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

Written statement* submitted by Reporters Without Borders – International, 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.

[16 March 2007]

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

The safety of journalists

The UN Security Council's unanimous approval on 23 December 2006 of a resolution (1738) on the safety of journalists in war-zones was a major step forward in making journalists more secure as they do their work.

The Human Rights Council (HRC) must follow this up by stating its own commitment to protecting reporters and their assistants in war-zones. It must declare support for the last paragraph of the resolution that "requests the Secretary-General to include in his next reports on the protection of civilians in armed conflict the issue of the safety and security of journalists, media professionals and associated personnel."

About 150 journalists and media assistants have been killed since fighting began in Iraq four years ago. This slaughter must stop and the HRC must play its full part.

Decriminalising defamation

The HRC should also take the lead in efforts to decriminalise media offences, including defamation. Such efforts are vital to strengthening press freedom around the world.

The UN Human Rights Commission said in a 14 July 1992 document that "detention, as punishment for the peaceful expression of an opinion, is one of the most reprehensible ways to enjoin silence and, as such, is a serious human rights violation." Then in 2000, the Commission's special rapporteur on the promotion and protection of the right to freedom of opinion and expression "strongly urged all governments" to ensure press offences were no longer punished by imprisonment except for racist or discriminatory remarks or calls for violence.

Prison terms for 'libelling,' 'insulting' or 'defaming' the head of state and publishing or broadcasting 'false' or 'alarmist' information were "both reprehensible and out of proportion to the harm suffered by the victim," the rapporteur said,. "In all such cases, imprisonment as punishment for the peaceful expression of an opinion" was "a serious violation of human rights."

The Organisation for Security and Cooperation in Europe (OSCE) and Reporters Without Borders discussed existing laws on defamation in OSCE member-countries in 2003.

They agreed that misuse or excessive use of laws against defamation and "insults" with the aim of protecting those in power or to silence the media were clear violations of free expression and the right to be informed, and should be condemned as such.

The two organisations urged governments to support decriminalising defamation and insults and also the repeal of laws on "offending" people, especially when they gave the authorities protection by allowing them to cite their "honour" and "dignity." The

supposedly defamed party should assume entire responsibility for such a lawsuit. The authorities should play no part in the process and all, including senior officials, should fully tolerate public discussion and criticism, limit defamation suits against the media and never pursue them with the aim of punishment.

The OSCE and Reporters Without Borders also asked legislators to replace criminal laws on defamation and insults if necessary by laws carrying only civil penalties. Laws on “offending” people, especially measures unduly protecting the authorities, should be repealed and civil laws against defamation amended, if need be, so that:

- Only individuals and legal entities, not public or government institutions, can bring defamation lawsuits.
- Symbols of the state and other objects, such as flags and religious symbols, should not be protected by defamation laws.
- Evidence of truthfulness should be a conclusive response to defamation charges.
- In cases involving matters of public interest, the defendants must be able to show that their statements and their distribution of them were justified and reasonable, even if they later proved to be inaccurate.
- Reasonable limits should be set for damages awarded for defamation taking into account the state of the country’s economy.

The range of what can be considered defamatory should be interpreted narrowly and as far as possible be confined to factual statements and not expression of opinion. Courts in countries where defamation is still a crime should refrain from imposing prison sentences, even suspended ones.

Non-monetary compensation, including self-regulation, as a way of repairing the harm done, should be preferred to fines and the award of damages, which should be in proportion to the offence and take account of all self-regulating and non-monetary possibilities. The aim should be to repair the harm, not punish the perpetrator. Defamation laws should not be used to bankrupt a media outlet and put it out of business.

No democratic governments these days impose prison sentences for media offences, but imprisonment for defamation is still an option in several dozen countries worldwide and many journalists are sent to jail for this reason every year.

The HRC must take a stand in favour of decriminalising defamation and ending imprisonment as a punishment for it. It should call on UN member-states – starting with those that are members of the HRC – to abolish all laws providing for such imprisonment.
