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

**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**

**Special procedures: Preliminary conclusions, by the Facilitator on the review of
mandates, Mr. Tomas Husak (Czech Republic)**

First session of the intersessional open-ended intergovernmental working group on the implementation of paragraph 6 of General Assembly resolution 60/251

**Preliminary conclusions by the Facilitator on the review of mandates:
Mr. Tomas Husak (Czech Republic)**

1. In its decision 1/104, the Human Rights Council decided to establish an intersessional open ended working group to formulate concrete recommendations on the issue of reviewing and when necessary improving and rationalizing all mandates. The Council decided that the working group should have at its disposal twenty days (or forty 3-hour meetings) of fully serviced meetings.
2. The review of mandates has been discussed during the nine meetings of the Working Group which held its first session from 13 to 24 November 2006. In general, the proceedings have met expectations. The Working Group managed to elaborate on the principles of the review as well as on its objectives and structure. It was also able to engage in a substantive and fruitful dialogue between the delegations and special procedures mandate holders.
3. The Working Group benefited from the lively and structured debate, which has allowed progress in negotiations in an array of respects. Most of the delegations had forwarded their statements to the Secretariat in advance so that they could be posted on the extranet-page of the Office of the High Commissioner for Human Rights (OHCHR).
4. Conceptual questions were tackled at the outset of the debate. As a number of delegations requested clarification on the character of the topics for discussion, the Facilitator pointed out that the list of relevant issues should serve only as a guiding tool for discussion and that was not exhaustive. Indeed, the list of relevant issues was then revised twice to include additions proposed by some delegations and it has been repeatedly reaffirmed that the non-exhaustive character of the list of issues would be maintained. Following the agreement by the Bureau of the Human Rights Council (hereafter “the Council”), the preliminary conclusions of the debate were to be compiled by and under responsibility of the Facilitator, taking due account of the widest possible range of concerns at stake.
5. Several delegations also requested that the background documents be prepared by OHCHR as requested by the Council in its decision 1/104. The idea of the “matrix” mapping the mandates and their functioning had been supported across the board. Although one of the regional groups had addressed its request in this regard in advance to the Secretariat, the formal request was raised only during the session of the Working Group. OHCHR in reply specified, that preparations had begun and that the matrix would be finalized in due time to facilitate further deliberations of the Working Group. The matrix, which has been posted on the extranet of OHCHR on 24 November 2006, would serve as a basis for the review of mandates and facilitate the adoption of an analytical and methodological approach, so as to reach not only compromises across the board, but also consensus.
6. The quality of the debate benefited also from the essential presence of special procedures mandate holders. Ms. Leila Zerrougui, Mr. Vitit Muntarbhorn, Mr. Louis Joinet, Mr. Santiago Corcuera and Mr. Doudou Diène focused on cooperation with and by

Governments, access to countries, interaction with the Council and civil society, instruments for the protection of victims and implementation of the relevant recommendations. Furthermore, they also acknowledged the need for further refinements of a system, which could make better use of the revised Manual of Special Procedures.

7. The substantive discussion consisted of exchanges on the issues outlined below.

1. Selection and appointment of mandate holders

8. Deliberations started with an exchange on criteria for mandate holders, such as qualification, independence, impartiality, equitable geographic representation and representation of all legal systems, different cultures and eventually religions. Issues of gender balance, procedure of nomination and setting in office, including pre-screening were also considered. Among the most debated aspects were the alternatives between election by the Council or designation by the President of the Council upon consultations with regional groups. Other possible systems of designation were also considered as well as issues such as term limits, non-accumulation of functions and reappointments.

9. There has been overall agreement on the need for further improvements of the selection criteria, while preserving the independence of the mandate holder. Many agreed on the necessity of imposing term limits, i.e. maximum two consecutive terms, and of preventing the accumulation of functions in the human rights domain within the United Nations (such as membership of the future expert advice mechanism to the Council or of treaty bodies). Only one human rights mandate, within the United Nations, should be exercised at a time. Regarding the nomination of candidates, participants agreed that candidates may be nominated by OHCHR, Governments, non governmental organizations (NGOs), regional groups, other human rights bodies, and that there could be unsolicited candidacy. There was also agreement on the necessity of improving the pre-screening of candidates, eventually through the establishment of an advisory panel of the High Commissioner for Human Rights. Such a panel could be composed of representatives of the Coordination Committee of the Special Procedures (hereafter “the Coordination Committee”) and OHCHR, and mandated with the screening of candidates in order to facilitate appointment or elections, as well as consultations with the regional groups.

10. There were bridgeable differences regarding the method that had to be designed in order to safeguard the equal representation of different regions or ensure rotation of mandates.

11. Further discussions will need to be devoted to the actual mechanism of appointment or election. The delegations did not conclude whether elections in this respect would ensure the necessary requirement of independence, as it may cause a “conflict of interest”. Notwithstanding the fact that no final solution was actually proposed, due account may be taken of the “hybrid model”, as a possible middle way. This approach might combine both the elements of appointment and elections. It could e.g. take the form of an appointment, after due pre-screening by the advisory panel, of the mandate-holders by the President of the Council or the High Commissioner or the Secretary-General, with the prerogative of endorsement by the Council, which may be exercised upon request.

2. Priority areas of mandates

12. The discussion provided for an exchange on the situations that require attention at the country level and the thematic issues to focus on, on how to safeguard the inter-relatedness of human rights and devote balanced attention to all violations of human rights and to the evaluation of gaps.

13. There was overall agreement on a need to further strengthen and refine the role of special procedures to improve the enjoyment of human rights as well as the prevention and protection against human rights violations. The coherence of the overall human rights machinery, including the special procedures, should be improved. Broad support was extended to strengthening the thematic approach, both by the special procedures and by furthering the interaction with other relevant United Nations bodies. On the other hand, the country focus was also considered essential, since it is in countries that the deficiencies regarding the enjoyment and the prevention and protection of human rights take place. As to country mandates, it was agreed that the past controversy regarding some of them should not spill-over and hinder the considerations by the Council. Nonetheless, new and predictable criteria in this respect need to be established. A number of delegations emphasized the contribution of special procedures in the field of advisory services and technical cooperation. It was agreed that there is room for further improvement and strengthening in this domain.

14. Out of the debate arose also bridgeable gaps. Some delegations requested that the country impact of the thematic mandates be limited, although these proposals have not been elaborated on or specified. Other delegations called for retaining the country mandates under exceptional circumstances, e.g. to address gross and systematic violations of human rights. Nevertheless, many agreed that the criteria in this respect needed to be fixed and/or further refined. No conclusion was reached as to whether the special procedures should monitor only gross and systematic violations or any other violations of human rights. It also remains to be defined when and how the special procedures may contribute to the “responsibility to protect” reaffirmed at the United Nations 2005 World Summit. Overall, there were numerous signs of an emerging path towards overcoming the past controversy fuelled by some country mandates. It was highlighted that many of the country mandates had been created by consensus and contributed to the provision of advisory services and technical cooperation.

15. During the forthcoming sessions of the Working Group, further discussions need to dwell on the interaction between the universal periodic review (UPR) and the special procedures, as some delegations would like to see UPR, and eventually the special sessions of the Council, as a primary instrument for country considerations. Others objected that the envisaged periodicity of the UPR might result in protection gap. Another issue at stake concerned the extent to which UPR could contribute to the establishment of special procedures. Lastly, one delegation presented the criteria, i.e. quorum for submitting country resolutions and for the eventual establishment of country mandates.

3. Review, rationalisation and harmonisation of mandates: general criteria

16. Delegations dwelled on means of improving the universality of human rights, of achieving proper balance between civil, cultural, economic, political and social rights and the right to development, and on prospects for increasing the enjoyment of human rights and on the level of human rights protection. Related issues were also discussed: addressing both the thematic and country issues, the accountability of actors as a precondition of ensuring human

rights, priority areas of thematic mandates, the identification of the situations that require attention at the country level – i.e. violations of human rights including gross and systematic violations of human rights, assessment and avoidance of unnecessary duplication, criteria of establishment of mandates, merger or adjustment of mandates, reflecting on their content and workload, unification of terminology (special rapporteurs and special representatives) and evaluation of gaps.

17. Many agreed that the criteria for the review need to be predictable and applied with flexibility. The review should serve and benefit the overall goal of improvement of enjoyment and protection against the violations of human rights. The review itself shall aim at improving the universality, interdependence and balance between the different categories of rights, including the right to development. The review may end with merging or dismantling certain mandates while at the same time it is necessary to ensure that all the rights contained in the Universal Declaration of Human Rights and other human rights instruments will be properly covered. Agreement was also reached that the matrix prepared by OHCHR shall facilitate the review and serve as one of its basis. Therefore, the criteria for the review should be applied along with the matrix. Moreover, the mandate holders and the Coordination Committee of special procedures were requested to elaborate on their vision of the outcome of the review. There has been broad support for the unification of terminology and titles of mandates (special rapporteurs and special representatives), as well as to the fact that some special procedures mandate holders might be appointed by the Secretary-General.

18. Only partial agreement had been reached on the consequences of the overlaps between the different mandates. Whereas some considered that the proliferation of mandates is unsustainable and that some of the special procedures could serve in tandem or as collective bodies, others pleaded for acceptance of partial overlaps as the universality of human rights requires a comprehensive approach. Bridgeable differences remained with regard to criteria for the establishment of mandates. Whereas some favoured the application of criteria only when establishing the mandates, others pleaded for their use not only at the establishment of the mandate, but also during its tenure. There was emerging agreement that the thematic mandates need to function in tandem with the country mandates, when it is needed or required, as the general view on consideration of both thematic and country issues had prevailed. Nevertheless, further clarification regarding standardization and establishment of criteria for the mandates focusing at the country level, is needed. Some delegations elaborated also on substantive gaps, such as the right to vote, conditions at military and in prisons, rights within the institutional care, minority rights etc. An interesting proposal to create a mechanism to systematically indicate the substantive gaps was presented.

19. Other issues still need to be discussed, such as the inter-relationship between the Council and the special procedures. An inherent question arose on how to ensure the accountability of all the actors, including the special procedures mandate holders. Some delegations pleaded that the sovereignty of States and the independence of special procedures must go hand in hand. It was stressed that there must be mutual responsiveness. The other question regarding balance was raised by the majority of delegations. Whereas a balance has been achieved in numbers, further refinements as regards e.g. financing and scope of attention need to be considered. There were also some differences as to how to improve the protection. While some delegations requested limiting the review of the country issues to UPR, others appealed to pursue the current model of factual findings by the special procedures, stressing that the enjoyment of human rights is safeguarded by other human

rights mechanisms. Another area of focus may be how to improve a regular review and evaluation of mandates.

4. Achieving coherence and proper coordination between the mandates

20. The discussion focused on the establishment of an eventual mechanism to assess the need of standardization of mandates and coordination of working methods, while reflecting on the specific features of individual mandates and the Manual of Special Procedures and the contributions thereto, as well as the regulations governing the status, basic rights and duties of officials (Code of Conduct). Attention has been also drawn to the need of improving the accountability and the role of special procedures mandate holders by streamlining the system (inputs by the Coordination Committee in this regard would be appreciated).

21. The discussion proved that there is agreement on the necessity of a greater coherence with respect to establishment and functioning of special procedures and their working methods. The essential role of the Coordination Committee with regard to the harmonization of the working methods has been recognised. The Working Group could also include an item regarding the draft of the revised Manual of Special Procedures on its agenda for further discussion. Moving to the establishment of new mandates, it may be based on several factors: a request of the State concerned with respect to technical cooperation, recommendation of a human rights body etc. It was again recognized, that the thematic and country focus goes hand in hand.

22. A bridgeable difference exists regarding the eventual establishment of the mechanism to indicate a need for the establishment of mandates.

23. Further discussion is needed on the establishment of criteria for a code of conduct or code of ethics, as well as whether it is for the Human Rights Council to interfere into the process of revising the draft Manual of Special Procedures. Some delegations argued that the code of conduct forms an inherent part of the Regulations governing the Status, Basic Rights and Duties of Officials adopted in 2002 by the General Assembly. In general, the issue of improving the responsibility of both the Governments and the special procedures enjoyed support across the board.

5. Relationship with the Human Rights Council

24. Delegations have been seized with the issues of format, structure and timeliness of reports to the Council, guiding role of the Council, submission of information and preparations of reports, consideration of reports and follow-up to recommendations. The issues of interactive dialogue, cluster approach and regular access to the Council as well as written and oral updates have been also raised.

25. An agreement has been reached concerning the operational and updated format of reports, which need to offer realistic and feasible recommendations to allow the Governments to improve the human rights record. The cooperation and interaction of the special procedures with the Council has been considered of paramount importance. A plea to improve the interaction of special procedures with the Governments on the contents of their reports has received support across the board. There have been common reservations regarding gaps in the follow-up of recommendations, which need to be remedied, including through improved

monitoring. Different suggestions have been presented to that end. It was also felt that it is for the special procedures and UPR to contribute to improving the follow-up.

26. Only partial agreement has been reached on the relationship between regular and update reports of special procedures to the Council and on the means of improving the fulfilment of recommendations contained therein. The proposals to disseminate the information on the status of implementation of recommendations and their follow-up would also require further consideration.

6. Cooperation by and with Governments

27. Several issues have been put forward to seek the views of delegations. Those included the format and presentation of urgent appeals and letters of allegations, category of sources of information and responses to urgent appeals, allegation letters and requests for information. Moreover, attention focused also on the level of implementation of recommendations, standing invitations, acceptance of visit and unhindered access to and within countries, follow-up to recommendations and visits, while dwelling on the evaluation of overall cooperation.

28. A large number of issues have been discussed, most of which were welcome, sometimes subject to further refinements. As regards the invitations to visit, these are both the essential instrument of safeguarding the cooperation, as requested by the United Nations Charter, as well as one indicator of commitment of the State to human rights. The members of the Council were called upon to consider issuing standing invitations, as the country visits are sine qua non for fulfilling the mission of special procedures. Nevertheless, the country visits presuppose existing consent by the concerned Government. The discussion proved that the cooperation is a pre-requisite for the effectiveness of the special procedures. The same applies to dealing with urgent appeals, which require timely responses by Governments. Different time-limits for regular and urgent responses, but always in real time, seem to be also acceptable. Standardization of the procedure, of the form and presentation of urgent appeals were encouraged, as was the standardization of working methods by the draft Manual of Special Procedures. The draft manual will reveal the position of the Coordination Committee on the future shape of an harmonized system. The collection and articulation of the principles to be respected both by the Governments and the special procedures is another related issue that requires attention.

29. On the other hand, States that do cooperate should not automatically be subjected to greater scrutiny. Some proposals have been presented on safeguarding the scrutiny to countries that do not cooperate, e.g. by special procedures in tandem with OHCHR. At the same time, the criteria applied to assess the cooperation with Governments need to be predictable and just to allow for mutual trust. The necessary objectivity of reports, which could include the replies of Governments to findings by the special procedures, has been highlighted. It was agreed that a standardized procedure would be beneficial to the interactive dialogue. Moreover, standardization of the format of urgent letters and allegation letters should be also envisaged. The unification of terminology and clarification of terms would make the system understandable to a wider audience. The mandate holders were encouraged to authorize the communications by the special procedures and to establish them on the basis of credible information.

30. Several delegations tried to set the parameters of the cooperation of the special procedures with Governments and United Nations country teams, and also stressed the rights and duties of all concerned. The emphasis was laid at the same time on unhindered access to and within countries and on its conditions. The cooperation between the special procedures, OHCHR and Governments should take the form of interaction rather than interference, so that the special procedures would contribute to fulfilling the obligations of States.

31. The potential of UPR to contribute to ensure the implementation of recommendations of special procedures was reaffirmed. Moreover, it was stressed, that UPR may enhance the cooperation with the special procedures as it can legitimize their action.

7. Relation between the mandate holders and with the other human rights mechanisms and actors

32. Under this topic, the discussion focused on the cooperation and exchange of observations between the different mandate holders, the relation between UPR and complaints procedure and the special procedures, means of addressing thematic issues and the interaction with the treaty bodies and NGOs.

33. As regards the cooperation and exchange of observations, the majority of speakers emphasized the leadership role of the mandate holders themselves. Although the Coordination Committee may play some role in this regard, it should embrace the conceptual framework rather than go into the details of individual mandates. Instead of focussing on the follow-up to individual recommendations, it should contribute to enhancing the coordination of working methods, requests for information, dealing with urgent appeals, country visits etc. Mandate holders were almost unequivocally encouraged to undertake joint activities. The insufficient level of and attention to the follow-up have been raised again. Therefore, proposals for the Council to monitor systematically the implementation of recommendations were presented. Several delegations have elaborated on the interaction with UPR. Although there was an agreement that the findings and recommendations of the special procedures would form part of the background materials for UPR--against which the compliance would be assessed--there was no agreement as to whether and when the mandate holders could interact with UPR. With respect to the interaction with the "complaint mechanism", the confidential character of the complaints procedure should be taken into account. Nevertheless the interaction of the special procedures with the complaints procedure through sharing of findings has been supported.

34. Particular attention was again devoted to the focus of the mandates, acknowledging that the thematic and especially country mandates have suffered by certain deficiencies, in some instances even by political pressures. While acknowledging that there is still merit in retaining the thematic and country focus of special procedures, a consensus has emerged according to which country mandates should be established only once meeting predictable criteria, avoiding thus politicization and unnecessary tensions. On the other hand, the cooperation by the Governments may not be conditional, i.e. made dependent on the level of criticism by the special procedures, since the special procedures are mandated to contribute to improving the enjoyment of human rights and identify shortcomings while safeguarding the human rights protection.

35. The Special Procedures have been also encouraged to improve the interaction with the treaty bodies, although these two pillars should remain distinct. The consideration of the

potential contribution of special procedures to the development of general comments and concluding observations of the treaty bodies does not seem to have been exhausted. NGOs were considered as another relevant partner when assessing the human rights situation from the thematic or country perspective. They are essential partners both in soliciting the information as well as assessing the level of implementation of findings. NGOs should continue to play their role in response to needs of individual victims, if necessary by contributing to public appeals. Several delegations have criticized targeting NGOs' representatives in view of cooperating with the special procedures.

8. Organisation and Logistics – support of the Office of the High Commissioner to the special procedures

36. The discussion under this topic has focused on the means of safeguarding qualified, independent and long-term personnel, adequate financing from the regular budget, improving the quality of compilation of the reports, administrative improvements and monitoring of follow-up.

37. Delegations pointed out the prevailing lack of funding from the regular budget to the Special Procedures Branch. Though, there is general expectation that this situation will be remedied by the decision of the 2005 World Summit to double the regular budget resources allocated to OHCHR within next five years. Expected increase in regular funding should not preclude voluntary contributions, preferably of a non- or lightly earmarked nature. There has been almost unanimous support to hiring the long-term, professional and regionally balanced staff for the Special Procedures Branch that is needed to provide stable surrounding to the mandate-holders. Some of the latest improvements on the part of OHCHR have been presented by the Secretariat, such as the functioning of the Quick Response Desk, the impact of the increase in regular budget funding, induction courses for mandate-holders and secretarial staff. Nevertheless, further information in this regard may enlighten the delegations.

9. Other issues related to working methods

38. Individual delegations focused e.g. on the interaction with the other United Nations bodies and its country-teams, cooperation with regional organisations and NGOs. Annual exchanges with States, awareness-raising activities, media presentation of a system and presentation of examples of cooperation and non-cooperation were also focused on.

39. A general agreement has been reached on the two-way cooperation of the special procedures with the United Nations country teams. Their contribution is essential not only for the collection of data, but also with respect to planning the visits, and also monitoring the implementation of recommendations.

40. There was only partial agreement on the level of cooperation of the Special Procedures with the other United Nations bodies, as the bodies should dwell on the core of their mandates.

Annex

Topics for discussion (Revised version of **16 November 2006**)

I. Review of Mandates

1. Selection and appointment of mandate-holders

- Criteria for mandate-holders, such as qualification, independence, impartiality
- Equitable geographic representation
- Representation of all legal systems, different cultures and event. religions
- Gender balance
- Procedure of nomination (nominations by OHCHR, human rights bodies, Governments, NGOs as well as **unsolicited candidacy**)
- Procedure of taking office, pre-evaluation by an advisory board
- Election by the Human Rights Council or designation by the President of the Council upon consultations (with regional groups, or other systems?)

- .- Term limits (2 consecutive terms?), non-accumulation of functions and possibility of reappointments (**after 3 years?**)

2. Review, Rationalisation and Harmonisation of Mandates: General Criteria

- Means of improving universality of human rights
- Adequate balance between civil, cultural, economic, political and social rights and the right to development
- Prospects for increased enjoyment of human rights and level of human rights protection
- Addressing both the thematic and country issues
- Accountability of actors as a precondition of ensuring human rights
- Areas of priority attention for thematic mandates
- Which situations require attention at the country level (violations of human rights, including, gross and systematic violations – responsibility to ensure protection)
- Assessment and avoidance of unnecessary duplication,
- Criteria for establishment of mandates,

- Merger or adjustment of mandates, reflecting on their content and workload,
- Unification of terminology (special rapporteurs and special representatives?),
- Evaluation of gaps (e.g. right to freedom of assembly, to vote, to development, to work, **right** to dignity without poverty, minority rights, etc.)

3. Achieving coherence and proper coordination between the mandates

- Mechanism to assess the need for a mandate,
- Standardization and coordination of working methods while reflecting on the specific features of individual mandates,
- Manual of Special Procedures and contributions thereto,
- Regulations governing the Status, Basic Rights and Duties of Officials/Code of Conduct, improvement of Responsibilities etc.
- Role of the special procedures mandate-holders in streamlining a system (inputs by the Coordination Committee);

4. Relationship with the Human Rights Council

- Format, structure and timeliness of reports to the Council,
- Guiding role of the Council,
- Submission of information and preparations of reports,
- Consideration of reports and follow-up to recommendations,
- Interactive dialogue, cluster approach,
- Regular access to the Council and written and oral updates;

5. Cooperation by and with Governments

- Format and presentation of urgent appeals and other letters of allegation,
- Sources of information,
- Replies to allegation letters and requests for information,
- Responses to urgent appeals and implementation of recommendations,
- Standing invitations, acceptance to visit and unhindered access,
- Follow-up to recommendations and visits,
- Evaluation of cooperation;

6. Relation between the mandate-holders and with the other human rights mechanisms and actors

- Cooperation and sharing observations between the different mandate-holders,
- Relation between UPR and complaints procedure and the special procedures,
- Means of addressing thematic issues
- Interaction with the treaty bodies and NGOs;

7. Organisation and Logistics - Support to the Special Procedures by the OHCHR

- Qualified, independent and long-term personnel,
- Adequate financing from the regular budget,
- Improving quality of compilation of the reports, taking into account the views of concerned States,
- Administrative improvements - Quick Response Desk and sharing of information
- Monitoring of follow-up;

8. Other Issues Relating to Working Methods

- Interaction with other UN bodies and its country-teams,
- Cooperation with regional organisations,
- Cooperation with NGOs,
- Annual exchanges with states,
- Raising awareness, media presentation of a system,
- Presentation of examples of cooperation and non-cooperation;

II. Review of individual mandates:

1. An overall assessment of the contents and focus of individual mandates

- Background documents by the OHCHR, in a form of chart or matrix, comparing the mandates, their focus and functioning;

2. Defining the gaps and overlaps

- Examples of thematic gaps: environment, prison conditions, child labour, freedoms of Association, assembly and their limits etc.,

- Overlaps of mandates and parallel measures;

3. Recommendations to streamline the working methods or individual mandates

- To avoid duplication and safeguard appropriate attention to all the rights and freedoms;

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