

Agenda for a New United Nations High Commissioner for Human Rights

The new High Commissioner for Human Rights has the opportunity to make the promotion and protection of human rights around the world a cornerstone of the UN's work for the next millennium. Human rights issues have been ignored, downplayed, forgotten, sidelined and overruled in the interests of so called 'realpolitik'. Even within the human rights debate some rights have been marginalized within the small space allowed to human rights at the UN. The rights of women and indigenous peoples have never been properly supported; economic, social and cultural rights have been trumpeted with rhetorical rectitude by governments - but never properly tackled by the UN program. The mandate of the High Commissioner is 'to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights.' The new High Commissioner now has the chance to take the human rights standards and principles, which have been so carefully nurtured in the corridors and conference rooms of the UN, and use them as an integral part of the UN's work on development, democratization, and the maintenance of peace and security.

This report looks at some of the different expectations surrounding the Office of the High Commissioner for Human

Rights. It also attempts to draw some lessons from the way in which the first High Commissioner for Human Rights, José Ayala-Lasso (Ecuador), exercised his powers over the last three years. Lastly, the report looks to the future. It addresses some of the immediate challenges facing the interim administration of Ralph Zacklin and sets out a number of recommendations for the United Nations so that the next High Commissioner for Human Rights might become more effective in the promotion and protection of all human rights around the world.

Origins of the Idea

Fifty years ago, at the second session of the UN Commission on Human Rights in December 1947, it was suggested that the UN should appoint a high level official to defend human rights. The idea was put forward in a letter from the French delegate, René Cassin, to the Chair of the Commission - Eleanor Roosevelt of the United States. The idea at that time was to move beyond the rights in the draft Universal Declaration and actually defend individual victims before an international court. In the 1950s and 1960s the concept of a High Commissioner took a new turn. Formal proposals by Uruguay and Costa Rica to the UN Commission on Human Rights suggested an office that would collect information and monitor compliance with the human rights treaties being drafted at the time.

In the run-up to the 1993 Vienna World Conference on Human Rights a number of non-governmental organizations,

including Amnesty International, campaigned for the creation of a new UN high-level official in the field of human rights (see annex). The decision by the General Assembly in 1993 to create the Office of the High Commissioner partly responded to the demands of non-governmental organizations, but it also came during a new phase in the history of human rights at the United Nations. The assumption that the resolution had to be adopted by consensus, and that the High Commissioner was to cooperate with all states all of the time, heralded what some observers have termed the 'diplomatization' of human rights. Forged through the consensus of diplomats, the Office took on a distinctly diplomatic mission.

The appointment of Ambassador Ayala-Lasso, the Ecuadorean Permanent Representative at the UN in New York, and the Chair of the Working Group that had drafted the General Assembly resolution, meant that the Office was from the outset imbued with the spirit of consensus that had so influenced the debate in Vienna and at the General Assembly. Ambassador Ayala-Lasso had skilfully achieved consensus on the text of the resolution by trading different demands and accommodating all sides. He therefore knew the limits of what states would accept from this new office. He also capitalized on his opportunities to use quiet diplomacy to broker agreements without embarrassing states' representatives. Early on, José Ayala-Lasso, as first High Commissioner for Human

Rights, asserted that he would herald a new approach to human rights at the UN. He would remain in constant dialogue with member states and seek to cooperate with them. The word most associated with the new Office was 'diplomacy'.

1. Aspects of José Ayala-Lasso's term - Lessons for the Future

1.1. Diplomatic Missions

One role which characterized José Ayala-Lasso's term was his role as travelling diplomat to meet with governments and others to advance a 'dialogue' on human rights. In this activity there developed a chasm between the expectations and the delivery. The High Commissioner travelled to Australia, Austria, Bhutan, Bosnia and Herzegovina, Burundi, Cambodia, Canada, Colombia, Costa Rica, Croatia, Cuba, Denmark, Estonia, Finland, Gabon, Germany, the Holy See, India, Indonesia, Italy, Japan, Latvia, Lithuania, Malawi, Nepal, Norway, Panama, the Republic of Korea, Rwanda, Spain, Sweden, Switzerland (as host state), Tunisia, the federal Republic of Yugoslavia, and the United States of America. There were obviously expectations that the High Commissioner would issue clear statements on the human rights records of the governments he was meeting. Instead the High Commissioner delivered speeches which seemed to simply praise the government's

efforts and bury the human rights violations that were on everyone's minds.

This silence by José Ayala-Lasso on the nature of ongoing human rights violations was interpreted by both governments and non-governmental organizations as weakness. Furthermore it meant that the High Commissioner had little appeal to the media and the general public. But these problems go beyond a question of image. The tools of the High Commissioner's trade must include telling the truth about a government's human rights record. If governments know that the High Commissioner is unlikely to embarrass them publicly, they will be tempted to appear to cooperate without sensing any need to put an end to human rights violations in their country.

José Ayala-Lasso consistently failed to confront gross human rights violators. And he was even eager to provide advisory services and technical assistance to governments which showed little willingness to implement changes. Amnesty International was encouraged by some of José Ayala-Lasso's speeches on the need to tackle impunity, which he described as 'morally revolting and an insult to our sense of justice.' But these forthright sentiments were not translated into any sort of willingness to confront the reality in particular countries. For example, Amnesty International was concerned that José Ayala-Lasso failed

to point out, during and after his visit in June 1996, the serious deterioration in the human rights situation in Tunisia. Country visits by the 'United Nations official with principal responsibility for UN human rights activities' should not be primarily 'promotional in nature' - as was suggested by José Ayala-Lasso.

Of course the High Commissioner was never supposed to be a 'super rapporteur' - investigating allegations of human rights violations and reporting on them in detailed reports. But these trips around the world sometimes undermined rather than enhanced the work of the Commission's special rapporteurs and other UN appointed experts. For example, the High Commissioner's December 1994 trip to Colombia was carried out with minimal consultation with the two thematic rapporteurs who had visited the country two months earlier. Amnesty International considers that all visits by the High Commissioner should build on action taken by other UN human rights bodies. Furthermore, offers made for technical assistance during such visits must be made contingent on the capacity of the Centre for Human Rights to carry them out and the willingness of the government to implement the recommendations.

Another problem in the context of 'visits for dialogue' has been José Ayala-Lasso's failure to reveal the results of special missions sent by him to assess the human rights situation with a

view to establishing field offices. The results of the assessment mission to Colombia carried out by Philippe Texier (an expert member of the UN Committee on Economic, Social and Cultural Rights) in August 1995 remain secret. It is hard to understand why the report of this important mission, and in particular its conclusions and recommendations, remained unpublished during the 13 months of discussion over the establishment of a UN human rights Office in Bogotá. With regards to another such assessment mission, sent to Chechnya in May 1995, the results of the 'ongoing dialogue' were never made known. It is difficult to see how the international community can complement and support the High Commissioner's human rights programs when the critical activities are shrouded in secrecy.

In some cases, invitations to the High Commissioner to visit have come from a country refusing access to a special rapporteur or from countries in the midst of negotiations over visits by a rapporteur or working group. Amnesty International considers that when the High Commissioner accepts to visit such countries this can undermine the role of the human rights investigative mechanisms by allowing the government to present themselves as cooperative with the UN on human rights matters. As a general principle, Amnesty International urges the new High Commissioner for Human Rights to refrain from carrying out visits to such

countries, unless the aim of the visit is to secure a proper visit by the relevant human rights expert mechanism.

1.2. Field Missions

It would be wrong to characterize the term of José Ayala-Lasso as solely focused on the diplomacy of dialogue with governments. One of the expectations behind the creation of the Office of High Commissioner for Human Rights was that the UN could be empowered to react more speedily to human rights crises as they emerged. José Ayala-Lasso was confronted on his second day in office by the simultaneous killing of the Presidents of Rwanda and Burundi and the instigation of the genocidal killings in Rwanda. In the face of complete inaction by the international community, José Ayala-Lasso suggested a special session of the UN Commission on Human Rights. Amnesty International also called for such a special session. José Ayala-Lasso then travelled to Rwanda and Burundi. On his return to Geneva the special session was convened and a decision was taken on 25 May 1994 to appoint a Special Rapporteur on Rwanda. The Commission also called on the High Commissioner to make arrangements for a team of human rights field officers to work in Rwanda. In a parallel initiative, José Ayala-Lasso called for a pilot case of

technical assistance designed to be part of a preventive programme to 'save the people of Burundi'.

Both these projects ran into immediate difficulties. Firstly, the UN member states, which had agreed by consensus to the creation of the High Commissioner's Office and the sending of human rights field officers to Rwanda and Burundi, failed to immediately provide the resources, equipment or assistance needed to establish effective operations. Secondly, this new operationalization of the human rights programme was attempted by the Centre for Human Rights without any previous experience in the establishment of similar field presences. Thirdly, confusion over priorities and lack of direction left the operations rudderless as they attempted to tackle the protection of human rights in countries living under the cloud of genocide.

Amnesty International has detailed its concerns about the early problems related to the Rwanda operation elsewhere (see annex). What is important in the current context is that José Ayala-Lasso succeeded in establishing these operations, and, by the end of 1996, they were producing some timely reports on human rights violations and working with the authorities on a number of projects. But, as the security situation deteriorated in the Great Lakes region, the human rights field work has become more difficult. In February 1997 five staff from the Rwanda operation

were brutally murdered in Cyangugu. This has led to the recall of a number of field workers from outside Kigali and has had repercussions for human rights field work to be carried out in Burundi and eastern Zaire.

The paradox is that states recognize the importance of accurate information from the field but are unwilling to provide the means for this to be done properly. This is most recently highlighted by the behaviour of the UN Security Council on 7 March 1997. In their presidential statement the Security Council welcomed the sending of a UN fact-finding mission to eastern Zaire but made no attempt to provide the resources, logistical help, security, or framework for any such mission. As long as the High Commissioner for Human Rights is expected to respond to this sort of request with absolutely no capacity to do so, there will be a yawning gap between the expectations and the response.

If this recent confusion over Zaire were an isolated example of a UN political body mandating the secretariat to carry out human rights work, and then failing to provide any visible means of support, it could probably be easily remedied. But the problem is endemic. The Security Council has encouraged the use of human rights monitors in Burundi, asked the Secretary-General to establish a commission of inquiry in Burundi, and approved a

human rights officer to work for the High Commissioner in Abkhazia, Georgia. Yet in no case did the Security Council ensure adequate financing and support for these initiatives. Similarly, the General Assembly and Commission are ready to endorse the use of human rights field officers in the contexts of Iraq, the former Yugoslavia, Cambodia, Sudan, Colombia, Zaire, Rwanda and Burundi. But they are unprepared to ensure any kind of regular budgetary support so that the operations can be run in a professional way with some prospect of long-term success.

In some cases there has been almost no thinking or dialogue over the scope of a proposed deployment of human rights field officers. With respect to Indonesia/East Timor, the authorities agreed to look into the possibility of the High Commissioner assigning a program officer within the United Nations Development Programme in Jakarta. The idea was that this officer would follow-up the implementation of the technical cooperation agreement. The absence of an assessment mission carried out by experienced staff or expert envoys, and the lack of agreement over travel and mandate, suggest that the project will be less than meaningful. Amnesty International has outlined in detail some of the activities that could be carried out by a small office in Jakarta (see annex). So far there is no indication that the Office of the High Commissioner has made any progress towards setting up an effective presence in Jakarta. Arguably, the delays

over this initiative have enabled the Indonesian Government to escape scrutiny from other UN bodies such as the Commission on Human Rights. Until there is a clear indication from the Government that they will implement the UN's recommendations it is questionable whether this is a useful initiative.

José Ayala-Lasso persevered with the development of field operations in the face of minimal support from the rest of the United Nations system and the UN member states. In February 1997, at the time of José Ayala-Lasso's resignation, he was responsible for 289 human rights field workers and consultants in: Albania (1), Burundi (31), Cambodia (50), Former Yugoslav Republic of Macedonia (1), Bosnia and Herzegovina (9), Croatia (6), Federal Republic of Yugoslavia (4), Abkhazia, Georgia (1), Haiti (1), Latvia (1), Malawi (1), Mongolia (3), Gaza, Palestine (1), Papua New Guinea (1), Rwanda (174), Togo (1), and Zaire (3). It is essential, that, in the period following José Ayala-Lasso's sudden departure, these operations are given the support and guidance they need. The new High Commissioner and her or his Deputy will have to address the issues of how to ensure adequate funding to do these field operations professionally, how to recruit experienced personnel who can ensure effective human rights field work, and how to connect the work of these field operations to the political bodies at the United Nations.

1.3. Restructuring the Centre

A third issue which dominated José Ayala-Lasso's term in office was the restructuring of the Centre for Human Rights. This long and arcane process has left many of the staff demoralized and concerned about their future and the future of their work. Of course the aims of the restructuring are uncontroversial: effectiveness, responding to new needs 'in Headquarters and in the field', 'creating a new culture of work', better communication, new partnerships, and cooperation with 'other parts of the human rights constituency'. The attempts at better management of human resources, finances, information and external relations are starting to bear fruit. (For example the details of the High Commissioner's visits and the upcoming meetings of the treaty bodies are now available on the Internet and in printed form.) The upcoming personnel appointments at the Centre for Human Rights mean that there will be a new layer of leadership which will have to not only transmit a sense of mission to the staff, but also match some of the skills with the challenges facing the human rights program. The new High Commissioner will need to urgently address the ongoing reorganization of the Centre. Amnesty International considers that the restructuring ought to lead to greater country and regional expertise, greater capacity for analysis of geo-political and human rights trends, and

increased professionalism in supporting field operations. A more integrated approach to country and thematic issues within the Centre should enable the new High Commissioner to build a series of effective country strategies for improving human rights. The new High Commissioner will only be able to do this properly by drawing on all parts of the UN system.

1.4. Reaching out to the rest of the UN System

By working with operational agencies in the field, the High Commissioner should be able to ensure that the ideas behind the human rights instruments become known beyond the corridors of the United Nations. By working with the UN specialized agencies and other bodies in places such as: Bonn (UN Volunteers), Geneva (International Labour Organisation and World Health Organization), Nairobi (UN Environment Programme), New York (UN Development Programme, UN Population Fund, UN Development Fund for Women, and UN Children's Fund), Paris (UN Educational and Cultural Organization), Rome (World Food Programme and Food and Agriculture Organization), Santo Domingo (International Research and Training Institute for the Advancement of Women), Vienna (Crime Prevention and Criminal Justice Division and UN Relief and Works Agency for Palestine Refugees in the Near East) and Washington (the World Bank), the

new High Commissioner should be able to ensure that human rights instruments finally reach and inform all aspects of the UN's work. José Ayala-Lasso's work with these and other agencies did not progress as far as would be expected.

In addition to reaching out to UN agencies, the High Commissioner should be involved in ensuring the best possible standards of human rights in any new UN texts that are adopted.

José Ayala-Lasso contributed to the processes which ended in the Copenhagen World Summit for Social Development, the Beijing Fourth World Conference on Women, and the Istanbul Conference on Human Settlements. In some cases the defence of rights, such as the right to housing, proved important in ensuring an acceptable outcome to the Conference. But the value of these meetings will lie in the follow-up at the national and international levels. The next High Commissioner for Human Rights will have to find a way to galvanize governments to implement the plans of actions they committed themselves to in Vienna, Beijing and Istanbul.

1.5. Forgotten Countries

Lastly, we should recall that part of the impetus to create a High Commissioner was generated by a sense that the UN's political

bodies often overlooked certain human rights situations. José Ayala-Lasso recognized the need to take steps to address the 'silent tragedies' but few concrete plans were drawn up to deal with situations such as Sierra Leone, Liberia, or Angola. In all these countries human rights protection and promotion will play a vital role during their transition from conflict to stability. In none of these situations has the UN human rights program developed a strategy for working with the authorities on post-conflict peace-building despite the presence of about 17 UN field officers as part of the peace-keeping missions in Angola (14) and Liberia (3) . The next High Commissioner will need to address these and other fragile situations in order to place human rights at the centre of the peace-building effort.

2. Building an Agenda for the next High Commissioner for Human Rights

Amnesty International worked closely with the first High Commissioner to inform him of the human rights situation in the countries he visited, to raise issues that required leadership within the UN system, and to enhance the effectiveness of the UN human

rights program. Amnesty International submitted a detailed memorandum to José Ayala-Lasso in August 1996 with a series of recommendations. The organization looks forward to working with the next High Commissioner, and offers some suggestions here which arise out of the critique outlined in the first part of this paper. These suggestions do not constitute a comprehensive agenda - they arise out of Amnesty International's experience in working with the first High Commissioner for Human Rights.

2.1. Speaking out when governments fail to cooperate with the UN or continue to systematically violate human rights. The new High Commissioner must be willing to confront governments when necessary. A tough stance is needed if governments refuse to cooperate with the UN human rights machinery, if constructive dialogue fails to lead to commitments and change, or if the situation is rapidly deteriorating. When atrocities such as crimes against humanity or war crimes have been committed the High Commissioner has a duty to act to confront gross human rights violations, identify the responsible authorities, and propose an appropriate response by the international community. The first High Commissioner's public statements on situations such as Chechnya, the Israeli Occupied Territories, and Afghanistan were phrased as generic appeals to all sides to abide by international

standards. Human rights violators need to be held accountable through the use of detailed and innovative statements to the media. This means the next High Commissioner will need to design a media strategy and appoint at least one press officer or spokesperson.

2.2. Protecting and promoting individual human rights through contact with governments. The High Commissioner for Human Rights will enjoy unique opportunities to raise individual cases with the relevant government authorities. The moral and political authority of the High Commissioner's Office should be invoked to protect individuals whose rights are being threatened or violated. In the past the first High Commissioner used these powers extremely sparingly. Although there were appeals for Ken Saro Wiwa, other opportunities to raise specific violations of international law with heads of state were passed over. There will always be room for diplomatic approaches as long as quiet diplomacy does not become silent diplomacy.

2.3. Preventive work through accountable field operations. Part of the idea behind the field operations in Rwanda and Burundi was that information from the field would inform the United Nations so that measures could be taken to avert further human

rights violations. Reports from all field operations should be published as official UN documents and properly followed-up by meaningful action by governments. These analytical reports should be made available to the Commission on Human Rights and the General Assembly as well as within the country itself. Such regular reports should include descriptions of the allegations of human rights abuses received by the field operation, the steps taken by the operation to investigate or correct these abuses, and the reaction of the authorities to the recommendations made by the field operation.

Although José Ayala-Lasso made a start on bringing the Centre for Human Rights closer to the operational agencies such as the UN High Commissioner for Refugees and the UN Children's Fund, the mechanics of cooperation have still to be worked out. Furthermore, there is a real need to explain the usefulness of the human rights program to Departments within the secretariat such as the Departments of Peace-keeping Operations, Political Affairs, and Humanitarian Affairs. The next High Commissioner for Human Rights has to find new ways to work with the operational arms of the UN system so that human rights field offices operate with the full support and cooperation of the whole UN system. There are now a series of new opportunities opening up to conduct technical assistance activities with relevant agencies such as the UN Development Program and the UN Children's Fund. The new

High Commissioner will need a clear understanding of the strengths of the current technical assistance work and how to translate this work into lasting improvements in the countries requesting technical assistance.

2.4. Working with the rest of the UN system. In order to start to fulfil the mandate of coordinating human rights activities throughout the UN system the new High Commissioner will need to considerably strengthen the liaison office in New York. Greater attention to the activities of the Departments of Political Affairs and Peace-keeping Operations in New York could result in new working arrangements. In this way lessons could be learned from the recent establishment of field missions by the New York based secretariat. Collective experience could be pooled and used to better design and execute the activities of the High Commissioner's field offices. The creation by the Secretary-General, Kofi Annan, of four core groups within the secretariat to discuss: peace and security, humanitarian issues, development, and social and economic matters has opened up the possibility of greater policy coordination. The Secretary-General has asserted with regard to these groups that 'of course human rights ... cuts across all of them'. This integration of human rights offers new opportunities for the next High Commissioner to promote human rights in a coordinated way throughout the UN. The new High

Commissioner should be able to tackle these issues in the run up to the UN meetings dedicated to the 1998 review of the progress made in the implementation of the Vienna Declaration and Programme of Action.

2.5. Integrating women's rights. Part of the new High Commissioner's agenda must be the promotion of women's rights as human rights and ensuring, as demanded by the Vienna Declaration and Programme of Action, that 'the human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.' (Part I para. 18). Not only does the Vienna Declaration insist on the integration of women's rights into the human rights programme, it also insists that 'the human rights of women should be integrated into the mainstream of United Nations system-wide activity.' (Part II para. 37). The High Commissioner has a special vantage point from which to pursue these imperatives. The next High Commissioner will need to find concrete ways to ensure this 'double integration' so that the whole UN system starts working for women's rights. Too often coordination and integration are assumed to flow from high-level meetings or joint seminars. In fact the new High Commissioner will have to develop a sophisticated approach to ensuring gender sensitivity in the human rights program and throughout the UN system. This will mean not only ensuring the

recruitment of staff with specific expertise in women's human rights, but also encouraging gender-specific analysis of the impact of laws and policies. The new High Commissioner can take the commitments made in Vienna and Beijing and develop a strategy for the implementation of women's rights.

2.6. Working for universality and a stronger legal framework. As a leader in human rights, the new High Commissioner will need to defend existing standards and achievements. This will involve taking a strong stand whenever the legitimacy or universality of UN standards are threatened. It also means encouraging the strengthening of the existing framework and mechanisms. The new High Commissioner should give serious attention to the ailing draft declaration on 'human rights defenders'. José Ayala-Lasso appealed in his 1997 report to the Commission on Human Rights for the completion of this declaration as an appropriate contribution to the commemoration of the fiftieth anniversary of the Universal Declaration on Human Rights in 1998. The new High Commissioner will have to engage with governments to ensure that any text which is adopted actually enhances the protection of human rights in a meaningful way. Other texts currently being elaborated in the form of optional protocols would allow for individual complaints in the areas of women's rights and economic, social and cultural rights. Support by the new High

Commissioner for these initiatives could ensure that these sets of rights start to be given the same consideration which has been given to civil and political rights in the UN system. The new High Commissioner should also continue the fight against impunity and continue José Ayala-Lasso's support for the completion in 1998 of the statute for an effective permanent international criminal court.

2.7. Reaching out to non-governmental organizations. Although the first High Commissioner made a number of attempts to reach out to non-governmental organizations, there was disappointment at his failure to inform the non-governmental community about his activities and to seek their expert advice on proposals. Much of the oxygen of the human rights program is supplied by non-governmental organizations. The information supplied to the United Nations comes mostly from non-governmental organizations and the programmes are often implemented through non-governmental partners. Even if the presence of non-governmental organizations sometimes seems overwhelming for the UN and its member states, the only way in which the UN human rights program can transform the habits and the structures which support human rights violations will be through the action of non-governmental organizations from all sectors. The next High Commissioner for Human Rights could start to

work with human rights organizations, environmental groups, women's groups, trade unionists and indigenous peoples to ensure that human rights ideas and information reach parts of civil society and the UN system that they have not yet reached.

ANNEX

*Selected Amnesty International Documents related to the
High Commissioner for Human Rights*

Open letter to UN Secretary-General, Kofi Annan, on the appointment of the next High Commissioner for Human Rights, AI Ref. LIOP/NH/IO team, 27 March 1997

'Next High Commissioner for Human Rights must confront human rights abusers' AI Index: IOR 40/05/97, press release, 21 February 1997.

Indonesia and East Timor: UN High Commissioner for Human Rights - Visit to Indonesia and East Timor 4-8 December 1995, Media Briefing AI Index: ASA 21/61/95, November 1995.

Rwanda and Burundi: a call for action by the international community AI Index: AFR 02/24/95 September 1995.

Peace-keeping and Human Rights AI Index: IOR 40/01/94, January 1994.

'First United Nations High Commissioner for Human Rights Named' AI Index: IOR 41/WU 02/1994, 1 February 1994

A High Commissioner for Human Rights: Time for Action AI Index: IOR 41/35/93, October 1993.

World Conference on Human Rights - Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations AI Index: IOR 41/16/92, December 1992.