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The following statements were delivered during the third regular session of the Human Rights Council that took place from 29 November to 8 December 2006. The bracketed text that appears in some of the following statements was not delivered orally due to speaking time limits. The full text is posted on the extranet page of the UN Human Rights Council¹.

Question to Louise Arbour, United Nations High Commissioner for Human Rights under “interactive dialogue” (Darfur/Eastern Chad)

Item 2: Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council”: Update by the High Commissioner for Human Rights followed by an interactive dialogue.

Delivered by *Peter Splinter* on Wednesday, 29 November 2006

Thank you Madam High Commissioner for your update today.

The UN Human Rights Council failed Darfur’s civilian population yesterday. Each member of this Council had an opportunity to enable the Council to send a strong and clear message to the Government of Sudan and the international community that the suffering of the people of Darfur must end; to send a message that rights and dignity of Darfurians must be restored without any further delay.

Instead, the majority of members of this Council adopted a feeble resolution that fails to reflect the gravity of the situation in Darfur; a resolution that fails to remind Sudanese government of its primary obligation to protect all persons in Darfur; a resolution that fails to provide for the Council to continue to monitor an appalling situation.

[The Council might have saved its honour by approving modest proposed amendments that were supported by countries from all regions of the world; but the majority appears indifferent to the severe suffering of the children, women and men of Darfur. Rejection of the amendments was justified on dubious appeals to avoid the practice of “naming and shaming” and on tenuous grounds of an improving situation in Darfur.]

In the view of Amnesty International, yesterday was another_dark day for the people of Darfur; it was also a dark day for the Human Rights Council.

Today we have heard the distinguished Ambassador of Algeria, speaking for the African Group, say that “alleged”, his word, links between the government of Sudan and Janjawid militia have yet to be documented objectively. One can only guess what can be required by way of objective documentation. It appears that what you report, Madam High Commissioner, is not enough.

Madam High Commissioner,

Can you help bring to this Council persons – victims of violations, humanitarian workers, human rights observers, commanders of the African Union peacekeeping force - who could inform this Council first-hand about the human rights violations in Darfur and Eastern Chad; persons who could inform this Council about the clear links between the government of Sudan and the militia who murder, rape and pillage and cause forced displacement in Darfur and Eastern Chad?

Thank you Madam High Commissioner.

Thank you Mr. President.

¹ <http://portal.ohchr.org/>

Statement on the report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1

Item 2: Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council": Follow-up to decisions of the Human Rights Council

Delivered by *Peter Splinter* on Friday, 1 December 2006

Mr. President,

Amnesty International condemns the violations of international humanitarian law committed during the 34-day war between Hizbullah and Israel in July and August 2006 which caused widespread death and destruction in both Lebanon and Israel. Civilians bore the brunt of these military operations.

Amnesty International welcomes the report of the commission of inquiry being discussed today. We regret however that this Council did not give the commission a mandate to consider evidence that Hizbullah fighters, as well as Israeli forces, committed serious violations of international humanitarian law, including war crimes such as indiscriminate attacks and direct attacks on civilians, in the context of the recent war.

Despite the fact that more than three months have elapsed since the ceasefire, to Amnesty International's knowledge neither side has even begun investigations into the grave violations committed during last summer's conflict.

Amnesty International urges the Human Rights Council to call for a UN international commission to investigate thoroughly and impartially the evidence of violations of international human rights, humanitarian and criminal law by Israel and Hizbullah; to recommend measures to be taken to address impunity and to prevent future violations; and to make recommendations on the form of reparations, including financial compensation for the victims of violations committed in the course of the conflict. We also call for an arms embargo on both sides, and an immediate moratorium on cluster weapons

Thank you Mr. President.

Statement on the Commission of Inquiry and the International Independent Group of Eminent Persons (IIGEP) established by the Government of Sri Lanka to Investigate Allegations of Human Rights

Item 2: Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council": Other issues

Delivered by *Patrizia Scannella* on Friday, 1 December 2006

Mr. President,

The human rights situation in Sri Lanka has been marked by decades of impunity for perpetrators of violations of international human rights and humanitarian law. In this regard, the creation of a Commission of Inquiry could be timely and potentially valuable.

Unfortunately, the Government of Sri Lanka has cut too many corners in establishing its current national Commission and the accompanying International Independent Group of Eminent Persons. Amnesty International is concerned that serious shortcomings in the

mandates of the Commission and the Group of Independent Persons will undermine their effectiveness.

Mr. President,

I will mention only some of our concerns today. Others are addressed in a document of 17 November² that we have recently circulated to missions in Geneva.

In sum, Amnesty International is concerned that the current terms of reference for the Group of Eminent Persons will undermine its independence, effectiveness and ability to publish its findings.

We understand that the Commission has been established under the Commissions of Inquiry Act No. 17 of 1948. The 1948 Act grants the President wide discretionary powers over the Commission that if exercised could undermine its independence and impartiality. Even the appearance of this discretion will harm the Commission's credibility.

The terms of reference for the Commission and the Group of Eminent Persons do not sufficiently address protection for complainants, witnesses, those conducting investigations and others involved in the investigations.

The Group of Eminent Persons' terms of reference provide that the Secretary to the Ministry of Justice will be the head of the Group's secretariat and representatives of the President and other ministers will be attached to the secretariat. These provisions, which give the government control of the administrative functions of the Group of Eminent Persons, will undermine the Group's independence and consequently the Commission's. They create the impression, if not the reality, that the Group's movements and actions will be closely monitored or supervised by government officials.

The publication of the final report of the Group of Eminent Persons will, according to its terms of reference, be subject to the exclusion by the President of "any material which in His Excellency's opinion may be prejudicial to, or absolutely necessary for the protection of, national security and public order". While we recognize that in certain instances security issues may arise, we are concerned that this provision is excessively broad and allows for censorship of the Group's report or parts of it.

In concluding Mr. President,

The logic and experience of war prevails today in Sri Lanka. Each side believes that it can win, but civilians lose their lives, their property, their livelihoods. Amnesty International emphasises that the Commission and the Group of Eminent Persons do not address the need for an effective and on-going international human rights protection presence that can also investigate human rights abuses in Sri Lanka. Amnesty International therefore urges the Government of Sri Lanka and all parties to the conflict to cooperate with the international community to put in place effective measures to protect civilians, and deliver them justice, without delay.

Thank you Mr. President

Joint statement on sexual orientation, gender identity and human rights

Action Canada for Population and Development; Amnesty International; Association for the Prevention of Torture; Association for Women's Rights in Development; Canadian

² *Sri Lanka: observations on a Proposed Commission of Inquiry and International Independent Group of Eminent Persons, (AI Index: ASA 37/030/2006)*

HIV/AIDS Legal Network; Center for Women's Global Leadership; Confederazione Generale Italiana del Lavoro (New Rights Section); Development Alternatives with Women for a New Era (DAWN); Fédération Internationale des Droits de l'Homme; Global Rights; Human Rights Watch; International Commission of Jurists; International Planned Parenthood Federation; International Service for Human Rights; International Trade Union Confederation; OMCT - World Organisation Against Torture ; Public Services International; Women for Women's Human Rights - NEW WAYS; World Population Foundation³

Item 2: Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council": Other issues

Delivered by *John Fisher* (ARC International) on Friday, 1 December, 2006

I am pleased to speak to issues of sexual orientation, gender identity and human rights, on behalf of 19 ECOSOC-accredited NGOs. This statement is also supported by more than 460 additional NGOs from 69 countries (see attached list).

We welcome the statement on human rights violations based on sexual orientation and gender identity, delivered by Norway on behalf of a broad grouping of 54 States from Western, Central and Eastern Europe, in North, Central and South America, in Asia, and in the Pacific. We acknowledge also the support of many African States for the inclusion of sexual orientation in UN resolutions condemning extrajudicial executions.

We commend Norway for its leadership, building on similar initiatives by Brazil, New Zealand and others, and we are particularly encouraged by the measurable increase in cross-regional support for these issues in recent years.

It is hard to imagine that any State committed to human rights could disagree with the principle that no person should face death, torture or violence because of their sexual orientation or gender identity. We look forward to further dialogue with, and support from, those States which did not yet feel able to join the statement, but which share the concern of the international community at these systemic human rights abuses.

Numerous Special Procedures have documented violations of the human rights of lesbian, gay, bisexual and transgender persons, including use of the death penalty, torture, criminal sanctions, police harassment, violence, rape, beatings, disappearances, denials of freedom of expression, raids and closures of NGOs, and discrimination in education, employment, health and housing.⁴ We urge all Special Procedures to integrate these important issues of human rights concern into their relevant mandates.

Too often in the past, these human rights abuses have passed in silence. As UN High Commissioner for Human Rights Louise Arbour stated earlier this year:⁵

“[V]iolence against lesbian, gay, bisexual and transgender persons is frequently unreported, undocumented and goes ultimately unpunished. ... This shameful silence is the ultimate

³ In addition to the 19 ECOSOC-accredited NGOs listed, this statement is supported by NGOs from the following 69 countries:

Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Iran, Chile, China, Colombia, Costa Rica, Croatia, Denmark, Dominican Republic, Ecuador, El Salvador, Fiji, France, Georgia, Germany, Guatemala, Guyana, Hungary, India, Indonesia, Ireland, Italy, Kenya, Latvia, Macedonia, Malawi, Malta, Mexico, Namibia, Nepal, Netherlands, Nicaragua, Nigeria, Norway, Panama, Peru, the Philippines, Portugal, Republic of Korea, Romania, Russian Federation, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Togo, Turkey, Uganda, Ukraine, United Kingdom, Uruguay, USA, Venezuela and Zimbabwe

⁴ International Commission of Jurists: http://www.icj.org/IMG/UN_references_on_SOGI.pdf.

⁵ Keynote Speech by High Commissioner for Human Rights Louise Arbour to International Conference on Lesbian, Gay, Bisexual and Transgender Rights, Montreal, 26 July 2006: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/B91AE52651D33F0DC12571BE002F172C?opendocument>

rejection of the fundamental principle of universality of rights. ... Excluding LGBT individuals from these protections clearly violates international human rights law as well as the common standards of humanity that define us all.”

Similarly, Secretary General Kofi Annan has acknowledged that “discrimination on the basis of ... sexual orientation ... is all too common” and, speaking at a gathering of lesbian and gay UN employees, affirmed that “the United Nations cannot condone any persecution of, or discrimination against, people on any grounds.”⁶

At a time when this Human Rights Council is seeking to enhance cooperation across regions and UN mechanisms on matters of basic human rights, it is encouraging that increasingly States, Special Procedures, treaty bodies, civil society, the Secretary-General and the High Commissioner for Human Rights are joining together to ensure that human rights violations based on sexual orientation and gender identity receive the international scrutiny and condemnation they require.

This issue will not go away. We look forward to future discussion within this Council, with a view to safeguarding the principle of universality, and ensuring that all persons are treated as free and equal in dignity and rights, including on the grounds of sexual orientation and gender identity.

Joint statement on the Universal Periodic Review (UPR)

By Amnesty International, the Bahá’í International Community, Franciscans International, Human Rights Watch, International Federation of Human Rights (FIDH), International Service for Human Rights and the World Organization Against Torture.

Item 2: Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council”: Progress reports and further discussion or decisions of the Working Group on the universal periodic review

Delivered by Simia Ahmadi (FIDH) on Monday, 4 December 2006

Mr. President,

The signatories to this joint intervention appreciate preliminary conclusions of the Ambassador Mohammed Loulichki. On the basis of our common criteria for the successful establishment of the UPR mechanism⁷ we would like to put forward the following proposals.

The review must lead to improvements in each state’s fulfilment of its human rights obligations and commitments.

An effective review requires the involvement of independent expertise. Experts should analyze the available information and distil it into the basis for the review of the concerned country. Independent expertise should also have an appropriate role in the inter-active dialogue and the follow-up.

The review must be governed by the principle of equality. For each state, the review should be based on a common standard for review, which includes the UDHR and other international human rights obligations or specific commitments, such as election pledges. It would not include national law as a basis for the review. The review should also be transparent at each phase.

⁶ Speech by UN Secretary-General Kofi Annan at the Global Compact Event held in conjunction with the WCAR, 1 September, 2001; Statement of Spokesman for the Secretary-General on the rights of gays and lesbians, 5 August, 2003, <http://www.un.org:80/apps/sg/sgstats.asp?nid=441>.

⁷ Available on the HRC Extranet at: http://portal.ohchr.org/portal/page/portal/HRCExtranet/WG-UPR/NGOOtherContributions/FIDH_JointNGOSubmission22Nov2006_UPR_Criteria4successful.pdf

The UPR is more than just the interactive dialogue. The review process comprises all of the following elements:

- the compilation and analysis of objective and reliable information and the identification of issues;
- the interactive dialogue;
- the conclusions, recommendations and outcome; and
- the follow-up.

The analysis and interactive dialogue should have as their principal bases Special Procedure and Treaty Body analysis and recommendations, as well as information from the state (including its election pledges), the OHCHR and other UN bodies, national human rights institutions, and NGOs.

NGOs, including national NGOs without consultative status, must be able to participate effectively in the review process.

The review must result in a comprehensive outcome that will lead to result-oriented follow-up. The outcome could include a broad range of measures to encourage, assist or require the concerned state to fulfill its human rights obligations and commitments. These measures could include action proposed by the country under review, follow-up on Special Procedures and Treaty Bodies' recommendations, capacity-building and technical assistance, appointment of a country rapporteur, or recommendations to the General Assembly or to the Security Council.

Provisions for follow-up must ensure action to implement recommendations and decisions taken in the review within a specific time-frame.

Finally, Mr. President, the UPR can be only one means by which the Council addresses situations in particular countries. Other options include discussion and decision in regular and special sessions and the complaint procedure that results from the review of mechanisms. The various means for action by the Council in respect of the human rights situation in individual countries must complement one another.

I thank you Mr. President.

Statement on Progress reports and further discussion or decisions of the WG on the Implementation of OP 6 of GA resolution 60/251 (Special Procedures)

Item 2: Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council": Progress reports and further discussion or decisions of the Working Group on the implementation of op. 6 of General Assembly resolution 60/251 (Special Procedures)

Delivered by *Patrizia Scannella* on Tuesday, 5 December 2006

Mr President,

We appreciate Amb. Husák's preliminary conclusions. We commend his efforts in identifying and breaking down issues to be addressed in the review and in identifying common ground.

In a document available on the extranet, Amnesty International, jointly with several other NGOs, has highlighted criteria against which we will assess the successful outcome of the review of Special Procedures.⁸ In today's statement we will focus on two areas:

First, the issue of election of mandate-holders: the delegations favouring a system of election appear to have identified a problem, that is the need to ensure greater transparency in the selection process, but are proposing a solution that would not solve that problem but would, instead, politicise the process. The process used in treaty body selection has not proved to be more open and transparent, or to result in increased "legitimacy", as some delegations claim.

Elections involve nominations by individual states (and this also raises the question of which states - Council's members only, all states?). Elections involve vote-trading, including exchanges based on votes in other (non- human rights) bodies, and secret ballots. As is clearly evident from every treaty body that exists today, including the newest of the committees, the selection process does not avoid the election of a substantial number of individuals serving with the executive of their government. It does not guarantee expertise either. Moreover the proponents of elections, who also support geographic, gender, legal system and other criteria for balance, have not explained how such balance can be achieved practically through an election system.

Mr President,

The adoption by this Council of draft resolution L.2/ Rev. 1 is disconcerting for two reasons. On procedural grounds, injecting new elements by vote into a review expected to reach a consensual outcome puts into question the basis for the whole process almost from the outset. On substantive grounds, efforts to negotiate the working methods of the Special Procedures and impose a code of conduct threaten to seriously interfere with the independence of the Special Procedures, limit their effectiveness in protecting human rights and thereby undermine the credibility of both the Human Rights Council and the United Nations as a whole.

By adopting draft resolution L.2/Rev. 1, the Council has mandated the Working Group to "draft a code of conduct regulating the work of the special procedures". This also means, as it was noted today, addressing the conduct of states, for instance, in terms of personal attacks to mandate-holders, reprisals against individuals that have interacted with Special Procedures, and substantive and timely responses to communications and mission requests. [In this respect, we agree with Brazil that a code of conduct "may help mandate-holders to better work with governments of the countries they visit"⁹. Some delegations supporting L.2/Rev. 1 have emphasised that the elaboration of a code of conduct is not incompatible with the independence of mandate-holders; the onus is now on those delegations to ensure that such independence is preserved.]

In concluding, Mr. President,

Only last week Secretary-General Kofi Annan described the Special Procedures as the "crown jewel" of the system and called on the Council to preserve and strengthen this precious legacy. Amnesty International calls on all states to consider carefully the likely consequences of initiatives to rationalise the system of Special Procedures. Ill -conceived initiatives will cripple it. Just as we recall the contribution of the regional groups and individual states in creating the Special Procedures 40 years ago, so also history will remember each state that contributed to depriving rights-holders and victims of human rights violations of protection in the review process.

Thank you Mr. President.

⁸ <http://portal.ohchr.org/portal/page/portal/HRCExtranet/WG-ReviewMechanisms/NGOContributions>

⁹ Explanation of vote after the vote on L. 2/Rev. 1, 27 November 2006.