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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

Written statement* submitted by the Asian Forum for Human Rights and Development (FORUM-ASIA), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 February 2007]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

FORUM-ASIA Position on Institution Building Issues of the UN Human Rights Council

The Asian Forum for Human Rights and Development (FORUM-ASIA) welcomes the establishment of the UN Human Rights Council (Council) in March last year, and remains hopeful that the Council will constitute an effective body to bring about redress and justice to human rights victims worldwide.

However, we are concerned that the current debate on important institution-building issues is being navigated in the wrong direction by the majority of Council members, with attempts to erode the effectiveness of international human rights protection mechanisms and to derogate from international human rights standards.

In particular, we are concerned about the positions of many Asian governments to advocate for the State control of independent human rights mechanisms such as the special procedures. We emphasise that any reform processes in the current transition phase must be conducted in a transparent manner with the full and active participation of NGOs, civil society groups, National Human Rights Institutions (NHRIs) in compliance with the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles) and parliamentarians, with the aim of **strengthening** the existing international human rights system.

In the spirit of ensuring compliance with State obligations, we also call on the Council to promote periodic national and regional level consultations between Asian States, NGOs, civil society groups, and NHRIs.

Universal Periodic Review (UPR)

- The UPR must be a victims-oriented, results-based, participatory mechanism with a strong in-country process that does not operate in Geneva alone.
- NGOs and civil society groups without ECOSOC status, NHRIs in compliance with the Paris Principles and parliamentarians must be able to participate in the UPR throughout all stages, including submission of information, participation in the interactive dialogue and follow-up processes.
- Independent actors, including special procedures, expert advisory body and the complaints procedure must be able to provide direct inputs to the UPR, including submission of reports, participation during the interactive dialogue, and follow-up processes.
- Consideration of a country's level of development and its national, religious and/or socio-cultural specificities in the review should neither undermine human rights and their universality in any way, nor entail any derogation from international human rights law.
- Implementation of recommendations by the UPR must be monitored through concrete follow-up mechanisms, such as the OHCHR field offices and UN Country Teams to act as "UPR follow-up focal points".
- A public database on each country's compliance with international human rights standards and implementation of recommendations should be created and maintained by the OHCHR.
- Instances of non-cooperation with the UPR process or in the implementation of recommendations should be reported to the Council at each session in order to

encourage further dialogue, cooperation and constructive engagement. However, in more serious instances, specific sanctions must be adopted, including the possibility of suspension of membership.

Special procedures

- Country mandates must be maintained as a way of addressing gross and/or systematic violations or non-cooperation by States.
- Any review of the existing mandates must be undertaken in a transparent manner with the full participation of NGOs and civil society. The review should be undertaken only after general criteria are adopted, such as:
 - The creation of any new mandate should offer a clear prospect of an increased level of human rights protection and promotion;
 - Potential consequences of any modification or harmonisation of the existing mandates, in particular the effects on existing level of protection offered to victims, must be identified and taken into account prior to any decisions with the active participation of NGOs and civil society groups;
 - The review should focus on identifying gaps in the current system rather than overlaps.
- Given the unfortunate adoption of Resolution A/HRC/2/1 on the Intergovernmental Working Group on the Review of Mandates on 27 November 2006, any code of conduct to be developed to regulate the work of the special procedures must also address the conduct of States. This includes:
 - Responding fully and in a timely manner to the communications and reports sent by the mandate holders;
 - Accepting mission requests and offering clear and public explanations for objecting to such requests;
 - Implementing the recommendations of the mandate holders;
 - Respecting the independence of the mandate holders and refraining from personalised attacks;
 - Protecting individuals who interact with special procedures and ensuring that there will be no reprisals;
 - Extending standing invitations to all mandate holders as the country visits are *sine qua non* for fulfilling the mission of special procedures; and
 - Fully facilitating the country visits by the mandate holders in accordance with the Terms of Reference for Fact-Finding Missions (E/CN.4/1998/45), including unrestricted access to all prisons, detention centres and places of interrogation, and confidential and unsupervised contact with witnesses.
- The Council must adopt a firm and systematic approach to deal with instances of non-cooperation. Such cases should be brought to the attention of the Council by the High Commissioner at each session and made publicly available via a country profile database maintained by OHCHR (see also the reference to the database in the UPR section above).

Expert advisory body

- The expert advisory body must be able to maintain its current functions to provide advice to the Council as a think-tank body, fulfill a norm-setting or legislative function, and provide regular inputs to the Council sessions.
- It must also be an autonomous body from States and take initiatives to propose ideas to the Council.

- Experts must be appointed through a transparent process that allows NGOs to play an active role at all stages.
- It should also be able to resume its mandate to undertake country-specific issues as requested by the Council, as the previous Sub-Commission on the Promotion and Protection of Human Rights was able to do prior to 2000¹.
- NGOs and civil society groups without ECOSOC status must be able to interact with and contribute to the substantive work of the expert advisory body through both formal and informal channels.

Complaints procedure

- The future complaints procedure must be victims-oriented and results-based, by:
 - Eliminating the need to exhaust domestic remedies for complainants to submit communications, as proposed by the Governments of Uruguay and Argentina;
 - Enhancing the transparency of the process by informing the complainant of the developments and outcomes at each stage;
 - Considering communications in a timely manner, by enabling the screening body to meet several times a year to discuss commutations/situations under the procedure, while discussions at the plenary could be scheduled at different sessions throughout the year;
 - Providing direct relief to human rights victims, including but not limited to payment of compensation, adopting interim measures for the protection of victims, establishing a monitoring mechanism or presence in the country, referring the matter to other UN bodies, appointing a special procedures mandate, convening a special session, and suspension of membership; and
 - Maintaining the ability of NGOs and civil society groups without ECOSOC status to submit complaints on any country on any human rights issue.
- At each session of the Council, a list of countries being considered by the complaint procedure should be made public. In the event of non-cooperation, the country concerned should be considered in a public session of the Council.
- The complaint procedure must be able to provide direct inputs to the UPR where there are consistent patterns of human rights violations.

Participation of NGOs

To encourage the participation of NGOs from developing countries in the work of the Council,

- Asian governments in particular should support the growth and the work of diverse civil society groups at the national level by fully implementing the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (“UN Declaration on Human Rights Defenders”).
- As the Council will now be convening at least three times a year for a minimum total duration of ten weeks², the Council should consider holding one of its sessions in the regional centres. This would ensure that the Council’s work will acquire more visibility, while providing better opportunities for NGOs in the regions to participate in the official sessions of the Council.

¹ Decision 2000/109 and Resolution 2003/59, UN Commission on Human Rights

² General Assembly Resolution 60/251 of 15 March 2006, operative paragraph 10

- The Council must guarantee the participation of non-ECOSOC accredited organisations in its work, including but not limited to the UPR, complaints procedure and expert advisory body. NGOs that have particular expertise or interest in the issue under discussion, for example in the context of the special sessions, should be accredited on a meeting-by-meeting basis.
- The level of NGO participation based on ECOSOC Resolution 1996/31 and the practices observed by the Commission must be at the minimum maintained, while new methods to “ensure the most effective contribution” by NGOs should be considered, such as:
 - Submission of audiovisual materials in addition to written and oral statements to the Council and its mechanisms (including UPR, expert advisory body and complaints procedure);
 - Ensuring the substantive participation of NGOs in the interactive dialogues with the special procedures, including NGOs’ right of reply when government criticisms are directed towards a particular NGO, and prioritising NGOs from the regions to speak; and
 - Increasing the role of NGOs in the negotiation and drafting of resolutions, for example by convening at least one open-ended consultation for each resolution.
