

Distr.
RESTRICTED

A/HRC/4/CRP.4
13 March 2007

ENGLISH ONLY

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 REVIEW OF PROCEDURES
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 (WG). 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 (SPs); H.E. Mr. Mousa Burayzat, Permanent Representative of Jordan, to facilitate the component on expert advice and H.E. Mr. Blaise Godet, Permanent Representative of Switzerland to facilitate the component on complaint procedure. Also pursuant to this decision, four rounds of open-ended inter-sessional 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 first session of the WG took place from 13 to 24 November 2006. At the closure of the component on special procedures of the WG two documents were submitted. The Facilitator submitted a paper entitled Special Procedures: Preliminary conclusions prepared under the authority of the Facilitator and Vice-President of the Human Rights Council, H.E. Mr. Tomas Husak (Czech Republic) (A/HRC/3/4). The Secretariat submitted a paper entitled Special Procedures: Summary of the discussion prepared by the Secretariat (A/HRC/3/CRP.2).

5. The mandate of the WG was expanded by HRC resolution 2/1 of 27 November 2006 in which the WG was requested to review the revised draft manual of the United Nations human rights special procedures of June 2006 and to make recommendations on possible additions or amendments thereto. The WG was also requested to draft a code of conduct regulating the work of the special procedures, taking into account, *inter alia*, the suggestions made by the members of the Council during the discussions at its second session on the reports of the special procedures mandate holders, as well as at previous formal and informal sessions of the Working Group.

6. The present paper summarizes the discussion in the segment on special procedures held during the second session of the WG (5 to 16 February 2007).

7. In accordance with Council decision 1/104, the Secretariat posted on the Extranet page of the Council all contributions received, before, during or after the session of the WG, by States members of the United Nations (UN), non-member States and observers as well as non-governmental organizations (NGOs).

8. The present summary is limited to the main points expressed by participants during the six meetings allocated to this segment of the WG.

I. ORGANIZATION OF WORK

9. 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 six were dedicated to the special procedures (review of mandates). For the timetable of the WG, see annex I to the present report.

10. The meetings were attended by representatives of States members of the Council, observer States of the Council, observers of non-member States of the UN and other observers, as well as observers of UN entities, specialized agencies and related organizations, intergovernmental organizations and other entities and NGOs. The meetings were also attended by special procedures mandate-holders Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Ms. Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences, Ms. Leila Zerrougui, Chairperson-Rapporteur of the Working Group on Arbitrary Detention; and Mr. Martin Scheinin, Special Rapporteur on the protection and promotion of human rights while countering terrorism.

II. OPENING OF THE WORKING GROUP

11. The Facilitator opened the first meeting on the special procedures of the WG's second session on 6 February 2007. He circulated a draft non-paper relating to the following topics:

1. Selection and appointment of mandate-holders;

2. Review, rationalization and harmonization of mandates: general criteria;
3. Achieving coherence and proper coordination between the mandates;
4. Relationship with the Human Rights Council;
5. Cooperation by and with Governments;
6. Relation between the mandate-holders and with the other human rights mechanisms and actors;
7. Organization and logistics – Support of the Office of the High Commissioner to the special procedures;
8. Other issues related to working methods.

12. The draft non-paper also highlighted Facilitator's proposals on each topic in light of the elements of convergence and the elements requiring further discussion identified by him as a result of previous debates (see Annex II).

III. GENERAL DISCUSSION

1. Selection and appointment of mandate holders

13. The above-mentioned topic relates to point 1 in the non-paper submitted by the Facilitator.

14. On the selection of mandate-holders, there appeared to be consensus on the need that mandate-holders meet a number of fundamental requirements such as expertise, integrity, independence, objectivity and impartiality. It was stated that the selection of mandate-holders should ensure equitable geographic distribution and gender balance. The opinion that equal representation should be given to all legal systems, cultures and religious values was submitted, as was the view that successive mandate-holders should represent different regional groups.

15. With respect to term limits, there appeared to be consensus on mandate-holders serving for a maximum of two consecutive 3-year terms. The view was expressed that individuals should be eligible for holding another mandate only after a lapse of time. It was submitted that mandate-holders should exercise only one human rights mandate or a UN mandate at a time and avoid possible conflicts of interests.

16. The main issue discussed under this topic concerned the procedure of mandate-holders' designation.

17. Those in favour of the election of mandate-holders reiterated that there would be no incompatibility between the independence of mandate-holders and their election by States, as in the case of the treaty bodies, international judicial bodies such as the International Court of Justice, the International Criminal Tribunals on the former Yugoslavia and on Rwanda, the International Criminal Court, and other international judicial and *quasi*-judicial bodies, created at the regional level, such as the European, Inter-American and African Courts of Human Rights, the European Court of Justice or the Inter-American and African

Commissions of Human Rights. It was also submitted that the use of mechanisms such as rosters have led in the past to an absence of rotation of mandate-holders.

18. Those in favour of the appointment of mandate-holders submitted that elections would not guarantee their independence. They stressed that there should be greater transparency in relation to the qualification of candidates. A three-stage process was proposed. Firstly, there would be a pre-screening of prospective candidates with the participation of all relevant stakeholders. Secondly, suitable candidates would be included into a roster which would ensure equitable geographic distribution and gender balance. Thirdly, the High Commissioner for Human Rights (HC) would appoint a candidate from that roster based on the specific requirements of the respective mandate and in consultation with all stakeholders. The analogy with the treaty bodies was disputed.

19. There appeared to be growing appreciation of a third option, a so-called hybrid or mixed model that would combine both elements of election and appointment. According to this procedure, the President of the HRC would select five of six names from a roster of candidates maintained by the OHCHR after consultation with all regional groups, and the HRC would elect the mandate-holder.

2. Review, rationalization and harmonization of mandates: General criteria

20. The above-mentioned topic relates to point 2 in the non-paper submitted by the Facilitator.

21. On 13 February, the discussion focused on the review and rationalization of mandates, with some reference to the document entitled Basic Information on Special Procedures and previously circulated by the Secretariat.

22. The Facilitator invited all delegations to bear in mind the interest of the victims of human rights violations. He noted the need to rationalize and harmonize the existing system while ensuring its efficiency and coherence. He suggested a focus on identifying protection gaps. He considered that unnecessary duplications should be eliminated and terminology could be harmonized.

23. There appeared to be consensus on some of the principles identified by the Facilitator as elements of convergence of the review process, such as: universality and interdependence of human rights; cooperation without selectivity; promotion of the inter-relatedness of human rights and balanced attention to the enjoyment of all rights, including the right to development, and to violations of all human rights; accountability of Governments and of mandate-holders. It was also submitted that the review process should aim at protecting human rights and preventing human rights violations, as well as at streamlining the existing SPs system.

24. No specific criteria for the individual review of mandates were agreed. It was proposed to conduct the review through clustering of existing mandates. In particular, it was suggested to separate country mandates from thematic mandates.

25. For thematic mandates, it was suggested that the review could follow the framework of clustering the mandates into (1) civil and political rights, (2) economic, social and cultural rights, and (3) specific groups. Reservations were expressed towards this proposal on the ground that the interdependence, interrelatedness and indivisibility of human rights issues would make clustering controversial.

26. Reference was made to existing gaps in the area of cultural rights as well as in relation to effective access to the justice system. It was submitted that greater attention should be devoted to issues such as human rights and international solidarity and the situation of human rights in the Palestinian territories occupied since 1967. It was stressed that the option of creating new mandates should be considered. It was considered that any new mandates should be established following clearly defined criteria.

27. There appeared to be general agreement on the need to analyze in greater detail existing working groups with a view to eventually transforming some of them into special rapporteurs. In this respect, reference was made to the Working Group on Enforced and Involuntary Disappearances as well as to the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination.

28. On country mandates, opinions differed. It was stated that all country mandates should be abolished as being the main source of confrontation, politicization, selectivity and double-standards under the former Commission on Human Rights (CHR). The Council should not repeat mistakes of the past and could make use of other mechanisms to assess human rights situations at country level such as the future universal periodic review (UPR) and special sessions. It was, however, pointed out that the existing mandate on the situation of human rights in the Palestinian territories occupied since 1967 should not be considered a country mandate and should accordingly be maintained until the end of the occupation.

29. It was suggested to distinguish between country mandates established under item 9 of the CHR agenda and those established by consensus under item 19. While the first should be discontinued, the latter could be maintained, provided that they function in a cooperative manner and focus on capacity building, advisory services and technical cooperation upon request of the country concerned.

30. It was also submitted that the category of country mandates should be maintained. The establishment of country mandates should be regarded as one tool among other instruments that the Council could make use of, if and when needed. It was noted that country mandates have historically played a role in the promotion and protection of human rights. It was submitted that they serve different purposes and could not be replaced by the UPR or special sessions. It was stressed that SPs could provide valuable inputs to both fora

by submitting, for example, background material to the UPR or by participating in special sessions.

31. It was suggested that the WG could establish general criteria or guidelines for the establishment of new country mandates or consider additional tools, such as the use of special representatives or envoys or independent experts and the establishment of a standing mechanism to consider country situations that are referred to it by the HRC. It was also suggested that an expert could be appointed for every country to assist with the UPR, and to engage in the follow-up to the outcome of that process.

32. It was felt that the review process should be conducted with the direct involvement of mandate-holders. It was therefore proposed to invite them to reflect on the evolution and functioning of their respective mandates, during the interactive dialogues at the forthcoming HRC session in March 2007. It was also proposed that mandate-holders identify, through the Coordination Committee, protection gaps and overlaps in the system, in a paper to be submitted to the WG. This would be beneficial to the WG and to those delegations who might incur difficulties in following the different WGs and the interactive dialogue due to staff constraints.

33. On the issue of accountability, different opinions were expressed. It was noted that Governments and mandate-holders are both accountable, but in a different manner and context. It was suggested that while States are accountable to their people and the HRC for the implementation of their human rights obligations, mandate-holders are accountable to the HRC for the implementation of their mandates. In this regard, it was noted that it is the prerogative of the Council to create mandates and define their scopes, to receive and examine SP's reports, hold inter-active dialogues and adopt resolutions concerning their recommendations and mandates. It was stressed that while the independence of mandate-holders should be preserved, they should strictly adhere to the scope of their mandates, avoid any conflict of interests and respect domestic legislation. They should also pay attention and verify the accuracy of the information that they collect. It was suggested that in their communications with States, they should use the diplomatic channels of permanent missions in Geneva. In this regard, while it was observed that some exceptions could in principle be justified in urgent cases, the need to define the meaning of "urgent" was noted. It was recalled that States have an obligation to facilitate the work of mandate-holders.

34. The opinion that SPs are accountable to the HRC and that the debate should focus on the lack of accountability of States rather than of mandate-holders was also expressed. It was noted that there was need for enhanced national implementation of recommendations of mandate holders. It was pointed out that the UPR could contribute to improving the situation in this regard highlighting the degree of cooperation with and the follow-up given to recommendations.

3. Achieving coherence and proper coordination between the mandates

35. The above-mentioned topic relates to point 3 in the non-paper submitted by the Facilitator.

36. There appeared to be consensus on the need to improve the coherence of the system with regard both to the establishment and the functioning of SPs. It was felt that SPs working methods should be predictable, transparent and impartial.

37. Views diverged on whether the review process should deal in detail with working methods. The opinion that the review of SPs working methods should exclusively be dealt with by the WG was expressed. It was also suggested that the process should be left to SPs and their Coordination Committee for self-regulation.

38. The question of a code of conduct (CoC) was also discussed. It was submitted that such a document should be seen as a means of guaranteeing the expertise and the professionalism of mandate-holders as well as a tool to safeguard their independence rather than limit the exercise of their mandates. The importance of the Manual of Operations was acknowledged. However, it was emphasized that the CoC and the Manual of Operation should remain distinct from each other. The African group announced that it would consult with all regional groups on the draft CoC to ensure transparency and inclusiveness. The draft would be circulated to all delegations through the Facilitator and the Secretariat.

39. The opinion that the CoC would add no value to the existing framework was also expressed. It was considered that there already exists a CoC for the SPs, namely the 2002 UN General Assembly Regulations Governing the Status, Basic Rights and Duties of Officials, other than Secretariat Officials, and Experts on Mission (Regulations). It was submitted that these Regulations cover many issues including competence, impartiality, integrity, conflict of interest, and relations with States, non-governmental organisations (NGOs) and the media. It was noted that all States currently have the possibility to comment on the draft revised Manual. Concern was expressed about the risk that a CoC would affect the independence of mandate-holders and the credibility of the SP system.

4. Relationship with the Human Rights Council

40. The above-mentioned topic relates to point 4 in the non-paper submitted by the Facilitator.

41. It was submitted that there is a need to enhance the format, structure, contents and timeliness of the SPs reports. It was considered that reports should be operational, providing Governments with realistic and feasible recommendations to improve their human rights records. Reports should also be accurately prepared after due and thorough consultation with the Governments concerned while reflecting on the latter's observations. They should be based on credible and objective information and considered within an adequate and appropriate time.

42. The view was also expressed that the HRC should not dictate the content of the mandate-holders' reports. It was argued that in the process of preparation of reports, consultations with the Governments concerned should be strictly focusing on correcting factual information only.

43. The need to strengthen the follow-up to SPs recommendation was highlighted. It was stated that, while recommendations of mandate-holders should be welcomed, the Council could only follow-up on the implementation of those recommendations that it had itself approved by decision or resolution, as the Council is not a body subsidiary to mandate-holders. It was also observed that it would not be realistic to expect that all recommendations will be implemented. It was noted that only treaties that are duly ratified are binding, and such binding nature may not be attributed to the recommendations made by the SP.

44. The opinion that the Council could also explore other mechanisms in order to strengthen its interaction with the SPs was also submitted. It was suggested that the Council could hold informal briefings with the SPs or request from SPs reports on specific issues. It was stressed that the guiding role of the Council should not amount to inappropriate oversight, and that the independence of mandate-holders be always respected. In particular, it was considered that mandate-holders should be free to focus on priorities within the framework of their mandate that require specific attention.

5. Cooperation by and with Governments

45. The above-mentioned topic relates to point 5 in the non-paper submitted by the Facilitator.

46. It was felt that cooperation is essential for the effectiveness of SPs. The opinion that SPs should continue to use mechanisms such as urgent appeals, letters of allegations, requests for information, recommendations and visits was submitted. Views were expressed on the need for a standardization of the urgent appeals procedure. Reference was made to the rules adopted by the Working Groups on Arbitrary Detention and on Enforced

Disappearance. On the other hand, it was felt that proposals in this regard should not limit the independence of SPs.

47. It was stated that appeals and requests for information must be objective, credible and justified. The opinion that the invocation of urgency should not justify any violation of diplomatic protocol by mandate-holders was submitted.

48. On the issue of possible duplication with the work of treaty bodies, it was observed that SPs communications do not judge the merit of allegations but request information. It was noted that not all countries are States parties to all human rights treaties, and that some States parties do not recognize the right of individual petition. It was considered that SPs should continue to issue letters of allegation and to publish reports on the responses received by States. It was suggested that SPs could publicly denounce situations if no responses are received from the State concerned within a reasonable time.

49. The opinion that all States, especially Council members, should issue standing invitation to SPs was also submitted. Views were expressed that standing invitations are not the only or major indicator of cooperation by States. It was stated that SPs should be able to brief the Council on urgent issues and situations when necessary, in order to allow the Council to fulfill its mandate to prevent human rights violations, as well as to respond in a timely manner to human rights emergencies.

50. The involvement of UN country teams in the preparation of visits by SPs, recommendations or follow-up on implementation was discussed. In this regard, the opinion that such an involvement could become controversial was expressed.

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

51. The above-mentioned topic relates to point 6 in the non-paper submitted by the Facilitator.

52. The view was expressed that cooperation and coordination between mandate-holders and other human rights mechanisms is essential for the effectiveness of the SPs system, particularly to avoid duplication. Initiatives such as joint reports or missions were encouraged. Diverging opinions were submitted on the possible role of the Coordination Committee in enhancing cooperation. It was stated that the Coordination Committee could play an important role in this regard. On the other hand, it was emphasized that it should remain an informal body.

53. On the interaction between the SPs and the UPR, diverging views were exchanged. It was suggested that there should be no linkage between the two mechanisms. On the other hand, it was submitted that SPs should be able to interact with the UPR as a source of information, that their recommendations form the basis of the review, and that mandate holders participate in the process.

54. On the interaction between the SPs and the future complaint procedure it was stated that, for example, SPs reports could be made available to the complaint procedure, while the need to maintain and preserve the confidential nature of the procedure was emphasized.

55. Diverging views were expressed on the possible relationship between the SPs and the treaty bodies. It was suggested on the one hand that overlap should be reduced by avoiding linkages between the mechanisms, and on the other hand, that mandate-holders should directly interact and participate in the work of the treaty bodies, including through information sharing.

7. Organisation and logistics – support of the Office of the High Commissioner to the special procedures

56. The above-mentioned topic relates to point 7 in the non-paper submitted by the Facilitator.

57. The debate highlighted that the system of SPs should be able to rely on qualified, professional, independent, experienced, long-term and regionally balanced personnel. It was submitted that OHCHR professionals who assist mandate-holders in their work should be representative of all legal systems, cultures and civilizations. However, it was also noted that issues relating to OHCHR staff composition would fall outside the mandate of the WG and of the HRC.

58. The view was expressed that the system of the SPs should be supported by resources from the UN regular budget.

59. The need for improvements in respect of mandate-holders' reports was also discussed. It was considered that equal and balanced attention should be devoted to all categories of rights and that mandate-holders' reports should adequately reflect comments made by Governments.

8. Other issues related to working methods

60. The above-mentioned topic relates to point 8 in the non-paper submitted by the Facilitator.

61. The view was expressed that the OHCHR's field presences should not be involved in the preparation of country files, country visits as well as in tailoring recommendations by SPs. Reports of SPs should be shared only with the General Assembly. It was considered that SPs are accountable to the HRC and to the General Assembly, of which the HRC is a subsidiary organ. Their interaction should therefore only be limited to these two bodies. It was also stated that there should be clear guidelines approved by the Council for media interaction by SPs. It was submitted that the publicizing of visits, urgent appeals and recommendations that aim at improving the human rights situation in a particular country could lead to politicization.

62. The view was expressed that any attempts by the HRC to limit the mainstreaming of human rights or to limit the interaction between human rights procedures and the rest of the UN system would send the wrong signal. It was recalled that all reports, recommendations and declarations by the SPs are available on the Internet. It was suggested that they are taken into consideration by all components of the HR machinery, including the UPR, and by all UN agencies, including at the country level.

63. It was also considered that media interaction is essential to awareness-raising and as a tool of promotion and protection of human rights. It was stated that the question should not be how to control, limit, restrict, supervise or hinder the interaction between SPs and media, but how to improve their reciprocal relations in the light of new potentials offered by mass media.

IV. CLOSURE OF THE SESSION

64. On 15 February, the WG concluded the meetings on its segment on the review of mandates of SPs. In a brief summary of the discussions, the Facilitator emphasized the following elements:

- thematic mandates would need minor adjustments; while for country-mandates a distinction needed to be made between those created under former item 19 of the CHR agenda and those established under former item 9;
- the need for greater coordination of special procedures as a precondition for the improvement of the system;
- all special procedures should enjoy equal and adequate support;
- all human rights, given the interdependence and interrelatedness of the issues at stake, should be given equal and adequate attention;
- the establishment of new mandates during the *ad interim* period should be carefully examined;
- cooperation from States is essential for the effectiveness of the system.

65. The Facilitator stated his intention to submit two new non-papers prior to the fourth session of the Council in March 2007, one focusing on the overall system of SPs and a second one identifying criteria and providing recommendations on individual mandates. He invited delegations to further reflect on the prevention of future protection gaps as well as on the closing of existing ones, and on how to prevent a fragmentation of the human rights system.

66. Algeria, on behalf of the African Group, announced that it was consulting with all Regional Groups on a draft CoC, which would subsequently be circulated to all delegations to ensure transparency and inclusiveness.

67. The Working Group thus concluded its second session.