



General Assembly

Distr.
GENERAL

A/HRC/4/118
20 March 2007

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Fourth session
Agenda item 2

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

**Note by the Secretariat on the non-paper
prepared by the Facilitator on the review of mandates**

1. The present document contains the text of the non-paper on the review of special procedures prepared by the Facilitator on this issue, Mr. Tomas Husak (Czech Republic). This document was orally introduced by the Facilitator at the 7th meeting of the Human Rights Council, on 15 March 2007.
2. The document retains the format as drafted by the Facilitator.

NON-PAPER ON SPECIAL PROCEDURES

I. SYSTEM OF SPECIAL PROCEDURES

A. Selection and appointment of mandate-holders

1. The following criteria will be of paramount importance while nominating and appointing mandate-holders:

- (a) Expertise;
- (b) Experience in the field of the mandate;
- (c) Independence;
- (d) Impartiality;
- (e) Personal integrity;
- (f) Objectivity;
- (g) Gender balance.

2. During the selection of mandate-holders, the following principles also have to be considered:

- (a) Equitable geographic representation;
- (b) Representation of different legal systems.

3. The following entities may nominate candidates as special procedures mandate-holders:

- (a) Governments;
- (b) Regional Groups operating within the United Nations human rights system;
- (c) International organizations or their offices (e.g.: Office of the United Nations High Commissioner for Human Rights (OHCHR));
- (d) Non-governmental organizations (NGOs);
- (e) Other human rights bodies;
- (f) Individual nominations.

4. Suitable candidates for the position of mandate-holder will be inscribed on the list of nominees – a roster managed by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Only those candidates who meet the specified criteria shall be inscribed on the roster. Candidates for a particular post from the roster, as well as any additional

candidates, will be pre-screened by an advisory body composed of the representatives of the Coordination Committee and representatives of the special procedures branch of OHCHR. The advisory body shall nominate mandate-holders matching both the criteria and expertise in the field of a particular mandate.

5. Means of selection to be decided.

6. Each mandate-holder will accept a principle of non-accumulation of human rights functions at a time, and the possibility of earliest reappointment after a 3-year pause. The mandate-holder may exercise the mandate for two consecutive 3-year terms.

Elements for further discussion:

7. Selection of mandate-holders.

Facilitator's proposals:

8. *Improved appointment procedure by the President of the Human Rights Council ("the Council") after consultation with the Bureau and regional groups, considering the nomination by the advisory body.*

9. *Hybrid model combining appointment by the President and endorsement by the Council of all the pre-screened nominees matching a number of available seats.*

10. *Brazilian model combining nomination and election from a pre-screened group of nominees meeting the required criteria.*

B. Achieving coherence and proper coordination between mandates

11. The Working Group agrees that it is necessary to improve coherence regarding the establishment and functioning of special procedures as well as their working methods. It is important that the working methods be predictable and transparent, providing for the effective promotion and protection of human rights.

12. Special procedures should contribute, under the guidance of the Coordination Committee, to improving the coherence of their working methods.

13. Mandate-holders should cooperate with each other in requests for information, communications, country visits and the implementation of their recommendations.

14. It is necessary to establish a transparent mechanism to achieve standardization of mandates and coordination of their working methods (i.e. through the Coordination Committee, annual meetings with Member States and interaction with the Council), while reflecting and retaining the specific features of individual mandates.

15. The Working Manual of the United Nations Human Rights Special Procedures elaborating on the application of working methods can be complemented by the contributions of States, while the Working Group is requested to make its contribution.

Elements for further discussion:

16. *To what extent can mandates be standardized and still comply with the principle of independence?*
17. *The Working Manual as an instrument developed by the special procedures to specify the working methods corresponding to the principles established in the Code of Conduct?*
18. *Shall the Working Manual remain to be adopted by the Coordination Committee?*

Facilitator's proposals

19. *All the mandates should benefit from standardized means of establishment, working methods and scope of mandate while retaining for the mandate-holders to further invent their instruments, under the auspices of the Coordination Committee.*
20. *The working methods must provide for a standardized, transparent and impartial operation through dialogue with the Governments concerned, which would also enable the effective implementation of the recommendations submitted in the reports to the Council.*
21. *The Working Manual improving the operation of special procedures on the basis of best practices would articulate the working methods reflecting the developments by the mandate-holders, as well as the views of the Coordination Committee and Governments expressed during the annual meetings and at the Council.*

C. Relationship with the Human Rights Council

22. It is necessary to reinforce format, structure, contents and timeliness of the special procedures reports. The reports need to be operational and updated, offering realistic and feasible recommendations allowing the Governments to improve their human rights record.
23. The Council should provide a guiding role to the special procedures, when establishing, vesting, extending the mandates, or eventually endorsing their findings. The Council also needs to specify a timeline and general contents of the reports, including when modifying a mandate. However, predictability may not limit the need to dwell appropriately on the issues that merit attention, including through written and oral updates upon request.
24. Preparations of reports should be undertaken in time, after due, thorough and timely consultation with the Governments concerned (9-week rule). Special procedures should submit advance copies of their reports to the concerned countries after country missions, so that they may express their views.
25. The cooperation by the Governments in the compilation of the reports and the implementation of their findings is essential to the effectiveness of the mandates.
26. The reports need to be based on credible and objective information, benefiting from a variety of sources.

27. Equal and appropriate time needs to be reserved for a consideration of each report.
28. An interactive dialogue has proved beneficial to improving the understanding as well as the impact of reports. However, there is room for further improvements, such as through clustered consideration of the reports, enabling the streamlining of mandates.
29. It is important to strengthen the follow-up to recommendations, including regular monitoring to overcome gaps in their implementation.

Elements for further discussion:

30. *Though the regular interaction between the Council and the mandate holders has been provided for when establishing or extending the mandates, the special procedures may receive the feedback by States through the interactive dialogue.*
31. *There have been proposed different measures on how to improve a follow-up to special procedures recommendations. As some favoured engaging the universal periodic review mechanism (UPR) in this regard, others preferred mandating the special procedures to disseminate regularly the information on the status of implementation of their recommendations and follow-up. Moreover, UPR might be also seized, if there is lack of improvements. UPR has the potential to improve the cooperation with the special procedures as it can legitimize their action (e.g.: through ensuring the implementation of their recommendations).*
32. *The format of the interactive dialogues would benefit from greater time allocation and clarification as to participation.*
33. *The relationship between the regular (annual) and updated reports of the special procedures to the Council (updates for the interactive dialogues).*

Facilitator's proposals:

34. *On top of the means to a standardized relationship, the Council may provide guidance on substance to the special procedures.*
35. *A two-stage mechanism to monitor the implementation of recommendations: first, it would be for the special procedures, which would in general terms devote parts of their reports to this aspect. However, this may have logistical and financial implications. On the other hand, the concerned States, as primary actors, should make available the information on the extent of implementation.*
36. *Interactive debates proved an essential instrument of dialogue with the special procedures. A minimum time of 20 minutes should be saved for the presentation by the mandate-holders, to be followed by time-slots for the concerned countries and the members and observers of the Council. The involvement of NGOs proved useful as they possess up-to-date information on relevant developments. The interactive debate would benefit from a standardized procedure.*
37. *One of the criteria for reporting may be a division of reports into an annual report by the special procedures to be presented according to an annual programme of work and the updates.*

Updates may be presented upon consideration by the mandate-holders (regular access to the Council), but always when presenting the written reports.

38. *An annual programme of work should provide for sequential presentation of annual reports by the special procedures over the year.*

D. Cooperation by and with Governments

39. Special procedures instruments (urgent appeals, letters of allegation, and requests for information, recommendations and their follow-up, and visits) and responses by the Governments thereto are essential to improving the enjoyment and protection of human rights. A mutual cooperation is a prerequisite for the effectiveness of special procedures.

40. Attention needs to be paid to the provisions of the invitations and acceptance of requests for visit, as well as to the level of implementation of recommendations. Unhindered access to and within countries, upon invitation, facilitates the exercise of mandates of special procedures.

41. The mandate-holders may consult with the Governments on any issue within their mandates, while it is for the Governments to decide on their explanations. Mutual dialogue prompts cooperation.

Elements for further discussion:

42. *Standardization of the procedure, the form and presentation of urgent appeals providing for protection in emergencies.*

43. *Unhindered access to and within countries, and without conditions.*

Facilitator's proposals:

44. *The appeals and requests for information must be objective, credible and justified, as must the reports of the special procedures, reflecting the replies by Governments or lack thereof. The mandate-holders should supervise any substantive communications with Governments, and authorize the communications. The Governments must contribute to the exchange of information that facilitates the work of special procedures.*

45. *Standardization of the format of urgent and allegation letters should be further expanded.*

46. *Improving cooperation is at the core of bettering the system. The Governments are encouraged to communicate in a timely manner with the special procedures and to reply to communications. The States that do not cooperate should not be exempted from scrutiny. Criteria applied to assess cooperation with Governments (extent of dialogue, level of implementation, effectiveness of national promotion and protection of human rights) need to be predictable and to allow for mutual trust.*

47. *Invitations are one of the means of safeguarding the fulfilment of the mission of special procedures to assess the level of enjoyment, promotion and protection of human rights. Nonetheless, their issuance is at the discretion of Governments. When visiting the countries,*

special procedures should take into account the national legislation, while assessing its compliance with international obligations.

48. *The members of the Council shall consider issuing standing invitations, demonstrating their general will to always accept a request for a country visit.*

E. Relation between the mandate-holders and with other human rights bodies

49. The mandate-holders should seize leadership in cooperation and exchange of observations among themselves, following the guidelines outlined by the Coordination Committee. The responsibility for their implementation will rest with individual mandates.

50. Mandate holders are encouraged to undertake joint activities (joint statements, reports and harmonized recommendations) where relevant.

51. The special procedures can interact with the UPR. Their findings and recommendations would form part of the background materials for the UPR, against which the compliance by the Government would be assessed.

52. Interaction with the “complaints mechanism” should take into account the confidential character of the complaints procedure (in relation to the complaint procedure) while exchanging the relevant information.

53. The special procedures are encouraged to improve interaction with treaty bodies. Despite a different character, they may complement each other.

54. Cooperation with NGOs and other relevant partners is also essential, enabling an assessment and improvement of the human rights situation from a thematic or country perspective. They contribute to soliciting the information, assessing the level of implementation of findings, making proposals on remedying the situation and responding thus to the needs of individual victims. It is essential to ensure the safety of the members of NGOs and special procedures meet during their visits to countries.

Elements for further discussion:

55. *Areas and means of cooperation among the mandate-holders.*

56. *Scope and timing of interaction of the special procedures with the UPR, with the “complaints mechanism” on pending complaints or on submissions not meeting the threshold for the complaints and the system of expert advice.*

57. *Means of safeguarding the unhindered engagement of NGOs’ representatives with the mandate-holders*

58. *Providing for a balanced representation of NGOs from different parts of the world during the interaction with mandate-holders.*

Facilitator's proposals:

59. *Cooperation among the mandate-holders may be improved by regular exchanges of information by the thematic and country desks of OHCHR, including on urgent responses, sharing the lists of allegations and information on domestic procedures and responses by the Governments, joint missions, statements and coordinated follow-up to recommendations.*

60. *The special procedures interaction with UPR may range from submission of findings to the background documentation, observation of procedure at the working group level, to interaction at the Council level, with eventual upholding of certain recommendations or encouraging cooperation by the concerned country with particular mandates at conclusion.*

61. *The interaction with the complaint mechanism may benefit, in the case of pending complaints, from an evaluation by the special procedures of the country in question. Submissions not meeting the threshold for complaints may be submitted to relevant special procedures for information.*

62. *The contribution of NGOs relies on unhindered activities, free from any reprisals for cooperation with the mandate-holders. Their contributions must be objective.*

63. *Balanced representation of NGOs should be envisaged not only for the regular sessions of the Council, but also for its working groups and other mechanisms.*

F. Organization and Logistics – support of OHCHR to the special procedures

64. The system of special procedures must build on qualified, professional, independent, experienced and long-term, and regionally balanced personnel to create a stable environment.

65. Adequate financing from the regular budget is necessary. Increase in the regular funding to OHCHR should be used to improve financial and logistical support to special procedures including support to thematic priorities in the High Commissioner's Action Plan. More resources are needed for country visits and monitoring follow-up to recommendations.

66. The majority of activities of the special procedures branch should be funded from the regular budget.

67. It is necessary to improve the quality of drafting of the reports, building on equal attention to all categories of rights. Comments by Governments should be duly reflected upon.

68. Common level of support to all the mandates needs to be achieved.

69. Administrative improvements should be regularly evaluated and shared with the Council.

70. Improvements on part of OHCHR, such as functioning of the Quick Response Desk, induction courses for mandate-holders and staff and streamlining of working methods must be of a gradual nature.

Elements for further discussion:

71. *Administrative and financial support to individual mandate-holders, including latest administrative improvements.*

72. *Statistics on country visits, communications and implemented recommendations by mandates, with the contribution of OHCHR.*

Facilitator's proposals:

73. *OHCHR is invited to present an update to delegations on the issues at stake, including assessments of funding from the regular budget, composition of the special procedures branch and the latest administrative improvements and their effectiveness.*

G. Other issues related to working methods

74. Interaction of special procedures with the United Nations agencies, within the field of the mandate, should be reinforced, if beneficial. OHCHR could compile the best practices in this regard. The future expert advice mechanism may also complement the established links between the special procedures and United Nations agencies. OHCHR field presences should be greatly involved in the preparation of country files, country visits as well as tailoring and implementing the recommendations by special procedures. Also, the human rights components of the United Nations missions should interact with the special procedures.

75. The reports of special procedures should be shared with the General Assembly (Third Committee) upon request, as is the practice with some of the mandates.

76. Cooperation with the regional organizations assists in soliciting the expertise, crafting the recommendations and monitoring their follow-up. Cooperation with international, regional and national NGOs is beneficial, provided these are independent and objective.

77. Annual interaction of special procedures with States in enhancing the effectiveness of special procedures should be continued, complemented by interactive dialogues at Council sessions.

78. Media interaction contributes to awareness-raising. However, more clarity or criteria to enable the most productive media involvement is needed. The information from the special procedures needs to be accessible and disseminated to the greatest possible extent within the

United Nations system. The Coordination Committee and OHCHR should play a role in this respect.

Elements for further discussion:

79. *Criteria for interaction of special procedures with the General Assembly, and where relevant with the other United Nations bodies.*

80. *Avenues for interaction with the media.*

81. *Evaluation of cooperation with the mandate-holders. Monitoring of follow-up to recommendations by the mandate-holders and OHCHR reflecting on best practices, while pointing out shortcomings.*

Facilitator's proposals:

82. *Reports and other observations of the special procedures should be shared with the United Nations bodies, upon their request or by the decision of the Council. Nevertheless, there may be emergency situations when the special procedures observations could be shared as part of prevention of human rights violations. The established procedures and practices should be observed in this regard.*

83. *The United Nations country teams are encouraged to extend cooperation with the special procedures, when preparing a visit, making recommendations and following-up on their implementation.*

84. *Although media interaction facilitates awareness-raising about particular issues and situations, Governments should be given prior notification of the publication of press releases and informed of the timing and summary of media inputs before they are issued.*

85. *There is a need to remedy the gaps in monitoring the implementation of special procedures recommendations. Both positive improvements and shortcomings must be highlighted.*

II. REVIEW, RATIONALIZATION AND HARMONIZATION OF MANDATES, GENERAL CRITERIA

A. General part

86. Universality, interdependence and interrelatedness of human rights, cooperation without selectivity, promotion of the inter-relatedness of human rights and achieving balance between the special procedures are the underlying principles of equal enjoyment of all rights and attention to all violations of human rights.

87. The effectiveness of the system of special procedures depends also on equal attention to all human rights, including the right to development.

88. It is the prerogative as well as the duty of both Governments and mandate-holders to contribute to improved enjoyment of all the rights contained in the Universal Declaration of Human Rights and other human rights instruments. Inter alia, thematic issues such as the right to education, poverty, protection against discrimination, torture and racism, right to food, to vote, to assemble and to associate would benefit from continuous or improved focus.

89. Increasing the enjoyment of human rights as well as the prevention of and protection against human rights violations, and strengthening and refining the role of special procedures, is essential.

90. The contribution of special procedures to advisory services and technical cooperation has been praised as a contribution to reinforcing national capacities.

91. A review implies an improved accountability of the Governments and of mandate-holders, while avoiding unnecessary duplications. On the other hand, a unification of terminology and titles of mandates will make the whole system more transparent and understandable.

92. In order to establish a system, some mandates may be streamlined, merged with others or eventually dismantled. Any such changes must be guided solely by the need for improvement of the enjoyment and protection of human rights, while bearing in mind that mandates should not be too broad nor too general.

93. The need for filling the existing substantive gaps might be remedied by closing the protection gaps upon the recommendations by the Coordination Committee.

94. Accountability by the mandate-holders needs to be improved.

Elements for further discussion:

95. *Improving the equality among all special procedures and equal attention to enjoyment and violations of all rights.*

96. *Contribution by the UPR and the Council's special sessions to country considerations, and their relation to country mandates.*

97. *The country mandates established in the past by vote have been criticized while some of them contributed to fuelling political tensions rather than improving the situation in a given country. Therefore, a distinction should be made between the country mandates created in the past by consensus and those by vote.*

98. *Accountability by the mandate-holders needs to be improved. Mandate-holders should follow the established working methods, to be regularly reviewed by the Coordination Committee. On the other hand, Governments are encouraged to be of utmost assistance to the special procedures when exercising their mandates.*

99. *The Coordination Committee is requested to propose the means for filling the protection gaps, stemming from substantive gaps.*

Facilitator's proposals:

100. *Equilibrium shall be reached among all the special procedures and mandate-holders so that they may rely on equal support and level of servicing, including financing. This would reinforce the equal attention paid to all categories of rights. There seem to be equal numbers of mandates covering different categories of rights. Nevertheless, the level of financing, staff, and servicing the mandates could be improved.*

101. *There are many arguments for and against symbiosis of country mandates with the UPR and special sessions. As already stated, some situations may require the establishment of a country mandate because of their gravity and sometimes also of the non-cooperation by the Government. Such country mandates may complement the UPR cycle, which is sometimes too long, as well as the special sessions, which may eventually benefit from an implementation partner, such as a fact-finding/inquiry mission or special procedures' assistance. General Assembly resolution 60/251 provides i.e. for a combination of the consideration of the violation of human rights, including gross and systematic violations, and for a regular scrutiny of the States by the UPR. Therefore, country consideration should not be limited to UPR, as it would contravene the General Assembly resolution opting for a country focus as one of the tools in the Council's box.*

102. *Should country mandates be established in the future, there is strong preference for doing so by consensus, such as in the case of the provision of advisory services or technical assistance. In certain instances, e.g. in case of gross and systematic violations such as genocide, torture, arbitrary executions, enforced disappearances or slavery, a country resolution may be introduced with the aim of possibly establishing the country mandates, as one of the last resorts. If consensus cannot be achieved on this, the country resolution possibly establishing the country mandate may be adopted by a vote.*

103. *Ensuring accountability is the responsibility of all actors, both mandate-holders and Governments. The sovereignty of States and the independence of special procedures must go hand in hand. The mutual responsiveness may be improved by regular exchanges between the special procedures and States rather than by exercising regular control over their performance, which is exercised when establishing or extending a mandate.*

104. *The accountability is two-fold: accountability of mandate-holders to their peers and accountability of the Governments towards enjoyment and protection of human rights, including through cooperation (submission of information, protection of complaining victims etc.). There*

is a complementarity between the principle of accountability of mandate holders and that of the responsibility of States for ensuring protection of and respect for all human rights.

105. *Mandate-holders should be guided by the need for objectivity, equal attention to all the rights and freedoms as well as issues at stake, transparency, impartiality, accessibility and fairness. The mandate-holders' conduct would rest with their independent judgment.*

B. Proposals on individual mandates:

- *Review of existing country mandates established by vote under the umbrella of the Commission on Human Rights ;*
- *Criteria for the establishment and functioning of the working groups - review of functioning of the WGs,*
- *Limiting the proliferation of mandates on particular issues and prevention of too general a focus.*
- *Adjustment of special procedures in relation to human rights issues.*
- *Establishment of a new mandate on contemporary forms of slavery?*

III. CODE OF CONDUCT

106. A Code of Conduct (CoC) could be understood as a set of guiding principles to be complied with when applying the working methods of the special procedures and soliciting the cooperation of Governments.

107. The Council may endorse a CoC compiling the principles on operation and cooperation. On the other hand, the Working Manual will specify the concrete means of operation and cooperation while respecting the basic principles entailed in the CoC.

108. A CoC should provide for the accountability of the mandate-holders to their peers (i.e. Coordination Committee) as well as of the Governments, to enable the enjoyment and protection of human rights and to enhance the responsibility of all actors. Such a code should build on and complement the Regulations Governing the Status, Basic Rights and Duties of Officials, other than Secretariat Officials, and Experts on Mission adopted in 2002 by the General Assembly (ST/SGB/2002/9).

109. The principles of objectivity, transparency, mutual cooperation, dialogue, verification of facts and of the effective implementation must be upheld by the CoC.

110. Other principles that may be elaborated by the CoC include:

- (a) International responsibilities of mandate-holders;
- (b) Exercise of a mandate in the name of the United Nations;
- (c) Respect for the rights and duties of the mandate-holders;
- (d) Respect for the laws and regulations of the visited countries;
- (e) Efficiency, competence, integrity, fairness and exercise of the utmost discretion in regard to all the matters of official business.
