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UN Human Rights Council: Time to wrap up the institution-building

When the Human Rights Council meets in its fifth session from 11 to 18 June 2007, it is expected to complete a year-long effort of institution-building. The Council's decision will be made on the basis of a draft proposal compiled by the President of the Council drawing on the negotiations that have taken place over the past year. Amnesty International recognizes the considerable accomplishments reflected in the President's 4 June 2007 text (the President's text), but believes that governments must do more to realize the hopes and aspirations that accompanied its creation.

Amnesty International takes this opportunity to offer a number of broad comments on the President's text and to express its expectations for the final outcome of the preceding year of consultations.

The Universal Periodic Review mechanism

The Universal Periodic Review (UPR) is the principal innovation of the Human Rights Council, and will be one of the main tools for the Council to fulfil its mandate to promote and protect all human rights in all countries. Although the basic modalities of the UPR set out in the President's text offer a sound basis for the UPR, the reviewed state has been given undue influence over the review process. Unless this is tempered in the final outcome, it will inevitably be abused by some states to the prejudice of equal treatment and universality. Similarly, the preparation for the inter-active dialogue should be made more rigorous to ensure the focus required for outcomes that will actually lead to improvements in the fulfilment of reviewed states' human rights obligations and commitments. Improvements should be made by the end of the Council's fifth session on 18 June:

- o The UPR needs independent expert assistance in the summary, analysis and evaluation of the information available for the review, in the identification of key issues to be addressed in the review, and in the preparation of its conclusions and recommendations. Involvement of independent experts would also help ensure objectivity, consistency and focus in the review process and reduce the risk of politically motivated and selective use of information.
- o The conclusions and recommendations to be adopted by the Council after the completion of each country review should be a comprehensive reflection of the process. They must identify measures aimed at improving the fulfilment by the reviewed state of its human rights obligations and commitments. Although the country under review should be able to offer its views on the conclusions and

recommendations, it should not be able to determine their substance or form. The Council must ensure that it will be able to monitor the implementation of the conclusions and recommendations to ensure effective follow up to the outcome of the review.

- o There should be a greater role for national and international non-governmental organizations and independent national human rights institutions in the review process. They must be able to submit information to the UPR, to follow the review process and to contribute to the discussion of the outcome of the review.

The Special Procedures

Described by former Secretary-General Kofi Annan as the “crown jewels of the system”, the Special Procedures are among the most innovative, flexible and responsive tools created by the UN to promote and protect human rights. They are at the core of the UN’s human rights machinery. Recently, nearly 14,000 individuals from 147 countries called for a strong system of independent Special Procedures in a global petition organized by Amnesty International and 16 other regional and international NGOs.

The ability of the UN -- and in particular the Council -- to protect human rights demands that the independent human rights experts who make up the Special Procedures be able to monitor effectively and respond rapidly to allegations of violations occurring anywhere in the world. The President’s text should go further in ensuring that the independence and expertise of the Special Procedures will be maintained and enhanced. Crucial issues such as the future of the Special Procedures with country-specific mandates and the process for reaching consensus on a code of conduct guiding the mutual relationship between the Special Procedures and states are not addressed in the text.

Amnesty International offers the following observations and key recommendations:

- o The proposed "Consultative Group" that will be tasked with identifying candidates for possible mandate holders must operate transparently and bring knowledge and expertise about the Special Procedures system to the selection of highly qualified candidates.
- o The process of selection must be transparent and not lend itself to undermining the expertise or independence of the mandate holders. The President’s text should be further strengthened by requiring mandate vacancies to be widely publicized in order to attract a broader pool of candidates. States should also be encouraged to conduct an open process at the national level to identify highly qualified candidates.
- o The proposed code of conduct must not restrict the independence of mandate holders, and state cooperation with the Special Procedures must be an integral part of the code. Any code of conduct for the Special Procedures adopted by the Council must enhance their ability to promote and protect human rights effectively, and must be consistent with the Special Procedures’ manual of operations.
- o It is unfortunate that the Council was unable to complete its task of reviewing mandates in order to maintain a system of Special Procedures. Provision must be made for measures to identify and close protection gaps with the aim of establishing a more coherent, coordinated and comprehensive system of Special Procedures. As part of the review envisaged in the President’s text, it is essential to ensure continued protection, including through renewal of mandates and extension of the terms of mandate holders.

- o Current country mandates should be assessed on the basis of clear criteria. In order to minimize politicization and double standards, the Council must retain the possibility of creating country mandates in specific circumstances. All such mandates should be created for a minimum period of three years.

The agenda and program and methods of work of the Council

The agenda of the Council must be sufficiently flexible to allow it to address human rights situations, including human rights emergencies, in an effective and timely manner. It must also be predictable to enable effective participation by states and all other relevant stakeholders, including non-governmental organizations and independent national human rights institutions. Amnesty International makes the following recommendations:

- o The agenda and program and methods of work should ensure that civil, cultural, economic, political and social rights will be considered in accordance with the principles of indivisibility, interrelation, and interdependence of human rights. Opportunities for artificial and politicised distinctions between civil and political rights on the one hand and economic, social and cultural rights on the other must be minimized.
- o States have already agreed to ensure that a gender perspective is fully integrated in the UPR, and they must also ensure that a gender perspective will be effectively integrated into all the work of the Council.
- o The Council's agenda and program of work must ensure that human rights violations suffered mainly by women are addressed effectively.
- o The Council must be able to address situations of human rights violations in its regular work.
- o The Council must consider situations of human rights violations in an impartial and non-selective manner. Specific situations, including the situation of human rights in the Occupied Palestinian Territories and other occupied Arab territories, should be addressed consistently with the principles of impartiality, objectivity and non-selectivity.
- o The Council must ensure that it has the necessary flexibility to promote universal respect for the protection of all human rights and fundamental freedoms for all, for example by including an item on its agenda on "other issues".
- o The Council must ensure effective follow up to the decisions, resolutions and other outcomes of the Council, including by monitoring their full and prompt implementation.

The complaints procedure

The proposed complaint procedure appears to be very similar to the "1503 Procedure" which in recent years has demonstrated its ineffectiveness in dealing with situations of manifest gross human rights violations. It is unfortunate that the Council appears likely to miss the opportunity to develop a more effective communications mechanism to identify, prevent and address situations of gross violations. Amnesty International takes this opportunity to make the following observations and recommendations:

- o The mechanism must be victim-oriented, efficient, transparent for victims and complainants at all stages, and must meet at least twice a year.

- o It should address consistent patterns of gross human rights violations and serve as a prevention tool by addressing emerging patterns of violations.
- o The admissibility criteria should be less restrictive and thereby avoid introducing uncertainty into the procedure.
- o Provision should be made to enable the Working Groups to seek additional information from the author of the communication or the complainant. They should be informed not only of the outcome of consideration, but also of its progress.
- o The composition of the Working Groups on Communications and the Working Group on Situations must reflect not only the geographical representation among geographic regions, but also within those regions. Measures should be introduced to ensure that over time membership of the Working Group on Communications reflects the full range of nationalities represented in the Council's Advisory Committee and the membership of the Working Group on Situations reflects the full membership of the Council itself.

The Advisory Committee

The Council has come up short in its efforts to build on the achievements of the former Sub-Commission on the Promotion and Protection of Human Rights and to redress its shortcomings. Amnesty International makes the following recommendations:

- o The process of selection of candidates for election to the Council's Advisory Committee must be more transparent to guarantee election of independent and qualified experts. The nomination procedure in the President's text should be enhanced by requiring states to consult their national human rights institutions and civil society organizations about possible candidates and inform the Council on the measures that they have taken to that effect.
- o The mandate of the Advisory Committee must enable the Council to benefit fully from the Committee's expertise by making provision for a right of initiative by the Committee.

In conclusion, Amnesty International believes that although the President's text suggests that governments have not squandered the promise of the new Council, they have not realized its full potential. Amnesty International calls on governments to use the occasion of the fifth session of the Council to bring the outcome of the first year closer to their common objective of preserving and building on the achievements of the former Commission on Human Rights and redressing its shortcomings.

Background

General Assembly Resolution 60/251 establishing the Human Rights Council was intended to herald a new beginning for the promotion and protection of human rights in the United Nations. The Council was to preserve and build on the achievements of its predecessor, the Commission on Human Rights, and to redress its shortcomings. For example, the process of election of Council members was aimed at ensuring genuine elections members committed to upholding the highest standards in the promotion and protection of human rights.

The resolution stipulated that the Council would assume the mandates and mechanisms of the Commission and that that it would complete a review of these within one year of holding its first session. The resolution also decided that the Council was to develop the modalities of a new Universal Periodic Review mechanism in order to better equip the

Council to address all human rights in all countries situations in an objective and non-selective manner. At its first session of the Council in June 2006, the Council established two inter-sessional Working Groups to undertake complete tasks within the one year allocated by Resolution 60/251. The fifth session takes place at the end of the first year of the Council and will consider the outcome of these efforts and reach decisions on the institutions of the Council.

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