



Submission No 1

Roundtable on the Reform of the UN Commission on Human Rights

Organisation: Rights Australia Inc.

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SURRY HILLS NSW 2010**

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
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Dear Secretary

Re: Reform of the United Nations Commission on Human Rights

I write on behalf of Rights Australia Incorporated (*Rights Australia*) to provide our views on the issues which the Committee is examining regarding the UN Commission on Human Rights (CHR).

Rights Australia is a national campaign organisation working towards increased protection in Australia of the human rights recognised in the Universal Declaration, and the international human rights instruments to which Australia is a signatory. Formed in October 2004, it aims to bring to the community's attention situations where:

- human rights are being neglected and abused;
- lives could be improved if human rights were protected; and
- support can be given for better and lasting protection of human rights.

Through the efforts of our large support base, we plan to:

- Sustain a campaign for long term change;
- Assist with the current human rights challenges in Australia; and
- Provide a loud and sensible voice in the media on the issues which need a human rights perspective.

General Position of *Rights Australia*

We believe that the UN Secretary General's call for reform of the CHR must not be ignored. We endorse the call for reform, and agree that the lack of credibility of the Commission damages the protection of human rights around the world.

Australia does not have any constitutional protection of human rights, unlike the United States, or a Charter of Rights and Freedoms like Canada. Nor is it part of a binding regional human rights framework, like the United Kingdom and European countries. The core UN human rights treaties, in combination with the Constitutional power to make laws to implement these treaties, provide the basis for all of Australia's national human rights legislation. Australia's High Court has recently ruled that despite international treaty obligations being in conflict, indefinite detention of failed asylum seekers, and of children, is lawful. Where a domestic law is in conflict with the human rights standards in the international treaties, the domestic law applies and there is no remedy other than that of world opinion, domestic campaigns for reform, and importantly, the combination of both.

So until such time as we achieve stronger domestic protection, which is of course the central campaign goal of this and many other Australian human rights organisations, the credibility of the international treaty mechanisms and the United Nations human rights machinery is critical to the protection of human rights in Australia - and importantly to those who come into or pass through our jurisdiction.

We share the views of other NGOs that the effectiveness and legitimacy of any human rights body depends in large part on its members' demonstrated human rights commitment, their readiness to be held accountable for their human rights obligations and their effective cooperation with human rights mechanisms.

We agree that any new human rights body must be conceived to attract as members those that have a demonstrated commitment to the highest human rights standards. The mandate and working methods of the body must also be conceived to contribute to legitimacy and effectiveness.

We support the call of the Secretary-General to replace the Commission on Human Rights with a new body that has greater authority by being given a higher status in the UN, and that, as a standing body, is able to meet whenever necessary to address human rights issues in the world.

The selectivity of concern at the Commission, and the posturing by serial human rights abusers, is the responsibility of the member States. It is easy to blame the UN as a whole, and fail to accept one's own responsibility as a component of the problem.

From the perspective of attending meetings of the CHR, it is our view that despite its shortcomings, Australia should continue to play a major role in the new body, as a member or active participant.

Indeed, we believe that by being part of a standing body, States like Australia which are, on the whole, deficient by exception rather than by general practice, will have to improve their performance. There is very little real sanction provided from periodic reports from treaty bodies – Australia has now mastered the art of hiding its deficiencies and deflecting criticism. But as a member of a credible, standing human rights body, there would be fewer places to hide, fudge, delay or obfuscate. Nor could the practice of paying another State to hold people outside the reach of one's laws be able to be sustained. The increased attention to this practice and that of "rendition" is welcome now, but overdue for those who remain on Nauru.

Australians have a fine record of contribution to the development of the UN, the Universal Declaration, and so many other crucial human rights advances. As NGOs, and in our dealings with Government, we continue to seek ways of making future contributions to advances, rather than just pointing to deficiencies and criticising the efforts of others.

Specific activities of *Rights Australia* to support CHR reform

At this year's meeting of CHR, *Rights Australia* worked with other NGOs to develop an initial statement in response to the Secretary General's speech calling for reform. Released as a media statement on 12 April 2005, the statement was endorsed by the following organisations:

- Amnesty International
- Association for the Prevention of Torture
- Baha'í International Community
- Centre on Housing Rights and Evictions
- Colombian Commission of Jurists
- Dominicans for Justice and Peace
- Federation Internationale des Ligues des Droits de l'Homme
- Franciscans International
- Human Rights Watch
- International Commission of Jurists
- International Service for Human Rights
- Lutheran World Federation
- Organisation Mondiale Contre la Torture
- Friends World Committee for Consultation (Quakers)
- Rights Australia.

The full statement forms Attachment One.

Since the 2005 CHR, we have been working with several of these and other agencies, in particular the International Service for Human Rights, to monitor developments, and to promote knowledge of the reform process.

Principles for reform

Following up from this statement, the Geneva-based International Service for Human Rights has released a set of principles for the reform of the CHR. *Rights Australia* endorses these principles, and **recommends** them to the Committee as a set of principles to guide Australia's work.

These principles are:

1. To address human rights issues effectively and to reflect the importance given to human rights in the Charter, a Human Rights Council should be established with higher status within the UN system than the existing Commission on Human Rights, ideally as a principal organ of the UN;
2. Non-government organisations should have at least the same access to and involvement in the work and deliberations of the Human Rights Council as they currently have to the Commission on Human Rights. Indeed mechanisms for their participation should ensure that it is effective and meaningful;
3. The Human Rights Council should be a standing organ of the United Nations that meets regularly year round and in special sessions and is able both to deal substantively with continuing human rights concerns through thorough debates and to respond to emerging crises;
4. While conducting regular year round sessions, the Human Rights Council should also meet in an annual extended session as a focal period each year to enable full and effective participation by all sectors of the international human rights movement, including non-government organisations from individual states and regions around the world;
5. The Human Rights Council must be able to deal effectively and appropriately with all rights, civil, cultural, developmental, economic, political and social;
6. The Human Rights Council must be able to respond to the protection needs of potential and actual victims and to debate and take action on human rights situations in specific countries;
7. The Human Rights Council should also be required to establish a process of universal accountability whereby each State is examined at regular intervals on its human rights performance through processes that could include peer review and reports from the High Commissioner for Human Rights;
8. To effectively fulfil the purpose of the Human Rights Council the rules of procedure and the practice of States should not allow the use of procedural ploys, including no action motions and adjournment 2 motions, to avoid debate on any human rights issue or situation within the broad mandate of the body to deal with any matter relating to human rights;
9. The Human Rights Council should continue to develop human rights standards and norms. It should also be responsive in this to the work of the treaty monitoring bodies and the Special Procedures; and
10. The Human Rights Council should retain and strengthen the unique system of Special Procedures of the Commission on Human Rights. The independence, expertise and effectiveness of the Special Procedures must be ensured and respected. The mandate given the Human Rights Council should require all States, especially those that are members of the Human Rights Council, to cooperate fully with the Special Procedures, including by responding to communications, accepting and facilitating visits and implementing their recommendations.

We also **recommend** that, in conjunction with the establishment of the Human Rights Council, member States of the United Nations should act to:

1. Strengthen the work and effectiveness of the human rights treaty monitoring bodies, including by increasing resources to support their work and providing better mechanisms to follow up their conclusions, recommendations and opinions

2. Mainstream human rights perspectives and operations more effectively through all United Nations organs and agencies, including through explicitly incorporating human right standards and work in their policies, programs, and projects, training staff in human rights law and human rights approaches and, where required, seeking the advice and collaboration of the High Commissioner for Human Rights and her Office
3. Enhance the effectiveness of the High Commissioner for Human Rights by significantly increasing resources to her Office.

We also note the position of the International Service for Human Rights recognising that the dual function of the existing CHR to promote and protect human rights flows from the overall purpose of the United Nations enshrined in its Charter. This fundamental and delicate balance of purposes must be reflected in the mandate of any new body. However, the protection role of the CHR has been challenged by a number of States. They give priority to promotion over protection and demand a body that works through cooperation rather than confrontation. Promotion of course is important and cooperation highly desirable. However, the experience of the CHR is that progress is sometimes possible only through confrontation, that consensus can lead to unacceptable results and a lowering of standards and that those whose human rights are being violated or at risk of violation require protection for today, not only promotion for tomorrow. This has been particularly reflected in the debates surrounding the CHR's examination of country situations.

Recommendations to the Committee

In the section above, we recommended to the Committee's consideration the ten principles for the new Human Rights Council, and three related principles flowing to other UN human rights machinery.

We also recommend that the Committee urges the Federal Government to support actively the reforms at the UN in line with these principles. The Committee should encourage the Government, if the opportunity arises, to seek membership of the resulting Human Rights Council, or if the reforms do not occur, continue to seek membership of the Commission on Human Rights.

In any event, we recommend that the Committee urge the Federal Government to demonstrate its commitment to the strengthening of the UN system for the promotion and protection of human rights by resolving to cooperate fully with the various Special Procedures, including by responding to communications, accepting and facilitating visits and either responding to or implementing their recommendations.

I would be happy to provide further information to the Committee on request. I would also appreciate continued information about the Committee's activities, particularly those of the Human Rights Sub-Committee.

Yours sincerely

Howard Glenn
Executive Director

4 August 2005

Attachment One:



Joint statement on UN Reform 12 April 2005

In his address to this year's Commission the Secretary-General of the United Nations has set out a compelling vision of the need for urgent reform of the human rights system.

Let us seize this historic opportunity to reshape the human rights system comprehensively, so that it protects all human rights, of all persons in all countries, at all times.

Amnesty International, Association for the Prevention of Torture, Baha'í International Community, Centre on Housing Rights and Evictions, Colombian Commission of Jurists, Dominicans for Justice and Peace, Fédération Internationale des Ligues de Droits de l'Homme, Franciscans International, Friends World Committee for Consultation (Quaker), Human Rights Watch, International Commission of Jurists, International Service for Human Rights, Lutheran World Federation, Organisation Mondiale Contre la Torture, and Rights Australia welcome the strong reaffirmation in the Secretary-General's report "In larger freedom", that human rights and the rule of law are integral components of the "vital and achievable" reform goals for the Millennium summit next September.

We agree that security, development and human rights are intrinsically linked and mutually reinforcing. Thus, any peace building commission and rule of law assistance unit must have a strong human rights component.

We share the concerns of the Secretary-General that the Commission on Human Rights lacks credibility. For years NGOs have been exposing the shortcomings of the UN's main human rights body, including its inability to address many situations of gross and systematic human rights violations around the world.

The Commission on Human Rights has been undermined by a number of actions, including:

- by states seeking election to the Commission not to strengthen human rights but to protect themselves against criticism or to criticise others;
- by states using procedural ploys to prevent debate on legitimate human rights concerns; • by the undermining and lowering of human rights standards and norms, and
- by the unacceptable selectivity and double standards that have seen many situations of grave human rights concern ignored.

As the Secretary General himself told us, these trends have stained the reputation of the UN.

We welcome this opportunity to examine the achievements and the failures of the Commission and to establish a system that responds swiftly to the needs of victims of human rights violations and their defenders.

Any reform must result in a stronger UN human rights system. Reform must lead to the principal UN human rights body addressing systematically and effectively all human rights violations in all countries on the basis of expert and independent information, including from treaty bodies, Special Procedures, UN country teams and the Office of the High Commissioner.

Non-governmental organisations and human rights defenders supplement official sources, through their knowledge and experience working with and for victims. The human rights system must draw on all these sources of information.

The effectiveness and legitimacy of any human rights body depends in large part on its members' demonstrated human rights commitment, their readiness to be held accountable for their human rights obligations and their effective cooperation with human rights mechanisms. By cooperation, we mean responding fully and promptly to communications, facilitating visits by Special Procedures including through the issuance of standing invitations, by implementing their recommendations and by submitting timely reports to the treaty bodies.

The new body must be conceived to attract as members those that have a demonstrated commitment to the highest human rights standards. The mandate and working methods of the body must also be conceived to contribute to legitimacy and effectiveness.

Our organizations support the call of the Secretary-General to replace the Commission on Human Rights with a new body that has greater authority by being given a higher status in the UN, and that, as a standing body, is able to meet whenever necessary to address human rights issues in the world.

We call on states to make rapidly a commitment to establish such a new human rights body. We call on states to set up an inclusive process, involving civil society, to discuss and shape the details of the new body.

A new permanent body should provide the international community an ability to:

1. respond quickly to human rights crises year round, through monitoring, adopting resolutions and alerting the international community;
2. to respond effectively to early warning by acting preventatively within the UN system and its agencies and the international community on the basis of reports of the High Commissioner from field presences, monitors and missions and reports from special procedures and NGOs;
3. ensure follow up and implementation of country specific commitments and decisions, and recommendations from Special Procedures and Treaty bodies; and
4. overall, provide a more comprehensive supervisory framework and continue to develop human rights standards and norms.

NGOs make a crucial contribution to the activities of all parts of the UN human rights system. Non-governmental organisations must have full opportunity to participate in the work of the new human rights body, at least at the same level and on the same basis as in the present Commission.

Special Procedures, including country and thematic Special Rapporteurs, Independent Experts and Working Groups, have emerged as one of the most creative and practical tools of the Commission. The system of Special Procedures is an integral part of any UN human rights system and should be not only maintained, but significantly strengthened in any new body.

The present Commission can proudly claim credit for the development and adoption of numerous key human rights instruments, including the Universal Declaration of Human Rights and the two Covenants. The standard setting role of the Commission must be preserved in the new human rights body.

Victims also rely on the growing impact of the human rights treaty monitoring bodies. Yet especially with the increasing ratification of human rights treaties, these expert bodies face a severe overload. States Parties and the Secretary-General must work in concert with NGOs and other stakeholders to strengthen the treaty bodies to function as a strong, professional and unified system, with members that clearly have the highest competence, independence and commitment.

We also share a vision of the leadership role of the High Commissioner for Human Rights and her Office, in human rights protection and capacity-building, expressed especially through an expanded and more meaningful role for human rights field presences. The High Commissioner's office is vital in helping to transform the work of Special Procedures and Treaty bodies into change on the ground, as well as in the UN's work in conflict prevention and crisis response. We look forward to the plan that the High Commissioner will present to the Secretary-General by 20 May. The OHCHR receives a paltry 2 percent of the regular UN budget. The gap between expectations and resources is enormous. The High Commissioner's plan of action must lead to States providing a dramatic increase in regular funding for the Office so it is equipped to exercise its protection and capacity-building leadership role in countries around the world.

Today we have a rare opportunity to bring about fundamental improvement in the human rights system, based on a clear vision that the protection of human rights is at the core of the United Nations. We join the Secretary-General in calling on Member States to rise to this challenge and to swiftly translate words into deeds.
