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HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

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

**Second session of the intersessional open-ended intergovernmental working group on the
implementation of operative paragraph 6 of General Assembly resolution 60/251
established pursuant to Human Rights Council decision 1/104**

**SUMMARY OF THE DISCUSSION ON THE COMPLAINT PROCEDURE
PREPARED BY THE SECRETARIAT**

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Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly established the Human Rights Council (Council) and decided that it “shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session” (paragraph 6).

2. At its first session held from 19 to 30 June 2006, the Council, by its decision 1/104 of 30 June 2006, decided “to establish an open-ended intergovernmental working group to formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure, in conformity with General Assembly resolution 60/251, through open-ended, inter-sessional, transparent, well-scheduled and inclusive consultations, with the participation of all stakeholders”, called Working Group on the Implementation of operative paragraph 6 of General Assembly resolution 60/251 (Working Group). The Council decided that the Working Group shall have at its disposal twenty days (or forty 3-hour meetings) of fully serviced meetings. The Council also decided that informal consultations could begin immediately through an open-ended consultative process in order to compile proposals and relevant information and experiences, and to facilitate open-ended discussions appropriately scheduled by the Chairperson of the Working Group with the involvement of all stakeholders.

3. Pursuant to this decision, the President of the Council appointed three Facilitators: H.E. Mr. Tomas Husak, Permanent Representative of the Czech Republic to facilitate the component on special procedures; H.E. Mr. Mousa Burayzat, Permanent Representative of the Hashemite Kingdom of Jordan, to facilitate the component on expert advice and H.E. Mr. Blaise Godet, Permanent Representative of Switzerland to facilitate the component on the complaint procedure. Also pursuant to this decision, four rounds of open-ended intersessional consultations were held respectively on 21 July, 7, 8 and 15 September 2006. At the first part of its second session held from 18 September to 6 October 2006, the Council held a general debate on the review of mandates following the Facilitators’ oral reports on progress made since the convening of the above-mentioned informal consultations.

4. The Working Group met in its first formal session from 13 to 24 November 2006. It held nine meetings on special procedures (review of mandates); three meetings on the complaint procedure and two meetings on the expert advice and concluded its work in a meeting convened by the President of the Council on 24 November 2006.

5. On the complaint procedure, the Working Group proceeded in accordance with a framework for discussions, containing thirteen elements previously proposed by the Facilitator and on which all previous written and oral contributions had been submitted:

- i. Objectives of the procedure
- ii. Scope of the procedure
- iii. Admissibility criteria
- iv. Number of stages
- v. Confidentiality
- vi. Participation of the authors of communications
- vii. Composition and size of working groups examining the communications/situations (assuming that two working groups would be maintained)
- viii. Experts of the first working group to be chosen from ...
- ix. Appointment/election of working group members
 - x. Duration of mandate for working group members and rotation
- xi. Human Rights Council to deal with situations ...
- xii. Duration of the process
- xiii. Possible measures to be taken by the Council upon proposals made by the second working group

6. Further to the Working Group's discussions on the complaint procedure (summary prepared by the Secretariat contained in document A/HRC/3/CRP.3), preliminary conclusions highlighting areas of emerging agreement as well as areas requiring further discussion on the above-mentioned elements were prepared by the Facilitator (document A/HRC/3/5). The preliminary conclusions on the complaint procedure were considered by the Council at its third session on 6 December 2006.

7. The present report summarizes the discussion on the complaint procedure at the second session of the Working Group (5 to 15 February 2007).

I. ORGANIZATION OF WORK

8. The Working Group met in its second session at the United Nations Office at Geneva from 5 to 16 February 2007. It held a total of fourteen meetings, of which four were dedicated to the complaint procedure.

9. The meeting was attended by representatives of States members of the Council, observer States of the Council, observers for non-member States of the United Nations and other observers, as well as observers for United Nations entities, specialized agencies and related organizations, intergovernmental organizations and other entities, as well as non-governmental organizations (NGOs).

10. The Working Group had before it a non-paper dated 1 February 2007 prepared by the Facilitator on the basis of the preliminary conclusions (document A/HRC/3/5) and on the discussions held to date, to serve as a basis for the deliberations. In line with the previous framework for discussions, the non-paper was structure around the following topics:

- Objective;

- Scope;
- Admissibility criteria;
- Number of working groups & confidentiality;
- First working group: composition, mandate & powers;
- Second working group: composition, mandate & powers;
- Frequency at which the Council shall consider situations;
- Duration of the process;
- Involvement of the complainant and of the State concerned;
- Possible measures to be taken by the Human Rights Council upon proposals made by the second working group.

II. GENERAL OBSERVATIONS ON THE NON-PAPER

11. At the 1st meeting, on 5 February 2007, the Working Group heard statements and general observations on the non-paper by the representatives of: Algeria (on behalf of the Group of African States); Argentina; Azerbaijan; Bangladesh; Belgium; Canada; China; Cuba; Germany (on behalf of the European Union); Indonesia; Malaysia; Mexico; Pakistan (on behalf of the Organization of the Islamic Conference); Russian Federation; Spain and Tunisia. Specific positions expressed by delegation will be reflected in the relevant sections of the present summary. Other delegations also participated in the discussions during the following meetings of the Working Group.

12. Overall, delegations expressed their appreciation for the Facilitator's non-paper and recognized that it served as a good basis for their discussions. Referring to a number of new ideas suggested in the non-paper, it was noted that further discussions would be required. Also, a general remark was made that the Council's complaint procedure should be built upon the existing 1503 procedure, which could be maintained with some improvements.

III. GENERAL DISCUSSION

1. OBJECTIVE AND SCOPE

13. At its 1st and 2nd meetings, on 5 February 2007, the Working Group discussed the objective and the scope of the future complaint procedure.

14. Repeated concerns were voiced about the proposal of the Facilitator to include, within the objective and the scope of the complaint procedure, the word "emerging" to qualify the consistent patterns of violations of human rights. Those opposing an early warning role of the complaint procedure pointed to its inconsistency with the current procedure and specifically with the concept of "reliably attested" violations. It was stressed that this function would constitute a fundamental change of the existing complaint procedure and would go beyond its mandate. Mention was also made of the fact that injecting such new elements into the procedure would

ultimately lead to politicization. Others however supported an early warning role of the complaint procedure, asserting the need to foster its victim-orientation, thereby enabling the Council to address situations of human rights violations as they emerge. A view was moreover expressed that, at minimum, reference to this early warning function should be made in the preambular paragraphs of any future constituting resolution of the complaint procedure.

15. Also discussed was the terminology to be used relating to the qualification of the human rights violations and to the threshold for violations to be considered under the complaint procedure. Referring to incongruence in the different language versions of Economic and Social Council resolution 1503 concerning the translation of the term “gross” violations into French and Spanish, the Facilitator observed that the underlying meaning of “gross” implied a certain degree of gravity and seriousness, as well as an element of recurrence. The option, advanced by the Facilitator in his non-paper, to replace the term “gross” by “serious”, was felt to amount to a lowering of the current threshold and as such raised some concerns. By contrast, others indicated that, they remained open to improvements of the existing threshold formula, yet would disagree with further raising it.

16. In view of these discussions, the Facilitator suggested to revert to the current language of the Economic and Social Council resolution 1503, which refers to “bringing to the attention of the [Council] those communications which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms”, in case this formulation was better suited to bring about consensus.

17. On the specification of the violations of human rights that would fall within the scope of the complaint procedure, different views were expressed. A suggestion to add the qualification “occurring in any part of the world” to the scope as well as the objective of the procedure, was felt redundant if one considers the inherent universal nature of the complaint procedure. A view was however expressed that if the specification was understood as broadening the scope of the complaint procedure to actions of States outside their jurisdiction, its addition would be supported. Also questioned during the discussions was the inclusion of the word “primarily” to the scope of the procedure, as leading to misinterpretations (e.g. that the scope could be broader).

2. ADMISSIBILITY CRITERIA

18. At its second meeting, on 5 February 2007, the Working Group discussed the admissibility criteria of the complaint procedure.

19. Differences between the admissibility criteria outlined in the non-paper of the Facilitator and the wording of resolution 1 (XXIV) of the Sub-Commission setting the current criteria were noted. Hence, views were expressed in favour of maintaining the existing admissibility criteria. Along the same line, the absence of the criterion establishing that a communication shall be admissible, if there were reasonable grounds to believe that it may reveal a consistent pattern of gross human rights violations, was discerned.

20. Referring to the requirement for a complaint to contain a factual description of the alleged violations, a proposal was made for the inclusion of a further specification by adding “authentic” or “genuine” to the factual description. Another drafting proposal concerned the language to be used in the complaint. It was suggested to delete the term “essentially” which preceded the notion of abusive language that was not to be used in the communication.

21. With regard to the proposal that “manifestly politicized” communications be inadmissible, preferences for the original reference to “politically-motivated” communications were expressed and the differences in meaning of “politicized” and “politically-motivated” communications were emphasized. It was noted that a communication would have to be considered “politicized”, when the outcome sought by the complainant was inconsistent with the remedy of the alleged violations. In this regard, mention was also made of the notion of abuse of the right to complaint. It was furthermore argued that the requirement for the communication to contain a factual description of the alleged violation would automatically eliminate complaints with a “politicized” focus.

22. Delegations also highlighted the linkages between the notion of “politically-motivated” communications and a reference to the respect of United Nations Charter principles among the admissibility criteria, which was identified by the Facilitator as one of the elements requiring further discussions. Different views were expressed regarding the reference to the UN Charter in the admissibility criteria. A suggestion was made that such reference be included in the preamble. Referring to the Facilitator’s proposal that a communication shall be inadmissible when its object is not consistent with any applicable human rights instruments, the need to limit this criterion to those instruments to which the State concerned is party was highlighted. Conversely, it was observed that some international obligations derived from *ius cogens* and were not limited to treaty obligations. Others favoured a reference to internationally recognized human rights instruments instead.

23. In connection with the requirement of exhaustion of local remedies, the matter of who would determine whether remedies appear to be ineffective or unreasonably prolonged was raised. In this context, it was furthermore suggested to replace “appeared” by “proved” to be ineffective and at the same time, the deletion of the conclusion drawn as a result, namely, that this would be tantamount to a denial of justice, was advocated.

24. Different views were expressed concerning the inclusion of a reference to National Human Rights Institutions (NHRIs). Those against observed that only legally-recognized remedies should be included and that NHRIs would not qualify in this regard. The fact that NHRIs do not exist in all countries and that not all of them work effectively was also underlined. Concerns were furthermore expressed at the potential of undermining the role of domestic remedies. Instead, a proposal was made to include a reference to the national judicial system and the national legislation.

25. Furthermore, a number of additions to the criteria as proposed by the Facilitator were put forward, including a reference to the author of the complaint or the source of the information, and a mention of the responsibility of the complainant to provide the necessary supporting

documents or evidence. Regarding the inadmissibility of complaints exclusively based on reports disseminated by mass media, a reference to information and communication technologies was advocated.

26. Referring to the current practice of screening out of communications by the Chairperson of the Working Group on Communications, it was felt more appropriate to involve the entire Working Group into this process. It was also suggested that communications be forwarded to the State concerned only after the verification of the admissibility had taken place.

27. The Facilitator's proposal that all complaints be channelled to a unique Secretariat was another element of discussion. From one point of view, the proposal was supported for practical reasons of channelling of communications. Yet, from another point of view it was observed that such single Secretariat would constitute a violation of the confidentiality requirement. It was also stated that the 1503 Secretariat should be composed of permanent staff with due respect given to the geographical distribution and the representation of different legal and cultural systems.

28. Another issue discussed was the follow-up to rejected complaints. While views were expressed in favour of the deletion of the related proposal put forward by the Facilitator, others stated their concurrence. A contradiction was discerned between the inadmissibility of situations already being dealt with by special procedures or treaty bodies and the referral of communications found inadmissible under the confidential complaint procedure to those human rights mechanisms. Conversely, it was upheld that indeed a complaint should not be deemed inadmissible because the situation is being dealt with by another human rights mechanism, but that instead no further action should be taken in such cases.

3. Number of Working Groups & Confidentiality

29. At its third meeting, on 8 February 2007, the Working Group held discussions on the number of working groups as well as on the confidentiality.

30. The confidentiality was generally recognized as one of the essential characteristics of the future complaint procedure. A view was however expressed that it should not be upheld at the cost of transparency. It was also recognized that confidentiality is a means and not an objective in itself.

31. Views were expressed that, in cases of manifest and unequivocal non-cooperation by the State concerned, the situation should be transferred to the Council for public consideration. Yet, it was also observed that public consideration should not be limited to non-cooperation, but also be reverted to when the gravity of the situation so required. Others maintained that in view of the cooperative nature of the complaint procedure no punitive action should be taken and that any decision with regard to public consideration of a situation should remain the prerogative of the Council. Also questioned was the definition of non-cooperation in this regard. In the same

context, referring to the proposal by the Facilitator that all situations referred to the Council shall be examined in a confidential manner, unless the Council decides otherwise, it was recommended to delete the last part of the sentence as it adds ambiguity. As mention was made that confidentiality of the procedure had proved to be conducive to State cooperation, a view was also expressed that cooperation was rather triggered by the fact that a lack of cooperation resulted in the complaint being inevitably forwarded to the next stage of consideration under the procedure.

32. General support was articulated for a procedure consisting of two working groups. A view was also expressed in favour of further streamlining the procedure by reducing the number of working groups to one. If such proposal failed to generate consensus, decision making in the second working group should be made by consensus only; in the absence of consensus and in order to avoid politicization, the situation should be referred to the Council. Other views were expressed in the sense that, while consensus was recognized as a golden rule in terms of methods of work, such approach was countered as removing the decision making power of the working group.

4. First and Second Working Groups

33. At its fourth meeting, on 14 February 2007, the Working Group held discussions on the mandate and composition of the working groups.

34. The maintenance of two working groups, one composed by highly qualified independent experts and the other one by representatives of Members of the Council, was generally supported. However, the selection of the members of these working groups was still debated. Those in favour of a first working group composed of experts drawn from the expert successor body of the Sub-Commission, supported their appointment by each regional group with due respect to the principle of geographical distribution. Another proposal was that experts be selected from the future expert advice body, by the President after consultations with the regional groups. In their view, this working group should examine the admissibility of allegations and report to the second working group. Those in favour of a first working group composed by experts drawn from a roster of highly qualified experts, which should be maintained and regularly updated by the OHCHR, supported their appointment by the High Commissioner. Appointments by the High Commissioner should, in their views, be based on qualifications and not necessarily on geographic distribution. Views were expressed that all members of this working group should be involved in the approval of the initial pre-screening of communications and assess their merits.

35. With regard to the second working group, views were expressed in support of a working group composed by representatives of Council members, with due respect of geographical distribution. In their opinion, the nominees to this working group should be appointed by each regional group, and the working group should propose measures to be taken by the Council. Another proposal was made that the members be appointed by the President of the Council after

consultation with the regional groups. Other views were also expressed, favouring appointments of representatives of Council members by the President of the Council, in consultation with the Bureau. This working group should determine the necessary measures to address the situations before it, and make recommendations to the Council. Views were also expressed in favour of this working group having the possibility to reject inadmissible communications. A proposal was also made that, in cases of manifest non-cooperation by the country-concerned, this working group could refer the situation for public consideration by the Council (see also para. 31).

36. On the number of members and their term of office, it was proposed that the first working group be composed of 5 members with a three-year mandate renewable once. In case of a vacancy, the President of the Council in consultation with regional groups should appoint an expert from the same regional group of the replaced member. Those in favour of experts being drawn from a successor expert body of the Sub-Commission stated their preference that in case of a vacancy, a replacing member from the same region be drawn from that expert body. A proposal was also made that the term of office of half of its membership expires at the same time.

37. With regard to the second working group, while the option of 5 members received general support, a proposal was made to increase its number to 10, with due respect for their geographical distribution. Regarding the terms of office of members, the two options mentioned were one year non-renewable or one year renewable. In case of a vacancy, the President should appoint a member from the same regional group.

38. The “accountability” of the working groups and the Facilitator’s proposal that that the first working group explained the grounds of its decisions, were also discussed. Views were expressed in favour of both working groups presenting clear justifications of every decision. Yet, other views questioned the practical implementation of this proposal, which would overburden the work of the members of the working groups.

5. Frequency and duration

39. At its fourth meeting, on 14 February 2007, the Working Group held discussions on the frequency of meetings and the duration of the process.

40. Different views were expressed on the number of times by year the Council should consider situations of human rights violations. Views were expressed in favour of a procedure by which the Council should consider situations once a year, while others preferred the Council to consider complaints twice or three times a year or whenever needed.

41. Concerning the meetings of the working groups, proposals were put forward that the working groups should meet more frequently. At the same time, views were expressed that the working groups should meet only once or twice a year.

42. On the duration of the process, preferences were expressed for a process not exceeding 24 months. Views were also expressed in favour of 12-months and 18-months cycles, as well as

for a short procedure by nature which should not encourage multiplication of complaints. Delegations moreover emphasized that the duration should be flexible in order to take into account difficulties faced by some States when trying to provide substantive replies. It was also stated that no artificial deadlines for the duration of the process should be imposed.

6. Involvement of the complainant and of the State concerned

43. At its fourth meeting, on 14 February 2007, the Working Group discussed the involvement in the procedure of the complainant and of the State concerned.

44. While maintaining the confidentiality of the procedure, it was proposed that the State concerned continued to be informed at all the stages of the procedure. With regard to the involvement of the complainant, it was suggested that, in addition to the acknowledgement receipt, he/she receives information on the final outcome of the procedure. Views were also in favour of informing the complainant at all the stages of the procedure, of all decisions of the working groups including the final outcome of the consideration of their respective complaints.

7. Possible measures to be taken by the Council

45. Also at its fourth meeting, on 14 February 2007, the Working Group discussed the possible measures to be taken by the Council upon proposals made by the second working group of the complaint procedure.

46. While support was articulated for the elements of convergence identified by the Facilitator in his non-paper, preference for the existing list of possible actions contained in operative paragraph 7 of Economic and Social Council resolution 2000/3 was expressed. . On the provision of technical assistance, capacity building and advisory services, it was felt that a reference to the explicit request by the State concerned was required. The Facilitator explained that the list was only an indicative and not an exhaustive one

47. The Working Group also discussed the proposals of the Facilitator, and different views were expressed in particular with regard to the proposed actions in case of non-cooperation by the State concerned. While concerns were expressed with regard to the proposals by the Facilitator, it was furthermore stated that there was no need of being prescriptive and that the Council should rather have a range of possibilities for action. A view was also expressed in favour of the notion of “urgent measures” of protection put forward by the Facilitator.

IV. CLOSURE OF THE SESSION

48. The Working Group concluded its discussions on the complaint procedure on 14 February 2007. The Facilitator informed the participants that, taking into account all views and proposals expressed during the deliberations, he will revise his non-paper, which will be circulated through the Secretariat in due time.

49. The Working Group thus concluded its second session.

Annex I

**Timetable for the Working Groups of the Council
5 to 16 February 2007**

	Morning	Afternoon
Monday, 5 February	Complaint Procedure	Complaint Procedure
Tuesday, 6 February	Review of Mandates	Review of Mandates
Wednesday, 7 February	Review of Mandates	Review of Mandates
Thursday, 8 February	Complaint Procedure	Expert Advice
Friday, 9 February	Expert Advice	Expert Advice

	Morning	Afternoon
Monday, 12 February	Universal Periodic Review	Universal Periodic Review
Tuesday, 13 February	Universal Periodic Review	Review of Mandates
Wednesday, 14 February	Universal Periodic Review	Complaint Procedure
Thursday, 15 February	Universal Periodic Review	Review of Mandates
Friday, 16 February	Expert Advice	-----
