



**STATEMENT BY GAY McDOUGALL
EXECUTIVE DIRECTOR, GLOBAL RIGHTS**

**STRENGTHENING THE UNITED NATIONS' HUMAN RIGHTS
MECHANISMS**

**Hearings of the General Assembly
Friday, June 24, 2005**

The United Nations stands today at a defining moment in its history. Over the next several months, the international community, while recognizing the achievements of the world body's human rights mechanisms, will focus its energies on their improvement. The potential for progress is enormous. By strengthening these systems, we will be able to better address human rights crises before they erupt into genocide or ethnic cleansing. We will help develop and enforce the rule of law in every part of the globe. And we will promote and protect the human dignity of more of the world's men, women and children. If we act with boldness and creativity, backed by credible political commitment, we will be able to remake the United Nations' human rights mechanisms so that they better serve the people of the world.

To these noble ends, Global Rights welcomes the constructive discussions now underway about how to build on the successes, and incorporate the lessons, of the United Nations' work in the field of human rights, as laid out in Chapter V of the Secretary-General's report *In Larger Freedom*. We also welcome the visionary recommendations made by the High Commissioner for Human Rights in *The OHCHR Plan of Action*.

We support the Secretary-General's proposal, endorsed by the General Assembly, to establish a standing Human Rights Council that would operate in place of the Human Rights Commission. We believe that this Council should be created as a main Charter body, reflecting the critical role human rights play as one of the pillars of the United Nations system, alongside security and development. Until the necessary Charter amendments can be achieved, however, the Human Rights Council should operate as a subsidiary body of the General Assembly.

Efforts to strengthen the human rights mechanisms of the United Nations should take care to preserve and perfect the successful elements of the current system. Considerable progress has been made in the human rights field over the past 60 years, and these hard-won successes should not be lost in the rush to reform. For example, the Commission on Human Rights has significantly expanded human rights protections in the areas of gender equality, racial equality and the rights of indigenous persons. The issue of violence against women has received

especially useful attention, as have issues relating to the right to education, the right to health, and other economic, social and cultural rights.

Strengthening the United Nations' human rights mechanisms will require more than just structural change. Bluntly put, governments must honestly commit themselves to prioritizing human rights in their national and international undertakings. For in the end, the problems with the United Nations' current human rights systems lie not as much in structure as in the actions of Member States, which rob the Commission of its integrity, credibility and legitimacy. Ultimately, a change in the behavior of Member States is needed as much as a change in the institutional structures.

Creation of the Human Rights Council

A new Human Rights Council should be large enough to avoid being dismissed as elite and non-representative, charges that would undermine the legitimacy that would be one of its most powerful assets. At the same time, it should not be so large so as to dilute its ability to make timely decisions. In addition, reform of the Human Rights Council's electoral process for membership will be critical. Members should be elected by two-thirds of the General Assembly, consideration being given to equitable geographic distribution. The de facto devolution of membership decisions to regional groups must be avoided.

The question of criteria for membership in the proposed Council is a complex one. While the world's worst human rights violators should not be permitted to join the Human Rights Council, mandating extensive criteria in this regard could also have detrimental consequences. Certainly, where the Security Council has taken Chapter VII enforcement measures against a government, that state should not be eligible for membership on the Human Rights Council until those measures are terminated. But in the main, membership should be inclusive and require forward-looking commitments or pledges. Human Rights Council members should commit to abiding by human rights standards, to issuing standing invitations to Special Procedures, to meeting obligations with respect to treaty bodies and to submitting themselves to review by other members of the Council. Faithfulness to these commitments should be monitored by a transparent process. Under these modest requirements, the worst human rights-violating states could not become members of the Human Rights Council. At the same time, requiring broad commitments will not prevent the Council from becoming culturally and regionally diverse.

Role of the Human Rights Council

The Human Rights Council should have the competence "to discuss any matters or situations related to the promotion and protection of human rights," as recommended by the General Assembly in its Draft Outcome Document of June 3, 2005. We understand this to include discussions on the progressive development of norms and standards, the implementation of obligations by all Member States, thematic issues, concrete cases of violations in particular countries and situations of massive/egregious atrocities that require immediate attention.

When egregious situations occur and require urgent action, the Human Rights Council should be able to alert the Security Council directly. For this reason, and to build much-needed synergy with other principal United Nations organs and relevant departments of the Secretariat such as the Department of Peacekeeping Operations, the Human Rights Council should establish a

presence in New York beyond the Office of the High Commissioner for Human Rights (OHCHR).

A system of periodic peer review of the practices of Member States could underscore the universality of human rights obligations and help dispel perceptions of selectivity. In particular, Western countries should take steps to demonstrate that they are open to review and critique of their performance. This is vital to restoring the institution's moral authority to be critical of all Member States. The interactive dialogue that would be a feature of the peer review process would also be useful for improving the tone of country scrutiny, while still allowing for country-specific resolutions.

Still, a number of issues would need to be addressed if the Human Rights Council were to adopt a peer review system. The Human Rights Council would be, by definition, an inherently political body, while country scrutiny must be based on objective assessments made with the highest degree of professionalism. This is the kind of work that is currently being done by the Special Procedures and the treaty bodies with the support of the OHCHR. The work of these mechanisms should not be duplicated or displaced. Rather, the Special Procedures, treaty bodies and OHCHR should be strengthened and further empowered.

Preserving the Role of the Special Procedures

The Special Procedures have made significant contributions to the human rights field through their on-the-ground investigations and reports. As the High Commissioner for Human Rights noted in *The OHCHR Plan of Action*, Special Procedures submitted more than 100 reports to the Commission in 2004, covering the human rights situation in 39 countries. In addition, they sent more than 1,300 communications to 142 governments, addressing 4,448 individual cases. Their capacity to devote extensive time to researching and monitoring specific situations, their ability to conduct country visits and investigate the cases of victims of human rights abuses, and their role as independent advocates for change make them a critical element of the United Nations' human rights system. Moreover, their public reports regularly help to shame rights-violating countries and to galvanize international pressure. Additionally, the Special Procedures with thematic mandates have made particularly notable contributions to the analytical framework for identifying and assessing human rights violations.

It is vital that the independence and professionalism of these experts be preserved and enhanced in any new human rights system. Specifically, the mandates of all of the current Special Procedures, working groups and other subsidiary bodies of the Human Rights Commission should be transferred to the Human Rights Council without renegotiation. The selection of experts to hold these mandates should be a transparent procedure, based on relevant expertise and taking into account geographical diversity and a fair representation of female and male experts. The notion that certain mandates must be held by experts from particular regions should be dispelled. Adequate funding should be ensured to support the work of mandate holders and the Human Rights Council should establish a process to systematically follow up on the recommendations made by the Special Procedures in their reports and communications.

Strengthening the Role of the Treaty Bodies

The treaty bodies have proved to be among the United Nations' most important mechanisms, having made significant advancements toward the protection and promotion of human rights worldwide. All states are party to at least one of the seven human rights treaties and 75 percent are party to at least four of them. The reporting obligations push states to analyze their own successes and identify areas that need improvement, thereby informing debate at the national level and, as the High Commissioner for Human Rights has noted, leading to changes in law and policy and ensuring redress for individual victims of human rights abuses.

The methods of work developed for the Human Rights Council must not undermine or be a duplication of the valuable work of the treaty bodies. For several years, the treaty bodies have been engaged in a debate about ways to improve and harmonize treaty reporting requirements to make them less onerous and repetitive, to encourage States Parties to submit reports in a timely fashion and to reduce any backlog in reviewing those reports. These discussions about enhancing the reporting and review process should be respected and facilitated. Finally, the Human Rights Council should systematically follow up on the recommendations that the treaty bodies set forth.

Preserving the Role of Non-Governmental Organizations

NGO participation in the United Nations' human rights mechanisms must be preserved and expanded. As the Cardoso panel made clear in its report *We the Peoples*, NGOs can "raise new issues, focus attention on the moral and ethical dimensions of decisions in the public sphere, expand resources and skills, challenge basic assumptions and priorities and protest unfair decisions." It is thus imperative that a future Human Rights Council guarantees a seat at the table for the ongoing, substantive participation of NGOs.

More than 2,000 groups, including Global Rights, have consultative status with the Economic and Social Council, under whose jurisdiction the Commission on Human Rights now falls—up from just 41 organizations in 1948. Collectively, NGOs enrich the debate by raising issues, often involving marginalized communities, which might otherwise be overlooked. They provide expert documentation on country conditions, developing crises, and the cases of individual victims of human rights violations. Also, maintaining an NGO presence at government negotiations creates pressure that misleading claims will be contradicted. The treaty bodies have come to rely on NGO reports when analyzing government submissions. Finally, NGOs regularly push for implementation of the recommendations of treaty bodies and Special Procedures at the domestic level.

NGOs played a critical role in lobbying for the inclusion of human rights standards in the United Nations Charter and in pushing for the creation of a Commission on Human Rights during the 1945 San Francisco conference. Today, NGOs lobby for reports to be commissioned, working groups to be established and new expert positions to be created. NGOs led the push for the establishment of a post for a High Commissioner for Human Rights, despite opposition from many Member States, and have been instrumental in establishing a number of Special Procedures. NGOs had great influence in the creation of the working groups on Disappearance and on Detention, for example, and led the push for creating the mandates of the Special Rapporteurs on Torture, Arbitrary and Extrajudicial Killing, Violence against Women, and

Racism. And NGOs were instrumental in drafting several provisions of the Convention on the Rights of the Child. In short, civil society participation is the engine that drives the human rights mechanisms at the United Nations.

In addition, the Commission on Human Rights' annual six-week sessions have become the premier gatherings of the world-wide human rights movement. These meetings create valuable forums in which human rights advocates from around the world engage with delegates of national human rights institutions, UN agencies and governments. More than 3,000 participants from all regions of the globe attended in 2005 alone. The sessions give an opportunity to a diverse group of human rights defenders to collaborate with one another, helping them see how their work overlaps and to share strategies for change. The sessions also provide victims and advocates with a unique opportunity to speak directly to the international community about their human rights concerns. During the Taliban's reign in Afghanistan, for example, a number of Afghan women attended the Commission on Human Rights to speak about the human rights violations being committed in their country; this was one of the very few chances Afghan women had to speak for themselves before the international community about the horrors of Taliban rule.

It is vital that, at a minimum, NGO access to the Human Rights Council be identical to the access currently allowed at the Commission on Human Rights. And if the Human Rights Council is to bolster its effectiveness, an even greater degree of substantive input from NGOs is needed. It is important that the General Assembly's Draft Outcome Document of June 3, 2005 recommends that arrangements made by the Economic and Social Council for consultations with NGOs under Article 71 of the Charter shall apply to the Human Rights Council. We read this to mean that NGOs will be afforded at least the degree of access provided in ECOSOC Resolution 1996/31.

At the same time, consideration should be given to establishing expanded mechanisms to facilitate the Council's structured engagement with civil society. Currently, as the Cardoso panel notes, "consultative status" implies that NGOs "can speak only when invited and are not participants in their own right." A more collaborative relationship could be more productive. The structured engagement of NGOs in drafting the Rome Statute of the International Criminal Court and at the UN world conferences serve as useful precedents or models for civil society participation in protecting and promoting human rights in collaboration with the Council. Among other things, the Council should hold regular hearings and briefings at which NGOs could engage with Special Rapporteurs and members of the Council. And there should be early access to draft negotiating texts. While expanded NGO involvement in the workings of the Human Rights Council will not come without challenges, these should be addressed in the spirit of collaboration and with due recognition to the essential role played by NGOs.

Much work needs to be done in this regard. In recent years, for example, the time allotment for NGO interventions before the Commission on Human Rights has been drastically cut, reducing what was once an opportunity for substantive input into nothing more than sound-bites. This should be remedied. In addition, the position of NGO liaison, established through the High Commissioner's office, should be maintained and expanded with respect to the Human Rights Council. The process of accrediting NGOs should also be made more transparent. As the Cardoso panel recommends, an accreditation process should be established that lessens the

prominence of intergovernmental review and the politicization that this review currently entails, while clarifying the criteria by which applicants will be assessed.

Further, while NGOs should be able to participate in all meetings of the Human Rights Council, if the Council is to be a standing body, a concentrated period of time must be set aside each year for civil society groups to gather with government delegates, independent experts and each other for discussions on a comprehensive set of human rights issues.

Support should also be given to the Cardoso panel's recommendation that to level the playing field between Northern and Southern civil society, the United Nations should establish "a special fund to enhance Southern civil society capacity to engage in United Nations deliberative processes, operations and partnerships." This will help ensure that access to the Human Rights Council is not limited de facto to the wealthier international NGOs who can maintain a permanent presence at the United Nations.

Finally, the systematic engagement of civil society in the workings of the United Nations should be furthered in other forums as well. This includes, as the Cardoso panel suggested, in the workings of the General Assembly.

Perhaps most pressing, NGOs must have a voice in the negotiations that will take place beyond these hearings over the strengthening of the United Nations' system. It is critical that civil society have sustained input in these debates, which will shape the structure and functioning of future UN human rights mechanisms. For in today's world, effective global governance is simply not possible without civil society participation. As the Secretary-General has said, "The United Nations once dealt only with governments. By now we know that peace and prosperity cannot be achieved without partnerships involving governments, international organizations, the business community and civil society."

Strengthening the Role of the High Commissioner for Human Rights

To ensure better protection and promotion of human rights worldwide, it is imperative that the High Commissioner for Human Rights enjoys the highest degree of political support from Member States and the Secretary-General. That enhanced political support should be backed by a doubling of the financial allocation to her office from the assessed budget of the United Nations. It is inexplicable that an office as important as this should receive only a paltry two percent of UN funds. The vision articulated in *The OHCHR Plan of Action*, with regard to increasing country engagement, bolstering the office's leadership, developing partnerships with civil society groups and UN agencies, building synergy with other UN human rights bodies, and strengthening management and planning, should also be supported.

Conclusion

While UN reform is now on the agenda, it will be important to ensure that the strengthening of human rights mechanisms is carried out thoughtfully and given the attention it deserves. A comprehensive UN reform agenda that is rushed and in which deals are made on the whole package, including on Security Council reform, will likely serve to weaken rather than strengthen the United Nations' human rights mechanisms. As the Secretary-General has noted, we are now facing a historic opportunity. Together, we must rise to this challenge.