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CREDIBILITY OF UN RIGHTS COUNCIL RESTS ON THE ADOPTION OF REFORMS THIS JUNE

May 1, 2007 - Democratic countries from every region must work together in the next two months to ensure the UN Human Rights Council adopts mechanisms that will strengthen its ability to address human rights violations around the world. Specifically, the Council must preserve the independence and flexibility of the system of “special procedures” that monitor human rights worldwide. It needs to establish a universal periodic review that involves independent experts and non-governmental stakeholders at all stages. The Council must also demonstrate an increased willingness to act on urgent human rights situations in a balanced and proactive way.

Fourth Session Produces Mixed Record

At its recently concluded fourth session, the Council’s democratic members demonstrated resolve on the dire human rights situation in Darfur, yet they failed to take action on urgent situations elsewhere, opting for further discussion and debate. Democracies in Europe and Africa negotiated a consensus resolution, introduced by Germany, to establish a group of six currently-serving human rights experts to continue monitoring the situation in **Darfur**. The group, to be headed by the Special Rapporteur on Darfur, is also charged with fostering implementation of the numerous UN recommendations on the situation. However, the resolution failed to criticize the Sudanese government for its role in gross human rights violations documented by the High-Level Mission led by Nobel laureate Jodi Williams.

In a distressing development, states voted behind closed doors to discontinue consideration of complaints of human rights violations by **Uzbekistan** and **Iran** under the confidential “1503 procedure” despite a deterioration of the situations in both countries

over the past year. Such a step backward in addressing human rights violations at this critical moment signals to those responsible that their actions have gone unnoticed and encourages further abuses.

The Council also passed a troublesome resolution on “**combating defamation of religions**” introduced by Pakistan on behalf of the Organization of the Islamic Conference. The resolution, supported by 24 of the 47 countries on the Council, highlights the protection of religion against defamation rather than the rights of individuals to freedom of religion and non-discrimination. Twenty-three members of the Council voted against or abstained on the resolution, citing its incompatibility with human rights discourse or its excessive focus on one religion, Islam. All Muslim-majority countries supported the resolution and were joined by Cuba, China, the Philippines, South Africa, Russia, and Mexico.

The 16-member Convening Group of the **Community of Democracies** was joined by Peru and Romania in a positive statement delivered by Philippines Foreign Minister Alberto G. Romulo at the fourth session which reaffirmed their commitment to democratic principles and to the timely completion of the institution-building process of the UN Human Rights Council, preferably by consensus. The statement also made note of the important role of non-governmental organizations in the activities of the Human Rights Council and urged all states to continue a constructive partnership with civil society.

Democracy Caucus Must Act Now on Reforms

As the first Council heads toward its final two months of work, its members face the most serious test of their pledges to “uphold the highest standards in the promotion and protection of human rights” when seeking membership on the Council.¹ The over 30 governments participating in the Community of Democracies that are also members of the Human Rights Council now must confront the critical task of ensuring that the decisions they take this June on the Council’s procedures and mechanisms strengthen the body’s authority and ability to effectively promote and protect human rights.

The most important provisions that must be included in the Council’s institutional reforms are:

Independent human rights experts and NGOs should have a central role in the Universal Periodic Review.

- The UPR is not a “peer review” process, but rather a **universal periodic review** designed to subject all UN member states to equal treatment and scrutiny. In order to become an effective and credible process, independent expertise should be involved at all stages of the review.

¹ This provision regarding pledges and membership is set forth in General Assembly Resolution 60/251.

- National NGOs and other other national stakeholders, such as national human rights institutions, should be informed of and able to participate in the process of elaborating a country report by the state being reviewed.
- In preparation of the review, the Office of the High Commissioner for Human Rights should prepare an evaluation and assessment of the country situation taking into consideration information from the state under review, special procedures, non-governmental organizations, national human rights institutions, regional bodies, and other relevant UN and human rights bodies.
- At a subsequent phase, states should conduct an interactive dialogue with the state being reviewed, with the involvement of non-member states, experts, and NGOs. The review should conclude with the adoption of an outcome document with recommendations prepared by experts in consultation with states conducting the review.
- A follow-up mechanism should be established requiring reviewed states to report back to the Council on the implementation of the Council’s recommendations. In the case of non-compliance, measures should be taken by the Council to guarantee the legitimacy of the UPR mechanism.
- The UPR should be carried out in parallel working groups with every state being reviewed at least once every four years.

Special procedures must remain independent and impartial.

- **UN experts** and rapporteurs that monitor human rights around the world – commonly called “special procedures” – must remain independent from political influence by governments.
- The Human Rights Council should continue the practice of the former Commission on Human Rights by selecting mandate holders through a process of appointment by the President of the Council.
- A pre-screening process for eligibility against clear criteria should be put in place to enhance transparency of the appointment process.
- Special procedure mandate holders’ conduct should be guided by best practices. Operational guidelines and accountability for mandate holders should continue to be guided by UNGA Resolution 56/280 “Status, Basic Rights and Duties of non UN Secretariat Officials and Experts on Mission” and the *Manual of Special Procedures*, which is currently being revised in consultation with states and other stakeholders. The working methods of the mandate holders should remain flexible in order to be effective.
- Should a **code of conduct** be adopted by the Human Rights Council, as determined by a 2006 vote of the Council, it should be limited to professional ethics and principles, adhere to the guidelines outlined above and address the responsibilities of both mandate holders and states.

Review of mandates should aim to identify and fill gaps in the protection of human rights rather than open new ones.

The **review of mandates** should be carried out in consultation with relevant mandate holders and other stakeholders to ensure gaps in human rights protection are filled rather than opened. “Special procedures” mandates – thematic and country-specific – are unique tools that provide sustained attention and monitoring of a specific human rights issue or a group of human rights problems in a particular state. Both tools should be retained and used for situations deemed necessary by the Council. The universal periodic review and special sessions are additional mechanisms that periodically call attention to specific situations; however, they must not replace country mandates.

The complaints procedure should help prevent human rights violations as well as better address consistent patterns of violations that have already occurred.

- Increased transparency, frequency, and use of human rights expertise are necessary to achieve an effective **complaints procedure**.
- The procedure should be carried out in a three-stage process. In the first and second stages, a body of experts, appointed by the President from a pre-screened roster, should assess the admissibility of the complaint and prepare the facts of the case for review by the Council. Admissibility should be determined on the basis of whether the complaint attests to existing *or* emerging patterns of violations.
- Exhaustion of domestic remedies should not be required as the Council is not a judicial or quasi-judicial process and would be inconsistent with a victim-oriented approach.
- In the final phase, the Council will decide what action to take among a broad range of measures. The Council should consider complaints at least twice a year and complainants should be informed of the status of their complaints throughout the process.

The Council’s agenda and program of work should balance predictability and flexibility and ensure follow-up.

- The Council should adopt an **agenda and program of work** that balances predictability and flexibility to deal with emerging human rights crises and enables the participation of as many stakeholders from outside Geneva as possible.
- The Council’s review of human rights situations would be greatly improved if the agenda included a mechanism that would ensure Council follow-up, both at routine intervals and on a priority basis for urgent matters, on the findings and recommendations of OHCHR and Special Procedure reports.