

UNITED NATIONS @A HIGH COMMISSIONER FOR HUMAN RIGHTS - TIME FOR ACTION

INTRODUCTION

One of the most concrete results of the 1993 UN World Conference on Human Rights was the call to the General Assembly to take up, as a matter of priority, the question of the establishment of a High Commissioner for Human Rights.

Amnesty International has identified a number of areas and ways in which the UN is failing to ensure the protection and promotion of human rights; these are detailed in its main written contribution to the World Conference: "Facing Up To The Failures: Proposals For Improving the Protection of Human Rights by the United Nations" (AI Index: IOR 41/16/92). Amnesty International is calling on the UN to establish a High Commissioner for Human Rights as a new high-level authority to address these gaps and failings.

In evaluating the current discussion on the High Commissioner, Amnesty International is concerned that a decision may be taken to create a "High Commissioner for Human Rights" without ensuring that the mandate and authority of the post meet the needs of the system. Such a cosmetic change, with no provision for the necessary authority, mandate and resources, would not satisfy these needs and the expectations which surround this post.

Set out below are what Amnesty International considers to be a number of the **essential characteristics** that such a new post should have.

ESSENTIAL CHARACTERISTICS OF A HIGH COMMISSIONER FOR HUMAN RIGHTS

1. The High Commissioner must be a **high-level authority** with a sole and specific human rights mandate covering the **full range of all human rights, economic, social, cultural, civil and political**. He or she must have appropriate **seniority, political and moral standing, and proven expertise in the human rights field**.
2. The High Commissioner must be in a position to ensure that human rights are recognized as a cornerstone of the UN and enjoy the necessary **political profile, status and resources** within that system. The Commissioner should provide **strategic leadership and direction** to develop a comprehensive program of activities integrating research, investigation and action and involving **system-wide coordination** of all UN human rights activities.

3. The High Commissioner must have the authority and capacity to **initiate action** and to **respond immediately to human rights crises** and emergency situations.

This capacity to initiate and take action must be explicitly built into the mandate of the High Commissioner when the post is established. For example, the Commissioner should be in a position to initiate preventive and fact-finding missions and information gathering; make high-level contacts with relevant governments (and armed opposition groups as appropriate); take emergency steps to safeguard life and physical integrity; and make recommendations to the General Assembly, the Commission on Human Rights and other relevant UN bodies, agencies and programs on human rights matters. The High Commissioner should also have authority to ensure the proper coordination of the protective, thematic and country focused mechanisms established by the Commission on Human Rights.

Rapid response by the post of High Commissioner could be much more immediate and relevant than the present arrangements for special sessions of the Commission; it could direct scarce resources towards tackling the emergency on the ground rather than financing lengthy political debates about what needs to be done; it could facilitate human rights action at a much earlier stage and thereby assist in averting a deterioration of the situation into a full-scale crisis; and it could enable essential information to be obtained and recommendations formulated that would facilitate and speed up decision-making by other UN bodies, including the Commission (whether meeting in its regular or a special session).

4. The High Commissioner should be able to **integrate human rights protection and promotion into other UN programs and activities**. Such UN activities include early warning and preventive action; peace-keeping and conflict settlement; sustainable development; post-conflict peace-building including human rights training of officials and institution-building; and the protection of the internally-displaced and refugees.

UN officials currently involved in these programs and activities do not generally have the training or expertise to address human rights issues comprehensively. This also means that the High Commissioner must have full access to, and be involved in, decision-making and programs which are carried out in New York, including participation in regular "cabinet" meetings convened by the Secretary-General. The High Commissioner's Office could be based in New York with a panel of regional experts as well as a small support staff and with frequent contacts with and travel to the Centre for Human Rights in Geneva. If based in Geneva, the High Commissioner would need to travel frequently to New York for relevant high-level discussions. In any event, the High Commissioner would have to maintain a high-level representation in New York in order to participate in meetings and further the Commissioner's work.

5. The High Commissioner should have a **formal relationship with the General Assembly** which should include the **regular submission of reports to the General Assembly in plenary** and the potential for the **General Assembly to take action, as appropriate, in response to his or her recommendations.**

The High Commissioner should be in a position to make recommendations which may affect or impact on all parts of the UN system, including other UN programs (eg UNICEF); relevant UN departments (eg. the Department of Humanitarian Affairs and the Department of Peace-Keeping Operations); financial institutions such as the World Bank and the International Monetary Fund; and committees of the General Assembly dealing not only with human rights, but also with peace-keeping, budgetary matters and social and humanitarian affairs. The Commissioner should also report regularly to, and have a close relationship with, the Commission on Human Rights and with its parent body, the Economic and Social Council. With such a broad scope of activities and with a view to real system-wide integration throughout the UN, it is essential that the General Assembly is informed about, and maintains an overview of, the activities of the High Commissioner.

6. The High Commissioner could be the **titular and political head** of the Centre for Human Rights providing strategic direction and leadership. The Centre's activities and resources need to be sufficiently expanded to enable it to act as the secretariat for a more comprehensive human rights program. However, **the High Commissioner must not be a super-bureaucrat with the administrative and managerial responsibility for the day-to-day functioning of the Centre and its programs.** These tasks need to be undertaken by a senior official directing the Centre for Human Rights and acting as chief administrator.

Merely up-grading the current post of head of the Centre for Human Rights and calling it a "High Commissioner" is not sufficient. There may be many reforms which are desirable to improve the operations and management of the Centre but these should be pursued as a separate exercise. The High Commissioner must have a higher role than heading the Centre, even if she or he is the titular head and ultimate political authority under which the Centre operates. The High Commissioner must carry the authority of the General Assembly and be free to travel extensively, enter into high-level negotiations with governments, meet frequently with other high-level UN officials and with the Secretary-General, initiate actions and maintain a UN system-wide overview and input in respect of human rights matters. These important responsibilities are incompatible with managing a large secretariat on a daily basis.

7. The High Commissioner should **work closely with, but will not duplicate, the work of other human rights mechanisms.** The High Commissioner should have a **unique and high-level function** and will operate at a wholly different level to the existing human rights mechanisms which focus on individual violations, narrow thematic issues or particular

countries. The detailed knowledge, experience and work of these experts will continue to be indispensable to the proper functioning and development of the human rights program. The High Commissioner would not be in a position to work at this level of detail on one particular issue, just as any one of these mechanisms does not have the high-level authority, mobility, overview, or access to other UN bodies and programs that a High Commissioner would enjoy.

In any event, it is simply not feasible for a single High Commissioner to take over the vast range of activities currently carried out by the rapporteurs and working groups of the Commission and Sub-Commission. The High Commissioner would not undertake work in respect of individual cases or examine article by article the implementation of UN treaties and standards. His or her role would be centred at the policy-making and strategic level, and would not enter into the level of detail at which the treaty bodies and mechanisms operate. The complexity and range of human rights standards, concepts and challenges which have developed over the years more than justifies a need both for individual mechanisms to work on particular rights, issues, cases or countries and for a new high-level authority with a much broader perspective, able to operate in a different way, and to tackle neglected and emerging areas in the field of human rights.

8. The High Commissioner should ensure **a system-wide approach to human rights by the UN**. An overriding theme which emerged from the 1993 World Conference on Human Rights was a commitment towards a much higher degree of integration and coordination among all UN organs, bodies and specialized agencies whose activities impact on human rights. Among other things the High Commissioner should ensure that respect for women's rights is incorporated into all aspects of the UN's work.

High-level UN officials are called upon in the Vienna Declaration and Programme of Action to coordinate their activities and to assess the impact of their strategies and policies on the enjoyment of human rights. Topics such as the rights of women and of children, the protection of refugees, the administration of justice, strengthening national institutions, developing emergency responses, the elimination of racism and racial discrimination, the relationship between human rights, democracy and development, trade union rights, and promoting respect for international humanitarian law are only some of the areas in respect of which the Vienna Declaration and Programme of Action calls for action by different bodies within the whole UN system, and not merely further steps by the human rights bodies and the Centre for Human Rights.

The holding of a World Conference on Human Rights and the many important recommendations which emerged from Vienna have given human rights a new profile and prominence in the UN. Expectations have been raised that a new agenda for human rights protection and promotion will be implemented. Yet this will not happen by itself. A system-wide response is essential to ensure that the recommendations of the World Conference are carried through to fruition rather than remaining a dead letter. This

requires a coordinated and authoritative response that can only effectively be provided by a post such as the High Commissioner combining an overview of the system, the necessary human rights expertise and the capacity to pursue a high-level dialogue with member states. The High Commissioner will have to sensitize other UN organs, bodies and agencies to human rights issues and act as a catalyst for action and change. Without special action, the recommendations of Vienna will quickly be forgotten and the World Conference will have been a useless and costly exercise.

WHAT MIGHT A HIGH COMMISSIONER BE DOING TODAY ?

In determining the scope of the mandate and authority of a High Commissioner for Human Rights, it is important to consider how a High Commissioner might really function and some of the ways in which a Commissioner could address the current gaps and failings in respect of human rights protection and promotion within the present system. The following examples are a few illustrations of issues currently on the UN's agenda in respect of which a High Commissioner could be active.

A. The High Commissioner could attempt to secure the admission of UN and CSCE human rights monitors in Kosovo, Sandjak and Vojvodina as a follow up to Commission resolution 1993/7 and Security Council Resolution 855. Moreover the UN's Special Rapporteur on Human Rights in the Former Yugoslavia, appointed by the Commission on Human Rights, has been prevented from setting up his offices in centres such as Belgrade. In addition the parties to the conflict in the former Yugoslavia have agreed to ombudsmen and human rights monitors as part of any peace settlement. The High Commissioner could be developing the priorities for such mechanisms and their relation to any future peace-keeping & peace building operation.

B. The High Commissioner could have injected human rights expertise and advice into the planning of the UN mission to train the Haitian Police, authorized by the Security Council Resolution 867. The High Commissioner would also be following peace process with regard to Guatemala and be involved in proposals for UN monitoring of any eventual human rights agreements.

C. The High Commissioner could follow the peace talks between the Angolan Government and UNITA and ensure that human rights protection is clearly delineated in the parties' agreement and that any United Nations role in rebuilding the peace has a realistic human rights component. The High Commissioner could alert the world to human rights abuses committed by both sides in the context of the present conflict.

D. The High Commissioner would look at the human rights implications of United Nations policy and practice with regard to Somalia, Liberia and Iraq. This would include

not only addressing any allegations of indiscriminate use of force by UN forces and the conditions of anyone detained by the UN but also the consequences for economic and social rights of embargoes. In addition the Security Council called for an investigation in the civilian massacre near Harbel, Liberia; oversight and follow-up to such investigations as well other responses to human rights violations could rest with the High Commissioner.

E. The High Commissioner would look at non-ratification of human rights treaties and enter into dialogue with governments at the highest levels concerning any difficulties they may have with becoming parties to such treaties or accepting all the available optional communication procedures. Similarly, reservations could be addressed so that they are eventually revised or withdrawn by governments. The Vienna Declaration specifically urges universal ratification and encourages all States to avoid, as far as possible, the resort to reservations.

F. The High Commissioner could complement the efforts of the High Commissioner for Refugees by stressing to potential receiving states, such as the United States and European Community Member States, the seriousness of the human rights violations in Haiti and the former Yugoslavia which necessitate granting protection, and ensuring that receiving states provide protection until such time as it is truly safe for refugees to return.

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Unless the authority, mandate and resources are agreed and secured when the post is established, Amnesty International fears that the UN and its Member States will continue to fail in their responsibility to improve efforts in the field of human rights. They will fail to take up the challenges and commitments set out in the Vienna Declaration and Programme of Action. Ultimately this also means failing the current victims of human rights violations, their families and those who are working around the world to stop such abuses and prevent future generations from having to suffer the same inhumanity.