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Human Rights Council: time to make the UN matter to human rights victims

Introduction: realities and needs in Asia

The birth of the new United Nations (UN) Human Rights Council (Council) presents an opportunity for real change on the ground—to make the UN relevant and practical for human rights victims and defenders around the world. This can be accomplished only if the 47 members of the Council, including 13 Asian members, ensure that the Council responds in a timely and effective manner when critical human rights situations arise, allows non-governmental organisations (NGOs) based outside of Geneva to participate in the deliberations of its work with sufficient access to information, and there are concrete follow-up actions on the ground.

Asia remains a region with low ratification records of international human rights treaties with many reservations to those that have been ratified, devoid of a regional human rights mechanism and where a climate of impunity for human rights violators persists.

Victims of human rights violations are given limited avenues for redress when domestic mechanisms for remedy are inadequate or ineffective, which heightens the importance of the international human rights system.

Against this backdrop, we are concerned that many of the Asian countries are still part of the Like-Minded Group (LMG)¹, which continues to undermine the crucial international human rights mechanisms. The recent non-paper submitted by the group has called for the elimination of the Special Procedures and country-based agenda items, in addition to limiting the participation of NGOs in the deliberations of the details of the Council and as speakers during the High Level Segment².

The eight Asian members who were elected as the inaugural members of the Council must renounce this obstructionist group and thereby demonstrate that they “uphold the highest standards” in the promotion and protection of human rights, as required by the General Assembly Resolution on the Human Rights Council³.

¹ Current LMG members include Algeria, Bangladesh, Belarus, Bhutan, Burma, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Vietnam and Zimbabwe. Out of these 19 countries, 12 are from Asia, including the 8 Asian countries that were recently elected as the first members of the Council (Bangladesh, China, India, Indonesia, Malaysia, Pakistan, Philippines and Sri Lanka).

² Under Section 4 of the paper, the LMG states that “only government representatives, as well as Heads of Specialised agencies and intergovernmental organisations, should speak in the High Level Segment”; “immediate attention should be granted to those special procedures...with a view to eliminate them”; and proposes “the establishment of one or more intergovernmental working groups in order to negotiate the details of the Human Rights Council”, without any reference to NGOs to participate in such negotiations. Non-paper of the Like Minded Group on the Human Rights Council, circulated by the OHCHR on 19 June 2006.

³ General Assembly Resolution A/RES/60/251, adopted on 15 March 2006, OP 9

This position paper will focus on five priority areas for Asian human rights defenders⁴:

- the universal periodic review;
- improving the participation of NGOs based outside of Geneva;
- prevention of human rights violations and prompt response to human rights emergencies;
- strengthening the system of Special Procedures;
- maintaining and enhancing discussions and resolutions on country situations.

Recommendations

The 47 members of the Human Rights Council should:

- maintain the means of participation granted to NGOs in the Commission on Human Rights (CHR) and improve them by diminishing obstacles to access to information and participation for NGOs, particularly those based in the regions (see section below for further details);
- appoint *national focal points on the universal periodic review* in the existing OHCHR field presence or UN Country Offices to enable national civil society actors to participate in the review of the country's human rights commitments via an in-country process;
- consider the Rapid Response Unit of OHCHR as one of the mechanisms that the Council can call upon to respond promptly to human rights emergencies and provide protection for human rights victims and those at risk on the ground;
- extend all the mandates of the Special Procedures for one year while measures to *maintain* the country mandates and to *strengthen* the system are to be worked out;
- strengthen the system of Special Procedures for better information management, increased number of country visits and effective follow-up to recommendations through the guarantee of adequate resources and funds for OHCHR;
- maintain the ability of the Council to address country situations in its agendas for the regular sessions, including through the adoption of country resolutions.

⁴ While we expect our views and priorities to evolve over time with the development of the Council, these priority areas have been identified as of June 2006.

Universal periodic review

The universal periodic review (UPR) mechanism is undoubtedly the most distinguishing factor between the Commission on Human Rights and the Human Rights Council.

It is mandated to undertake a review, based on “objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to **all States**”⁵. The review is intended to be a “cooperative mechanism, based on an interactive dialogue, with the **full involvement of the country concerned** and with consideration given to its capacity-building needs”⁶.

While the composition and the specificities of the UPR are still to be determined, we appeal to the members of the Council to take into consideration the factors below that must underline whatever shape or form the UPR may take.

(1) In-country focal points for the universal periodic review (UPR) mechanism

The members of the Council should appoint designated *national UPR focal points* based within the existing OHCHR field offices (see Annex I)⁷ or UN country offices at the national level to enable national civil society actors to participate in the review of the country’s human rights commitments. Such intermediary focal points will bridge the gap between the deliberations in Geneva and the realities on the ground.

This proposal complements the priority given by the Office of the High Commissioner for Human Rights (OHCHR) for greater country engagement and implementation of human rights on the ground⁸, as well as Action 2 of the Secretary-General’s second report on the UN reform⁹, which also calls for strengthened UN actions at the country level and streamlining human rights within the UN system. The General Assembly Resolution of 15 March also asserts that the Council should “promote the effective coordination and the mainstreaming of human rights within the UN system”¹⁰.

Annex I identifies the presence of OHCHR or UN offices in each of the countries in Asia¹¹ where the national UPR focal points can be based.

The *national UPR focal point* shall:

- Be an independent human rights expert, based in the OHCHR country office or UN Country Team. Where there is no OHCHR/UN country office, the focal point shall be based in the sub-regional/regional office. In cases where the country does not have any field presence and does not

⁵ General Assembly Resolution A/RES/60/251, adopted on 15 March 2006, OP 5e

⁶ General Assembly Resolution A/RES/60/251, adopted on 15 March 2006, OP 5e

⁷ Field presences take the form of regional offices, country offices, support for peace missions, or the assignment of human rights officers in the UN Country Teams. In Asia, the Southeast Asia regional office is based in Bangkok, while the Southwest Asia office is expected to be established soon. There are two country offices: Cambodia and Nepal; while there are human rights officers in two UN country teams: Mongolia and Sri Lanka.

⁸ See OHCHR Plan of Action, May 2005, available at <http://www.ohchr.org/english/docs/A.59.2005.Add.3.pdf>

⁹ Report by the UN Secretary-General, “Strengthening of the United Nations: an agenda for further change”, 9 September 2002, A/57/387

¹⁰ GA resolution A/RES/60/251, OP3

¹¹ The countries covered under “Asia” are those that correspond with the mandate and geographical scope of FORUM-ASIA and its members.

fall under the mandate of the sub-regional OHCHR office, then the *national UPR focal point* could be assigned to Special Procedures mandate holders (see Annex I).

- Work closely with civil society, National Human Rights Institutions and the government to receive information on the situation of human rights in the country for the UPR, including through regular consultations;
- Work closely with the civil society, National Human Rights Institutions and the government to follow-up and implement the recommendations resulting from the UPR process in Geneva;
- Submit recommendations to the Council to adopt other measures that may be necessary when human rights emergencies arise and there is a significant amount of time until the next session when the country will be reviewed by the UPR. Depending on the situation, these measures can include the deployment of a Rapid Response Unit, consideration of the country under the “country situation” resolution or convening an emergency session (see below).

We believe that the establishment of *national UPR focal points* will ensure sustainability of the UPR, inclusion and participation of all stakeholders, decentralization of the processes in Geneva and ultimately better follow-up and implementation of human rights on the ground.

(2) Review of pledges by the UPR

The members of the Council should keep in mind that the progress in the implementation of pledges submitted should also be one of the types of information considered in the universal periodic review. Such systematic monitoring of the follow-up to the pledges should persuade future candidates to submit pledges that are specific, credible and measurable in the long-term, while encouraging them to make voluntary commitments at their own initiatives.

We are concerned by the vague and paltry pledges submitted by Asian candidates prior to the election on 9 May 2006, as we expressed in our briefing paper¹². Most so-called pledges were confined to self-glorifying remarks about their human rights records rather than specifying any concrete commitments.

We remind all States that the final wording used in the GA Resolution is “*universal periodic review*”, not “peer review mechanism”. Hence, the review must be conducted by independent experts to consider objective information provided by the Treaty Bodies, Special Procedures, OHCHR, national human rights institutions and civil society.

¹² “Asian Candidates Adverse to Scrutiny, Non-Governmental Organisations and Vigilant Human Rights Mechanisms”, 8 May 2006, available at <http://forum-asia.org/hrc/?p=152>

Improving the participation of NGOs based outside of Geneva

As the Council has been established as a standing body to “meet regularly throughout the year” with more than three sessions per year for a total duration of at least ten weeks¹³, there will financial and practical obstacles for national and regional NGOs based outside of Geneva to participate effectively throughout the year.

To address these barriers and to enhance the participation of NGOs in the regions to bring the voices of the victims to the Council, we appeal to the members of the Council to consider the following recommendations.

Recommendations:

- Improve access to information by:
 - Web-casting the Council sessions via the Internet, as it is currently done with some General Assembly meetings. This will enable NGOs who are unable to be present in Geneva to attain a better grasp of the deliberations and dynamics of the Council, which cannot be expressed through paper. However, due to the differences in access to technology, this should only be complementary to the official documents of the sessions;
 - Appointing a “national universal periodic review focal point” within the existing OHCHR field presences and UN country offices that will consult national civil society regularly for their input to the review process on government compliance with human rights standards and to jointly implement the recommendations resulting from the review (see the section on “in-country focal points for the UPR” below).
- Provide better opportunities for participation by NGOs without permanent representatives in Geneva by:
 - Holding one of the sessions in the regional centres of the United Nations¹⁴. The Council could follow the example of UN Summits and conferences to hold its sessions beyond Geneva for more visibility and relevance to the realities in other parts of the world;
 - Ensuring that the planned dates and agenda of the sessions are publicised in advance, especially the emergency sessions, so that NGOs can plan their attendance and interventions effectively;
 - Increasing the transparency of the deliberations on the working methods of the Council by allowing NGOs to participate as observers in the inter-governmental meetings. All relevant documents must be circulated publicly so that NGOs from the regions will have the opportunity to contribute;
 - Convening regular consultations at the five regional centres or in the capitals involving governments, civil society, national human rights institutions and OHCHR on matters

¹³ General Assembly Resolution A/RES/60/251, adopted on 15 March 2006, OP 10

¹⁴ UN Regional Centres include the UN Economic and Social Commissions in Africa (UNECA, based in Addis Ababa, Ethiopia), Latin America and the Caribbean (ECLAC, based in Santiago, Chile), Asia and the Pacific (UNESCAP, based in Bangkok Thailand), and West Asia (ESCWA, based in Beirut, Lebanon).

related to the Council. This would also strengthen the interactions between these stakeholders at the regional level and decentralise the discussions in Geneva;

- Establishing a UN fund for NGOs from developing countries to attend the Council sessions, such as the existing UN funds on Contemporary Forms of Slavery, Indigenous Peoples and Victims of Torture. However, the lengthy application procedure for these existing funds should be simplified and improved for the “UN Fund on the Council”;
- Expanding the types of NGO interventions that are allowed during the Council sessions in addition to written and oral statements to include audiovisual materials and multimedia presentations so that human rights realities can be better understood.

Prevention of human rights violations and prompt response to emergencies: Rapid Response Unit

As mentioned above, the *national UPR focal point* should also be able to bring to the attention of the Council any situations of gross or systematic violations of human rights and make recommendations on the responses required.

One of the mechanisms invoked to “respond promptly to human rights emergencies” as stipulated in the GA resolution¹⁵ could include the proposed “Rapid Response Unit” of OHCHR.

The High Commissioner’s Strategic Management Plan for 2006-2007 states that “OHCHR will acquire the capacity to respond promptly to deteriorating or potentially deteriorating human rights situations. This will be achieved by establishing a Rapid Response Unit in Capacity Building Branch [of OHCHR]”¹⁶. However, this Rapid Response Unit should operate independently from the Council’s deliberations. It should have its autonomy to respond to urgent situations without the interferences from the members of the Council.

The Council should therefore merely consider providing *recommendations* to the Rapid Response Unit to conduct missions to countries with human rights emergencies to provide immediate protection for human rights victims and those at risk, stabilise the situation as necessary and prevent further violations from taking place.

Strengthening the system of Special Procedures

The system of Special Procedures has been one of the Commission’s major achievements and constitutes an essential cornerstone of the international human rights machinery. All mandates that are due to expire in 2006 should be renewed for one year while measures to strengthen the system are worked out.

Unlike the individual complaints system of the treaty bodies, the independent experts of the Special Procedures are able to monitor and rapidly respond to allegations of violations occurring anywhere in the world. Their core functions include issuing urgent appeals and transmitting allegations to the governments

¹⁵ GA resolution A/RES/60/251, OP5f

¹⁶ High Commissioner’s Strategic Management Plan 2006-2007, p.36. It further states: “OHCHR will define in-house coordinating arrangements and aim to establish an inter-service task force to plan all aspects of rapid deployments. It will also prepare the necessary planning and operations tools, guidance, and in-house arrangements for the preparation, approval, and implementation of operations plans. In order to secure adequate stand-by resources for emergency operations, OHCHR will establish partnerships with UN agencies and other external partners. The team will prepare tools, provide advice, participate in missions, and organize training sessions for staff in cooperation with new Staff Development and Training Section”.

concerned, undertaking fact-finding missions, carrying out studies, clarifying international law, and preparing annual reports with recommendations for action by governments to protect human rights.

This system has been invaluable to Asian human rights defenders as it has been able to respond quickly to urgent human rights situations regardless of treaty ratification status or the need to exhaust domestic remedies. Moreover, as Asia remains the only region in the world without a regional human rights mechanism, the Special Procedures system has often been the only recourse to justice when domestic remedies fail.

We therefore welcome the High Commissioner's Strategic Management Plan which aims to "strengthen the impact of the special procedures at the country level, enhance their thematic expertise and develop channels to make public their findings, and enlarge the network of national institutions, NGOs and civil society organisations collaborating with special procedures mechanisms¹⁷".

Despite the international trend to strengthen the Special Procedures system, we are concerned by attempts in the past by various governments from the Asian region to undermine this crucial tool for the promotion and protection of human rights. We also note that unlike the other regional counterparts, none of the Asian candidates pledged to cooperate with the Special Procedures through concrete commitments, such as by extending standing invitations to all the mandate holders¹⁸.

We are particularly concerned by the recent non-paper submitted by the Like Minded Group (LMG), stating that "immediate attention should be granted to those special procedures responsible for the politicization that affected the work and credibility of the Commission on Human Rights, **with a view to eliminate them**"¹⁹. The LMG is dominated by Asian countries including Bangladesh, Bhutan, Burma, China, India, Indonesia, Malaysia, Nepal, Pakistan, the Philippines, Sri Lanka and Vietnam from Asia. Out of these 12 Asian countries, eight have been elected as Members of the Council.

We remind all governments that the General Assembly Resolution on the Council affirms that *where necessary*, the mandates, mechanisms, functions and responsibilities of the Commission on Human Rights may be reviewed, improved and rationalized in order to "*maintain a system of procedures, expert advice and a complaint procedure*"²⁰.

As the Council has been established to enhance the promotion and protection of human rights worldwide, we appeal to all Members of the Council to improve but maintain this system as an integral component of the Council by providing objective information on country situations and acting upon urgent situations through recommendations and country visits.

Recommendations:

The members of the Council must strengthen the system of Special Procedures by:

- Responding fully to the communications by the mandate holders in a timely manner;
- Implementing the recommendations by the mandate holders in good faith and reporting the progress to the UPR;

¹⁷ High Commissioner's Strategic Management Plan 2006-2007, p.10

¹⁸ Please see FORUM-ASIA's briefing paper on Asian candidates to the Human Rights Council, published 8 May, available at <http://forum-asia.org/hrc/?p=152>

¹⁹ Non-paper of the Like Minded Group on the Human Rights Council, circulated by the OHCHR on 19 June 2006

²⁰ General Assembly Resolution A/RES/60/251 of 15 March 2006, paragraph 6

- Honouring their commitments to double the regular budget of OHCHR²¹ so that it can provide the full support needed to strengthen the system;
- Ensuring that the country mandates will be maintained and further strengthened, given the need for experts who can fully monitor and respond to human rights situations, particularly where human rights violations are systematic;
- Extending standing invitations to all mandate holders to demonstrate the commitment to the promotion and protection of human rights as elected members of the Council;
- Facilitating the country visits by the mandate holders fully, including unrestricted access to human rights victims;
- Incorporating the responses and actions by the governments to the mandate holders' requests, communications and recommendations in the Universal Periodic Review.

Country resolutions

The Council must be able to address situations of violations of human rights via country resolutions as many countries may not be scheduled for review by the UPR for a number of years. In addition, the outcomes of the UPR may point to the need for a country-specific resolution in cases where governments do not implement the recommendations of the review and the situation of human rights deteriorates. The Council should therefore keep in place its ability to address country situations in its agendas for the regular sessions, which would also act as an early-warning measure to “prevent human rights violations”²².

The country resolution has been one of the most important elements of the Commission on Human Rights for Asian NGOs to call upon heightened international attention to critical situations of human rights, thereby conveying the common concern of the international community and solidarity to the human rights defenders on the ground.

We are concerned by the common position expressed by the Asian governments during the last session of the Commission on Human Rights in March 2006 that in the work of the new Council, “efforts should be made to avoid country specific actions and resolutions”²³. Most recently, the Like-Minded Group, predominantly composed of 12 Asian countries, has stated in its non-paper that “Agenda item 9 in its current format must be eliminated”²⁴.

Although the categorisation of country situations under two different agenda items (Item 9 on the “Question of violation of human rights and fundamental freedoms in any part of the world” and Item 19 on “Advisory services and technical cooperation in the field of human rights”) should be revised, there should be one agenda item entitled “country situations” as suggested by other NGOs²⁵. This would diminish criticisms of selectivity and politicisation by removing the categorization of countries under separate agenda items.

²¹ At the September 2005 World Summit, Member States pledged to strengthen OHCHR by doubling their regular budget contribution from an amount which is currently less than 2% of the UN's regular budget. As stated in the High Commissioner's Strategic Management Plan, OHCHR's financial requirements in addition to the regular budget are estimated at US\$160 million (see High Commissioner's Strategic Management Plan, p.69)

²² The Human Rights Council is mandated to “contribute towards the prevention of human rights violations”. Hence, in addition to its mandate to promote and protect human rights, the Council has the obligation to prevent violations. See GA Resolution A/RES/60/251 of 15 March 2006, OP5f

²³ Asian Group Statement, 27 March 2006

²⁴ Non-paper of the Like Minded Group on the Human Rights Council, circulated by the OHCHR on 19 June 2006

²⁵ Human Rights Watch, “Human Rights Council: No More Business as Usual”, 19 May 2006.

We assert that without concrete actions on country situations, the Council will be tantamount to an exclusive talk show that has little implications for human rights victims on the ground and will amplify the climate of impunity.

FORUM-ASIA reminds all Member States that the Council is intended to be “result-oriented”, in accordance with paragraph 12 of the General Assembly Resolution, which means that timely and effective actions are essential. We look forward to constructive engagement with all the elected members of the Council to ensure better promotion and protection of human rights for all.

For more information, please contact Ms. Momoko Nomura, UN Advocacy Programme officer at unadvocacy@forum-asia.org

Annex I:
Table of OHCHR/UN field presence in 24 Asian countries

Country	OHCHR field presence	UNDP Country Office	OHCHR Southeast Asia Regional Office (Bangkok)	Others
Afghanistan	✓ (UN Assistance Mission, HR Unit)	Yes		
Bangladesh		✓		
Bhutan		✓	Yes	
Brunei Darussalam			✓	
Burma		✓	Yes	SR on the situation of human rights in Myanmar
Cambodia	✓ (OHCHR country office)	Yes	Yes	SRSR on the situation of human rights in Cambodia
China		✓		
India		✓		
Indonesia		✓	Yes	
Japan		✓ (UNDP liaison office)		
South Korea		✓		
Laos		✓	Yes	
Malaysia		✓	Yes	
Maldives		✓		
Mongolia	✓ (HR officer)			
Nepal	✓ (OHCHR country office)			
North Korea				✓ SR on situation of human rights in DPRK
Pakistan		✓		
Philippines		✓	Yes	
Singapore			✓	
Sri Lanka	✓ (HR officer)			
Thailand		✓	Yes	
Timor Leste	✓ (UN Peace Mission)		Yes	
Vietnam			✓	

✓ = Ideal position where the national UPR focal point should be based given the OHCHR/UN field presence