

REFORMING THE HUMAN RIGHTS SYSTEM: A CHANCE FOR THE UNITED NATIONS TO FULFIL ITS PROMISE

SUMMARY

As the United Nations steps up its drive to redefine its aims and reform its institutions, the International Commission of Jurists (ICJ) believes that the time has come for the UN to fulfil its essential human rights mandate under its Charter in a dramatically new way. A window of opportunity has opened for significant and far-reaching reform. The UN member states must safeguard the achievements of the UN in human rights protection and promotion. In the face of unprecedented human rights challenges, they must also create the conditions to allow the UN to do a great deal more.

The UN human rights system is composed of several elements that complement each other: Commission on Human Rights (Commission), treaty bodies, special procedures of the Commission, the Office of the High Commissioner for Human Rights (OHCHR), and human rights programmes of other UN agencies. This paper focuses mainly on the proposal by Secretary-General Kofi Annan to replace the Commission with a standing human rights council that occupies a higher position in the UN and is able to respond more swiftly and effectively to serious human rights situations around the world.

The ICJ, however, considers it is equally important to reform other pillars of the UN human rights system. The human rights treaty bodies should be transformed into a single, full time and professional treaty institution with a human rights “court”. States need to provide political support for the High Commissioner for Human Rights to play a greater leadership role, as well as finances from the regular budget so she is able to implement her May 2005 OHCHR Plan of Action. The practical implications of a human rights approach should be integrated much more effectively into the work of other UN agencies.

A Human Rights Council: Three Primary Functions

The ICJ endorses the proposal to replace the Commission with a standing council holding a higher position within the United Nations. A new council must be innovative and adopt fresh methods of work, so distinguishing itself from the existing Commission. At the same time, states must take care to preserve and strengthen the best features of the Commission.

The three chief functions of a Human Rights council should be: Addressing questions of thematic concern, especially through a strong system of special procedures; scrutiny of the human rights performance of UN member states; and human rights standard-setting.

Thematic work

Consideration of human rights on a **thematic** basis must form a pillar of the work of a new council. The system of experts appointed by the Commission on particular themes or countries (special procedures) should be carried over to a new council. However, the council should adopt a transparent procedure for the appointment of mandate holders that would ensure independence and high quality of expertise. One way to improve selection is to maintain a roster of experts from which manifestly unqualified candidates are excluded.

The **OHCHR** should also further develop its capacity in thematic areas, especially to fill gaps where the council shows an inability or unwillingness to act. The High Commissioner should produce an annual global report on a particular theme, as proposed in her Plan of Action for the OHCHR. The report could be considered by the council at an annual session. An annual focus on a theme could eliminate the need for large and expensive international conferences.

Addressing country situations

The Commission has proved unable to deal coherently and robustly with **country-specific** human rights situations. The number of states under scrutiny has sharply declined and too many states are protected by regional and other blocs or by their powerful position in the world. This dysfunction has been the Commission's greatest failure. To address the failure, the ICJ supports a multidimensional approach to state scrutiny, which includes both universal scrutiny and a means for dealing with both chronic and emergency human rights problems. The treaty bodies must be strengthened. In this regard, states should support a process of treaty body reform to create of a standing unified treaty body. The analyses of treaty bodies, supplemented by the work of the special procedures and the OHCHR, should form the primary substantive basis for the council's review of states.

The ICJ believes that the council should scrutinize all states, but that the forms of response must vary according to the nature and severity of the human rights situations under consideration. The Secretary-General and a number of states have supported the development of a **peer review** process, which would ensure **universal scrutiny** of all UN member states. The ICJ considers that to be effective peer review should not be a fresh assessment of the human rights situation in a country. Rather, peer review should assess the extent to which a state has *implemented* existing recommendations made by treaty bodies, special procedures, OHCHR and previous Commission/council resolutions (only filling gaps on countries where there have been no past assessments). This could address one of the major current weaknesses: lack of follow-up and implementation. An intermediary expert body or individual country rapporteurs would have to prepare succinct dossiers of the existing, often voluminous, analyses and recommendations.

Even if a peer review scheme is adopted, it is essential that a council maintain the political capacity to act on these assessments. The **“trigger mechanism” for action** would be the recommendation either of an expert sub-committee, the High Commissioner, annual meetings of the treaty bodies or special procedures, or member

states. The council should formulate a **range of possible responses** it might adopt depending on the nature and severity of situation. These responses could include, *inter alia*, censure of the concerned state; the setting of human rights benchmarks; offers of OHCHR technical assistance; establishment of an OHCHR field monitoring operation; mandating an *ad hoc* monitoring mission of special procedures; appointment of a country-specific rapporteur; request that a regional human rights body or national human rights institution of the concerned state address the situation; referral to the Security Council; or provision of information to the Prosecutor of the International Criminal Court.

The existing confidential “1503 procedure” should be eliminated. It is unacceptable that the Commission or future council review states with “a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms” without transparency and without serious engagement by all stakeholders.

Standard-setting

The new council should take up and improve upon the Commission’s work in the area of **standard-setting**. Standard-setting work should be performed with greater speed and should rely on improved independent expertise. Much standard-setting work should be undertaken by a reformed Sub-Commission on the Promotion and Protection of Human Rights, which could be reconstituted as a sub-committee of the council. This collective independent decision-making is highly valuable. However, as with special procedures, the method of selecting experts should be reformed to improve the quality of expertise and to ensure that the members are truly independent and serve no more than two three-year terms.

The OHCHR should play a more active expert role in providing legal and technical advice and in identifying options for drafting. A broader range of stakeholders, including victims of human rights violations, should be included in standard-setting procedures.

The Form of a Council: Higher Status with Responsible Membership

A council should be constituted as a **principal organ** under the UN Charter. In this way, the council would be insulated from undue oversight by the Economic and Social Council (ECOSOC) and the General Assembly. If states summon the political will to implement serious reform, amending the UN Charter to create a new principal body should not pose a formidable constraint.

A council should have status as a **permanent standing body**, holding multiple plenary meetings for a total period of at least 12 weeks. A council must retain the capacity to be called into emergency session at any time, at the request of the Secretary-General, the High Commissioner, the council bureau or one-third of its members. It should also meet at more regular periodic intervals, possibly once per month, which would reduce the need to call special sessions.

Membership in a new council should be **selective**, not universal. Universal membership would create practical obstacles and impose cumbersome operating procedures on the council. At the same time, too small a membership could lead to a lack of confidence in a body perceived as not broadly representative. The best option therefore would be to maintain a size roughly comparable to the present Commission.

The ICJ recognizes that establishing substantive criteria for membership would be politically unachievable and unworkable. On the other hand, requiring that members receive a vote of 2/3 of UN members, as suggested by the Secretary General, as opposed to a simple majority, may serve to filter out the most abusive states from membership. The ICJ believes that upon assuming council membership, states should be required to enter into firm human rights **commitments**, including to cooperate with the council and its mechanisms and to subject itself to scrutiny.

The ICJ considers that **NGOs** must maintain a strong participatory role in a new council. The present procedure to accredit NGOs with consultative status for ECOSOC should be reformed by giving independent assessors or the OHCHR the task of making a technical determination as to whether an organization meets the requirements for accreditation. Under the present system, some legitimate NGOs are excluded for political reasons, while many “GONGOs” (government-organized NGOs) receive accreditation as bona fide NGOs.