human rights violations in all countries on the basis of expert and independent information. This information should include the reports of the treaty bodies, Special Procedures, UN country teams and the Office of the High Commissioner supplemented by the experience of NGOs and human rights defenders. In this context, NGOs underline that the system of Special Procedures should be maintained and rather be strengthened in any new body²⁷. According to many NGOs, the OHCHR should take a leadership role in human rights protection and capacity-building, especially through an expanded and more meaningful role for the human rights field presence.

Most NGOs agree to replace the CHR with a new body transferring the CHR into a Human Rights Council. In its joint oral statements to the 61st session of CHR, NGOs called on states to rapidly establish such a new human rights body. In general, NGOs enhance a higher status for the human rights body which would no longer be a subsidiary of ECOSOC. The new Council should be a standing body which would be able:

- to conduct an in-depth consideration as well as to respond timely, effectively and flexible to human rights crises;
- to act preventatively within the UN system as an early warning system on the basis of reports of the OHCHR, special procedures and NGOs;
- to ensure a follow up of country specific commitments, decisions, and recommendations from Special Procedures and treaty bodies;
- to continue developing and setting human rights standards and norms.

NGOs sustain that the member states of such a new Council should have demonstrated their commitment to the highest human rights standards and their effective co-operation with the human rights mechanisms. What means e.g. to respond fully and promptly to the communications of the mechanisms, to implement the

recommendations and to submit timely reports to the treaty bodies, and to facilitate visits by Special Procedures issuing standing invitations²⁸. Most of the NGOs do not insist on formal criteria but expect pledges (as a kind of benchmarks) that could be monitored.

Obviously, the present discussion on the creation of a new Human Rights Council, its functions, composition and working methods left a bundle of questions to be dealt with particularly related to the details²⁹. Therefore, NGOs generally call on states to set up an inclusive process involving civil society³⁰ in order to discuss and shape the details of the new body within an appropriate time table. Going into some details, the NGOs' concern³¹ relates to:

- particularly the access of NGOs to the new council though NGOs expect, that the current standard of fully participating in the work would be maintained at the same level and on the same basis as in the present CHR; the widespread participation of NGOs to even informal hearings is one of the strongholds of the CHR compared to other UN bodies;
- the frequency of sessions of a standing Human Rights Council; more than 2 or 3 sessions per year would be a technical and

²⁸ Since 1999, only 50 member states have extended standing invitations to all the Special Procedures of the CHR: Argentina, Austria, Belgium, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Georgia, Greece, Guatemala, Hungary, Iceland, Ireland, Iran, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Mongolia, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey and the United Kingdom. No invitation has been issued till now neither by Australia nor by the USA.

²⁹ Some of NGOs' concerns are going to be subject of an informal interactive hearing organised by the UN General Assembly to be held with non-governmental organisations, civil society organisations and the private sector at United Nations Headquarters, 23-24 June 2005, in New York.

³⁰ Particularly relating to vulnerable groups as women, indigenous peoples, minorities, and marginalised people.

³¹ See also *The Flowerhill Exchange (April 2005); Notes on UN Human Rights Reform. International Council on Human Rights Policy, Geneva, electronic message via beuze@international-council.org*

²⁷ See the joint oral statements by NGOs mentioned under footnote 1 to the informal meeting during the 61st session of the CHR or papers of e.g. ACHR Review/63/2005 and Review/68/2005; Amnesty International IOR 40/008/2005 / 27 April 2005, IOR 41/032/2005; Peter N. Prove (2005); *op. cit.*

financial problem for smaller NGOs if they would like to attend all sessions;

- if the Council will be no longer subject to ECOSOC Rules of Procedure, a proceeding is required to guarantee the space that NGOs enjoy at the present CHR;
- the problem of the 'politicisation' of CHR if the Council would continue to be directly subject to political management exclusively by States³²;
- the relationship between the OHCHR and a new Human Rights Council³³; at present, the OHCHR receives advice and recommendations from the CHR but is operationally autonomous in many aspects while Kofi Annan proposed a leading role of the new Council;
- the relationship to the Special Procedures and e.g. to the recently established Interactive Dialogue;
- the existence of the UN Sub-Commission;
- the relationship with the UN system as a whole like the treaty bodies in order to avoid competition or duplication.

A general concern of NGOs relates to the risk that the present discussion on reforms may encourage those countries too, which would like to undermine the challenging system of human rights mechanisms at all; as the mentioned 'Asian-Non-Paper' tends to be. A new Human Rights Council should not end up in the mood of the present ECOSOC.

4. Concluding Remarks for Further Discussion

Considering the sketched reform discussion, we believe that there is a historic opportunity to build a stronger, more authoritative and effective UN mechanism system to promote and protect

human rights. As a kind of platform for further consideration and discussion, we condense the presented contributions into a list of fundamental aspects and requests.

I. Based on the experience and the tendency of the recent years, we believe that the performance of the CHR is unlikely to allow any substantial reform. In contrast, any reform must lead to a stronger UN human rights system, recognising the strengths of the CHR to be preserved and reinforced by a new body but stressing more transparency, independence, and measurable achievements and commitments. Concerns that the proposal for reform might undermine the human rights mechanisms should be responded by committed parties to the UN human rights mechanisms in a determined and comprehensive manner. Victims frequently have no further tool than to rely on a strong, professional and unified system, with members that clearly have the highest competence, independence and commitment.

II. The principal UN body on human rights shall systematically and effectively address all human rights violations in all countries on the basis of expert and independent information; including data from treaty bodies, Special Procedures, UN country teams, the OHCHR as well as supplements by NGOs and human rights defenders. Such a human rights body must be able to condemn human rights violations where the seriousness of the situation warrants. In this context, it should be considered to establish a kind of mandatory system to proceed such cases to either the Security Council or to the International Criminal Court if the corresponding state is unwilling or unable to tackle the crime or impunity. Such a body also must have the authority to adopt resolutions and alert the international community. A basic need would also be the competence to evaluate and follow up the implementation of decisions and recommendations from Special Procedures, treaty bodies and the Council itself.

III. For that purpose, the Secretary-General proposed that the CHR be transformed into a Human Rights Council seeking to give human rights a more authoritative position, next to security and development. We support such creation of a strong, effective and authoritative human rights body reflecting the primacy

³² *Theoretically, the CHR has the competence too, e.g. to call for extra meetings and preventive actions based on the reports of the Special Rapporteurs or other independent experts but restricts itself because of mainly political blockades imposed by interested states.*

³³ *Questions like: What role should the OHCHR play in relation to the peer review, or: Would the OHCHR's annual report set a priority for the new Council?*

accorded to human rights in the Charter of the United Nations. A Human Rights Council must be a standing body, being able to meet promptly at any time. The Council should objectively review all country situations on the basis of available data compiled and analysed by the previously mentioned experts and expert bodies. Each country should be regularly reviewed in a consistent and transparent manner. The Human Rights Council should co-ordinate its work with other principal organs of the United Nations and maintain the standard-setting activities of the CHR. The Council should meet in sessions throughout the year, with regular scheduled meetings in order to facilitate the participation of civil society; e.g. as NGOs. To function effectively, the Human Rights Council requires financial resources from the regular budget, but separately from those required by the OHCHR.

IV. The legitimacy and effectiveness of any human rights body depends on the commitment of its members. The member states and prospective member states of the Council as well as the corresponding representatives should demonstrate such a commitment to the highest human rights standards. Member states should do so through specific pledges; e.g. to ratify and comprehensibly implement the basic standards on human rights, to be reviewed without reservations, to issue standing invitations to the Special Procedures, to fully co-operate with the UN human rights mechanisms on international and national level as well. The heads of member states' delegation to the Council are expected to dispose of a high reputation in human rights issues. The election to the membership of the Council should be carried out by a two-thirds majority of the UN General Assembly with due consideration to including members from all regions of the world.

V. The Special Procedures of the present CHR – country and thematic Special Rapporteurs, Independent Experts and Working Groups – are one of the most committed and action-based tools to protect and promote human rights as well as they constitute a major indicator of the situation in the countries. Therefore, a Human Rights Council should be built on the strengths of this system while sustaining its relatively autonomous status. Any further improvements in the methods and quality of their work would obviously be welcome too, as a special Branch in

the OHCHR already has taken up in terms of e.g. streamlining the working methods. As the Special Procedures of the CHR are presently engaged conducting exactly the functions what the High-Level Panel report recommends as appointment of an advisory council, the recommendation of that advisory council seems to be futile at the current stage of discussion.

VI. We share the proposal of a leadership role for the OHCHR. The Office plays a fundamental role in human rights protection and capacity-building, based on its human rights field presence. The OHCHR is vital in helping to transform the work of Special Procedures and treaty bodies into change on the ground, in conflict prevention and crisis response. In this context, we support the annual report on the situation of human rights world wide. At the same time, the gap between expectations and resources is enormous. Actually, the OHCHR receives less than 2 per cent of the regular UN budget. The office needs a dramatic increase in regular funding being sufficiently equipped to exercise its role in countries around the world.

VII. Based on its crucial contribution to all parts of the UN human rights system, NGOs must have full opportunity to participate in the work of the new human rights body. The Charter-based consultative role of civil society (Article 71) should be maintained, at least at the level and on the same basis as in the present CHR. Despite the recommendations of the Cardoso-Report and the Secretary-General's response, some governments still try to restrict the accreditation or to control the involvement of an independent civil society. A new body should further offer a better opportunity to NGOs to be substantively engaged in its deliberations. Of paramount importance for NGOs are regular meetings of the Council – one or two per year – in form of sessions; in order to enable also smaller NGOs (and most national human rights institutions) to fully participate.

VIII. The growing importance of National Human Rights Institutions in the work of the CHR should also be considered in the procedures of a new Council in order to contribute to the debates with their expertise. Their participation, however, should not constitute an alibi for those violating human rights as some times happened at the CHR being a buffer against criticism of their country.

IX. We fully share the expectation expressed by the Secretary-General that a new human rights body will continue to be located in Geneva facilitating the traditional and important interface with other concerned UN agencies and with the wide range of civil society organisations and grass-roots membership.

X. The Secretary-General's proposals to decide upon the principles during the special Summit of Heads of State in September 2005 provides a unique opportunity to demonstrate the political will to "raise human rights to the priority accorded to it in the UN Charter". We applaud this opportunity and join the Secretary-General in calling on member states to rise to this challenge. We challenge particularly the Western governments to take the momentum of change.

A mere change in name and elevation in the UN organisational hierarchy, however, would not meet the urgently needed new beginning and neither address the shortcomings of the CHR. Therefore, we particularly urge the German government and the European Union as well, to prioritise the discussion on reforming the UN human rights mechanisms. In any case, this discussion should not be subordinated to the debate on permanent seats for an extended Security Council; without denying the importance of this discussion. If there is any need to have an additional Western country permanently represented to the Security Council, then the one being different from the unilateral approach maintained by the USA and its allies. Again, this means to foster a multilateral approach and a fundamental reform of the UN human rights system, particularly the CHR, in due recognition of the victim's needs as outlined in this paper.

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