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# Briefing Paper

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## UN Reform and Human Rights

Discussion about reform of the United Nations is in the air. The Secretary-General's Report "In Larger Freedom: Towards Development, Security and Human Rights for All" (A/59/2005) gives welcome recognition to the centrality of human rights to the work of the UN as a whole. Whilst much quiet human rights work goes on, the reform debate focuses on the much criticised UN Commission on Human Rights. The Commission is the main intergovernmental human rights forum. Should it be replaced by a new Human Rights Council? Before taking any decisions, it is important to analyse the strengths and weaknesses of the existing body.

### **Strengths of the Commission on Human Rights:**

Amongst the particular achievements of and benefits demonstrated by the Commission to date have been:

- The development of various human rights treaties and other standards;
- The creation and operation of the thematic and country 'Special Procedures'. These independent experts, working *pro bono*, identify and investigate particular human rights issues or consider the human rights situation of particular groups;
- The interaction and debate engendered by the process of multilateral diplomacy, including the development of a political consensus about issues, and peer group pressure between governments in relation to human rights issues; and
- The capacity of non-governmental organisations (NGOs) to address an intergovernmental human rights body and participate in the interaction in and around the Commission. This provides NGOs with direct access to many Government representatives, including from capitals, and access to negotiations (both resolutions and standard-setting).

It is essential that all these are valued and preserved. There must be recognition that the Commission is much more than the 'end product' of resolutions adopted or rejected.

### **Weaknesses of the Commission on Human Rights:**

The most valid consistent criticisms of the Commission are its selective and political approach to country situations, the divisiveness of some of its debates (and voting) and that some of the issues it takes up are more related to inter-governmental issues than human rights. The fundamental problem in trying to address these is that they are a reflection of the state of the world rather than being particular to the Commission on Human Rights. The danger is, therefore, that in trying to 'fix' these problems, more may be lost than will be gained.

Many of the other weaknesses of the existing Commission could be solved through adoption of better processes and procedures, if there were the political will to resolve them. In fact, a number of improvements have been initiated in recent years - in particular, the inter-active dialogues with the Special Procedures - although they need further development.

### **Reform of the Commission and/or creation of a new body:**

*Status:* The idea of enhancing the status of the UN's main human rights body is attractive in giving greater visibility to such an important issue. This must not, however, be at the expense of NGO access both 'legally' (since NGOs' current access derives from their accreditation with the Economic and Social Council, of which the Commission is a subsidiary body) and in practice. If the status of the Commission were raised, the current systems for NGO access would not automatically continue. As already identified, the role of NGOs is one of the strengths of the Commission, and is unique within the UN system.



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**Duration:** Having a body that (with limited exceptions) meets only once a year has significant disadvantages. Human rights crises happen year round and need to be addressed in a timely fashion. In addition, the reports of the Special Procedures deserve more attention than they currently get in the press of negotiations on resolutions and other activities. At the same time, having an annual session attracts more participants (both governmental and non-governmental) than would be the case if it were to meet for, say, one day a week or for other short but more frequent periods. In particular, fewer NGOs from outside the site of the meetings and its near surroundings would be likely to attend, and short meetings provide less time for interaction. Careful consideration needs to be given to proposals for a 'standing' body to ensure a balance between the need for timely responses and greater in-depth consideration, and the drawing power of a substantive session of sufficient length to make travel worthwhile.

The Commission currently meets for six weeks annually, and has working groups that meet for a further eight or so weeks each year. These meetings could be redefined as the Commission meeting in 'regular/annual session' and the Commission meeting in working groups. To these current meetings could then be added additional Commission sessions for particular purposes. Such additional sessions might include a quarterly meeting to receive reports on missions undertaken by Special Procedures and by the High Commissioner, with an 'other business' agenda item. This would enable timely debate of human rights situations where there has been a sudden change or a major development. With these additions, the regular/annual session would be maintained as the major focus but could be reduced from six to four weeks.

**Membership:** A common criticism is that many members of the Commission appear to be there to enable themselves either to criticise other governments or to shield themselves from criticism. There are three possible approaches to membership, assuming that the intergovernmental nature of the Commission is to be retained:

- (a) Universal membership (recognising that almost all States in practice participate in the work of the Commission and should be involved in discussions of human rights);
- (b) Limited membership by election (as at present), whether of the same number (53 members), or of a greater or smaller number (but this would likely maintain the same problems as at present); or
- (c) Limited membership tied to specific obligations or commitments. Many attempts have been made to identify appropriate 'minimum obligations', and to encourage States to make voluntary commitments by, for example, issuing Standing Invitations to the Commission's Special Procedures. All such undertakings are welcome and should continue to be encouraged. However, perhaps key is a State's willingness to undergo a review of its human rights record through some type of peer review process. At the same time, too small a body could create a different kind of crisis of legitimacy, particularly if one of its tasks were to adopt resolutions on the human rights situations in other countries.

#### Action Points:

Call on your Government and Parliamentary bodies to ensure that any reform or replacement of the UN Commission on Human Rights retains the following:

1. An equivalent of the current NGO ECOSOC status (although the body deciding on NGO status should be an expert/technical one instead of a governmental one);
2. At least the current level of NGO participation in practice, including to delegations both formally and informally and to negotiations on resolutions;
3. Meeting(s) of such a level and duration as to draw both the NGO and governmental human rights community from around the world;
4. The existence and role of the Special Procedures and discussion of their reports; and
5. If membership is limited, the ability of all governments to participate actively in the meetings.