

## **“Reform of the Commission on Human Rights”**

**Report on the side-event to the 61<sup>st</sup> Commission on Human Rights,  
FES Geneva Office – German Forum Human Rights (FMR)**

**04 April 2005**

**Luncheon Roundtable Meeting and Workshop, Palais des Nations, Geneva**

During this year’s 61st session of the United Nations Commission on Human Rights, the *Friedrich Ebert Stiftung Geneva Office* together with the *German Forum Human Rights (FMR)* organized a side-event on 04 April 2005 on the “Reform of the Commission on Human Rights”. The luncheon roundtable meeting and the workshop sought to discuss reform proposals made by the UN High-level Panel on Threats, Challenges and Change and the UN Secretary-General Kofi Annan. The working sessions were attended by ambassadors and representatives of Geneva-based missions, parliamentarians who are members of the Committee on Human Rights of the German Bundestag as well as parliamentarians of the European Parliament (Sub-Committee on Human Rights), the German government’s Commissioner for Human Rights, representatives of the OHCHR, NGOs working on human rights issues, members of the German Forum Human Rights and the Friedrich Ebert Stiftung Geneva Office.

The Commission on Human Rights (CHR) - established in 1946 and composed of 53 member states<sup>1</sup> - is entrusted with promoting respect for human rights globally, fostering international cooperation in human rights, responding to violations in specific countries and assisting countries in building their human rights capacity. In recent years, however, the Commission’s capacity to perform these tasks has been undermined by eroding credibility and professionalism. States have sought membership of the Commission not to strengthen human rights, but to protect themselves against criticism or to criticise others. The UN High-level Panel on Threats, Challenges and Change has therefore presented reform proposals regarding a new Council on Human Rights.<sup>2</sup> It recommends that the membership of the CHR be expanded to universal membership. The Panel argues that this would commit *all* members to the promotion of human rights, and might help to focus attention back on to substantive issues rather than *who* is debating and voting on them.

In addition, there has been made the suggestion that the High Commissioner prepares an annual report on the situation of human rights worldwide. This could then serve as a basis for a comprehensive discussion with the Commission.

Secretary-General Kofi Annan has recently underlined the need of major reform of the Commission although he presents some different ideas in his reform proposals than the High-level Panel. In his report “In Larger Freedom – Towards Development, Security and Human Rights for

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<sup>1</sup> Membership of the CHR (2005) by regional groups: *African States*: Burkina Faso, Congo, Egypt, Eritrea, Ethiopia, Gabon, Guinea, Kenya, Mauritania, Nigeria, South Africa, Sudan, Swaziland, Togo, Zimbabwe; *Latin American and Caribbean States*: Argentina, Brazil, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru; *Asian States*: Bhutan, China, India, Indonesia, Japan, Malaysia, Nepal, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Sri Lanka; *Western Europe and Other States*: Australia, Canada, Finland, France, Germany, Ireland, Italy, Netherlands, United Kingdom, United States of America; *Eastern European States*: Armenia, Hungary, Romania, Russian Federation, Ukraine.

<sup>2</sup> *A more secure world: Our shared responsibility*. Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change, December 2004, <http://www.un.org/secureworld/>

All<sup>3</sup> he suggests that the CHR should be replaced by a smaller standing Human Rights Council. Different from the present Commission on Human Rights - which only meets during its annual six week session in March / April each year - this Council would be a permanent institution fully functioning throughout the year. It would be constituted as a principal organ of the United Nations or subsidiary of the General Assembly, whose members would be elected directly by the General Assembly, by a two-thirds majority of members present and voting.

Both suggestions – of the Secretary-General and of the High-level Panel – aim at a radical renewal and upgrading of the CHR to a Human Rights Council. They differ particularly in the question of membership. Where Annan prefers a small council and claims that the new members must have a record of commitment to the highest human rights standards and that no seat and voting was to be given to states who themselves violate human rights, the High-level Panel advocates universal membership for the new human rights institution.

### **Present problems...**

During the luncheon roundtable meeting, *H.E. Ambassador Makarim Wibisono*, chairperson of this year's session of the CHR, criticised the Commission's eroding credibility caused by the lack of implementation of human rights standards in many countries world-wide. He addressed the problem of double standards and selectivity of the CHR's work: human rights violations were only identified in developing countries.

The competencies of the CHR concerning its control function in relation to human rights are limited as the Commission can only state and publicly condemn human rights violations, give recommendations and offer help in the form of technical cooperation for an improvement in the state concerned. Several workshop participants therefore mentioned the lack of legally binding instruments of the CHR – a clear weakness of the present Commission.

What are the causes for these weaknesses and what can be done to improve the situation?

*Erfried Adam*, Director of the *Friedrich Ebert Stiftung*, Geneva Office, put the problem into a broader context by recalling that in an international system based on sovereign states each state is carefully watching its interests and trying to push through its own positions. This international scenario imposes limits on the CHR as many countries demand support, but under their terms and conditions.

The international system has to be taken into account, but also the specific structure of the Commission on Human Rights. *MP Holger Haibach* (CDU/CSU) hinted at the complex and branched out structure of the CHR: Responsibilities were not clear having the Third Committee, the Sub-Commission, the Special Rapporteurs, the Independent Experts, the Representatives of the High Commissioner for Human Rights etc.

A concrete problem of the Commission on Human Rights is the question of funding. *MEP Richard Howitt* stated an underfunding of the CHR. "But how much should be fundend? No one is answering this question!" *Theodor Rathgeber* from the *German Forum Human Rights* picked up this point and gave some concrete figures illustrating this weakness: the fund for the OHCHR is currently only 1.8 per cent of the United Nations regular budget. This hardly covers the management of the office while voluntary funds constituted around 70 per cent of the OHCHR's

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<sup>3</sup> <http://www.un.org/largerfreedom/>. The Secretary-General hopes that his proposals will be accepted by the UN-member states in a voting in September this year. He has asked the UN High Commissioner for Human Rights, Louise Arbour, to issue a plan of action elaborated by the OHCHR by May 20th.

budget. But again: “The decision is to be made by the governments on how much they are willing to contribute!”

A lack of the countries’ commitment was also stated by *Luis Javier Campuzano, Minister of the Mexican Mission*. He said that 66 per cent of the member states had not extended their Open Invitations and that the interactive dialogue was only used by European and Latin American countries. For the last 15 years, countries from Africa and Asia have never submitted any draft resolution on a country issue.

*H.E. Ambassador Wegger C. Strømme* from Norway and *Juan Eduardo Eguiguren, First Minister of the Mission of Chile* hinted at the marginalisation of the CHR in the public attention. The CHR was only present in the media in case of scandals. They said that nowadays human rights violations were analysed and expressed more precisely and vigorously in the Security Council and therefore they saw the tendency within the UN system of shifting the dealing with human rights issues from the Commission on Human Rights to the Security Council.

There are different understandings of where a violation of human rights begins, *MP Rainer Funke (FDP), Head of Delegation, Committee on Human Rights of the German Bundestag*, said. He observed that in international law there were no clear definitions of “violations of human rights”, which were understood in a different way in China and the USA for example. But he concluded optimistically: “International law has shown that it is possible to find international binding rules. One example is the International Criminal Court.”

Having analysed the current situation, it had become clear that the present institutional, procedural and moral problems meant a serious loss of credibility of the CHR. *MP Bärbel Kofler (SPD)* therefore asked - amongst others - how credibility could be regained as the lack of trustworthiness of the CHR threatens the credibility of the UN as a whole.

### **... and future challenges**

To analyse what can be changed and improved, the workshop participants entered into a discussion of the reform proposals made by Kofi Annan and the High-level Panel. Especially three points were still unclear:

1. Size and composition: How many members should be in Kofi Annan’s proposed new Council of Human Rights? Or should the High-level Panel’s suggestion of universal membership be given preference?
2. If it will be a smaller Human Rights Council than the current Commission on Human Rights: which criteria should be established for the member’s election?
3. And what will happen to the special role of the NGOs and their participation during the CHR’s annual session?

### **What can be done on the institutional level?**

*Erfried Adam* emphasized that the functioning of the CHR and the central aim of preventing human rights abuses all around the world had to be in the centre of interest – and not particular country interests.

*Tom Koenigs, Commissioner for Human Rights at the German Foreign Office*, saw the necessity of strengthening the Special Mechanisms and the OHCHR. *H.E. Ambassador Michael Steiner* from Germany also emphasized the importance of the work of the OHCHR and pledged for a strengthening of its work and presence - particularly on the national level. He welcomed the idea

of permanently institutionalizing the Special Mechanisms in a standing Human Rights Council, preferably based in Geneva.

*H.E. Ambassador Naéla Gabr* from Egypt wanted the double standards to be eliminated: “People have to face the reality that there is a politicisation and double standards. If you want item 9 to continue, enlarge the scope of criticism.” This point was also picked up by NGO representatives and parliamentarians of the EP. *Peter Prove* from the *Lutherans World Federation* and *MEP Richard Howitt* said that human rights abuses were not stopping at the doors of the EU. Howitt emphasized that the pattern “South: human rights abuses – North: no human rights abuses” was definitely not true.

Unanimously the workshop participants stated the urgency of increasing the human rights budgets. The political will of governments is crucial in this regard as the amount of those budgets is finally their decision.

*MEP Hélène Flautre*, *Chair of the Sub-Commission on Human Rights of the EP*, and NGO representatives plead for the continuation of a broad NGO participation. *Chris Sidoti*, *International Service for Human Rights*, highlighted this particularity: no other UN-institution broad together so many different actors like the CHR. This very positive aspect had to be considered and maintained in any reform attempt.

Regarding the difficult question of membership of a new Human Rights Council, *Ehab Gamal Eldin*, *Director of the Human Rights department of the Egyptian Foreign Ministry*, endorsed the High-level Panel’s suggestions. He said that one should not forget that “we are all part of one system” and that universal membership had to be given preference. He noted a conflict between efficiency on the hand - which would rather provide a smaller human rights council - and integrity and legitimacy on the other hand which would be respected through universal membership.

*Maria Francisca Ize-Charrin* of the *OHCHR* saw the necessity of better coordinating the work of the CHR with other UN-institutions and mechanisms like the seven Human Rights Treaty Bodies which monitor implementation of the core international human rights treaties.

Especially representatives from developing countries backed the High-level Panel’s idea of a Global Report on Human Rights. Such a standardized document based on a serious study would enhance the CHR’s credibility and end the double standards because every country would be addressed.

*MEP Richard Howitt* proposed: “We should get rid of the ‘no action motion’”. This extraordinary procedural mechanism prevents any discussion on the country concerned by human rights violations and is currently used by China, Belarus and the Republic of Congo amongst others.

During the workshop more voices were heard to preserve the country-specific procedures than to abolish them. This country oriented approach has been institutionalised under Item 9 of the Provisional Agenda including the 1503 Confidential Communications Procedure. This procedure is reserved for gross and reliably attested violations of human rights and fundamental freedoms. *Andreas Berg*, *First Secretary of the German Mission* said: “Item 9 is an important instrument and it must remain a possibility.”

### **What should be changed at the national level?**

*MP Holger Haibach* was convinced that every country should have its own commissioner for human rights as it is the case in the German government. He gave examples of how simple measures, which do not require a high budget, can help improve human rights situations. He

mentioned parliamentary friendship groups and initiatives like “Parliamentarians protect Parliamentarians” which support parliamentarians in countries where freedom of speech and other human rights are being violated.

*Luis Javier Campuzano* emphasized that the EP helped other countries to implement human rights recommendations. In Mexico the EP is a strong supporter in the field “human rights for indigenous people” and backs measures like special training for lawyers in indigenous law. The Mexican delegate concluded self-critically that cooperation was very good, but every state had its own responsibility to protect human rights. He emphasized furthermore the importance of National Programmes of Action, which were agreed to establish in 1993. However, only 13 countries, amongst them Mexico, had such a national programme, he criticised.

*Rafi Nair* from the *Asian Center for Human Rights* pledged for the strengthening of national human rights institutions which are often used against scrutiny to avoid further examinations of the human rights situation of the country concerned.

### **Concluding remarks**

The participants reached consensus that the Commission on Human Rights is in crisis and is lacking credibility as well as effectiveness. It is characterized by what most described with the term *politicisation*, referring to the lack of objectivity in the CHR’s work.

Therefore, the proposal of a permanent institution for human rights was generally welcomed by the discussion round. Such a standing committee would be able to respond quicker to human rights crises. It could better develop mechanisms to help prevent human rights abuses and it could function as an early warning system.

A new Human Rights Council should, however, be more accountable. Effective methods of evaluation and monitoring are needed as well as binding legislation procedures to implement human rights laws and standards on the national level. Another point of common criticism was the financial situation of the CHR and the OHCHR. The fundings and resources must be increased in order to deliver high quality work.

While the discussion round agreed to the General-Secretary’s and the High-level Panel’s proposals of a new Council on Human Rights, the question of membership in this institution was controversially discussed. Universal membership would enhance the integrity, legitimacy and credibility of such an organ, while the search for consensus might impede efficiency and quick reactions to human rights violations. A smaller Human Rights Council could work more effectively, but the difficult question in this context refers to the criteria for election of the members as there can be found human rights violations in almost all countries worldwide.

Whether a small or large Human Rights Council, most participants were unanimous in their sentiment that the strengths of the present CHR such as the appointment of rapporteurs and other experts and the participation of NGOs should be preserved. A loss of all established mechanisms would definitely not be desirable.

<http://www.ohchr.org/english/bodies/chr/>

<http://www.unchr.info>

*By Isabelle Maag,  
rapporteur for the FES Geneva Office during the 61<sup>st</sup> session of the CHR 2005.*