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Principles to guide a successful outcome of the Review of the UN Human Rights Council as it relates to the Special Procedures

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INTRODUCTION

The Human Rights Council (the Council) is preparing to undertake a review of its work and functioning based on a provision in the resolution which established it.¹ The review is likely to conclude in 2011. We expect that the Special Procedures will be discussed at length during the review of the work and functioning of the Council, and it is essential that everything possible be done to ensure that they emerge stronger from this process.

The system of Special Procedures - the independent and expert thematic and country mechanisms - are central to the operation of the Council. The Council inherited and formally “assumed” this system from the former Commission on Human Rights (the Commission) as per the General Assembly’s request that the Council “maintain a system of Special Procedures”.²

Although there are welcome suggestions of an emerging consensus among member states that the review should not seek to re-open either the resolution which created the Council or those that laid out the modalities of its work (otherwise known as the “institution-building” text) in this process, we anticipate that this will not prevent efforts to constrain the effectiveness of the system of Special Procedures.³

1 General Assembly resolution A/RES/60/251, adopted on 15 March 2006, provides for the Council to review its work and functioning five years after its establishment, and to report to the General Assembly.

2 The term “Special Procedures” is used to describe the special rapporteurs, special representatives, independent experts and working groups established by the Human Rights Council. They are referred to as “thematic mechanisms” if they are mandated to review particular violations on a global scale and “country mechanisms” if their mandate is specific to one country or territory. The Special Procedures are experts drawn from all regions of the world who serve in an independent and unpaid capacity. Currently there are 8 country mechanisms and 31 thematic mechanisms (a list of Special Procedure mandates is available at the following link: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>)

3 General Assembly resolution A/RES/60/251 and Human Rights Council resolution A/HRC/RES/5/1, Institution-building of the United Nations Human Rights Council adopted on 18 June 2007. The Institution-building text includes provisions on the selection of mandate-holders and on the review of the mandates. Pursuant to Human Rights Council decision A/HRC/DEC/5/101, the institution-building text was adopted together with Human Rights Council Resolution A/HRC/RES/5/2 on a code of conduct for special procedures mandate-holders.

Since the Council was established, there have been some positive developments in connection with the Special Procedures. Without attempting an exhaustive assessment, these include more frequent opportunities for states to demonstrate their commitment to the Special Procedures through membership pledges, the process of elections and during the Universal Periodic Review (UPR) process. The Council gives increased attention and visibility to the reports and findings of the Special Procedures through consideration throughout the year of the Special Procedures' reports, through the use of their findings during UPR examinations, and through the interactive dialogues, which include states, NGOs and national human rights institutions, and are webcast. The Council has sought to deploy or otherwise use its Special Procedures to deal with situations of gross human rights violations. The role of the Coordination Committee, the body established by the Special Procedures and comprising some mandate-holders to coordinate aspects of their activities, has been formally recognized by the Council.⁴

However, there have also been negative developments. They include the undermining of individual mandate-holders through repeated personal attacks casting doubt on their integrity and vague allegations of breaches of the Code of Conduct, and the use of negotiations on resolutions to admonish mandate-holders when their reports address issues that displease some states. The Council must respond appropriately to such acts; they must not be allowed to undermine the critical elements of the Special Procedures system that make them a unique and vital organ to the Council's functioning.

The upcoming review provides an opportunity to strengthen the system of Special Procedures. The following **ten principles** can be used to guide a successful outcome:

⁴ The Coordination Committee was established by the Special Procedures in 2005 to assist in the coordination among mandate-holders and to act as a bridge between them and the OHCHR, civil society and others, in promoting the standing of the Special Procedures. Its role was recognized by the Council in Presidential Statement "PRST/8/2. *Terms of office of special procedures mandate holders*" 18 June 2008. The Presidential Statement envisages a role for the Coordination Committee in the renewal of mandate holders in office. Moreover, the Chair of the Coordination Committee, or one of its members, has regularly addressed the Human Rights Council since it began functioning. Also the President invites mandate-holders to Special Sessions of the Council through the Coordination Committee (as noted in the "*Report of the sixteenth meeting of special rapporteurs/representatives, independent experts and chairs of the working groups of the Special Procedure of the Human Rights Council*" UN Doc. A/HRC/12/47, 22 July 2009).

1 The Council must support the Special Procedures in monitoring and responding to allegations of violations against an individual or on a large scale occurring anywhere in the world, including through rapid response.

This would ensure that the Special Procedures remain **innovative, responsive and flexible mechanisms**. The Council should be alert to warnings from the Special Procedures of existing or emerging situations of grave or massive human rights violations and act on the basis of such warnings. The Council should fully integrate information and analysis from the Special Procedures throughout its country and thematic debates and take account of them in its decision-making.

2 The Council should respect the role of the Special Procedures in providing independent and expert advice and give timely consideration to the issues raised by mandate-holders.

The Special Procedures provide **independent, objective and expert advice** – qualities that states praise consistently and that the Council has recognized, including by requesting Special Procedures' input into its deliberations and mandating follow-up analysis and reporting to them. The Council must respect these qualities fully and take further measures to ensure that Council procedures and the working conditions of the Special Procedures reinforce them. For example, in order to ensure that recommendations arising from country missions are dealt with in a timely fashion, the Special Procedures should be able to bring mission reports before the Council as soon as possible after the mission.

3 The Council must respect the need for mandate-holders **to continue to adapt and develop** independently their working methods according to changing contexts, including new technologies.

The working methods of the Special Procedures have evolved over a period of more than 30 years and have been distilled in the *Manual of the United Nations Human Rights Special Procedures*. A revised version of the Manual, which also takes into account the provisions of the Code of Conduct and the observations of stakeholders, was adopted in August 2008 and is publicly available on the OHCHR

website. One area requiring the attention of the mandate-holders, and the support of the Council, is around individual cases. These should be kept pending before the Council when replies are not received, are inadequate or otherwise do not enable the mandate-holder to be satisfied that the case has been properly addressed.

4 The Council must respect the ability of the Coordination Committee to fulfil without interference the role of promoting the highest standards of professional conduct.

The Council adopted a Code of Conduct with the stated intention of providing clarity on the standards of professional behaviour expected of the Special Procedures. All mandate-holders have a shared interest in **performing their functions to the highest standards of professional conduct** and in upholding the integrity of the Special Procedures system overall. The principle of peer-regulation is crucial to the coherence and viability of a system premised upon independence; for this reason the Special Procedures themselves have assigned to their Coordination Committee a key role to play when issues are raised regarding how mandate-holders have met agreed upon standards in the performance of their duties.⁵ The Council has recognised the role of the Coordination Committee in promoting the highest standards of professional conduct.⁶

5 The Council must be alert to states which consistently disregard their responsibility to cooperate with the Special Procedures and act promptly to remedy any such persistent failure to cooperate.

State cooperation is essential for Special Procedures to be able to fulfil their mandates effectively.

The General Assembly decided that Council members shall fully cooperate with the Council.⁷ In adopting the Code of Conduct the Council stressed the importance of states' cooperation with Special Procedures by urging "all states to provide all information in a timely manner, as well as respond to communications transmitted to them by the special procedures without undue delay".⁸

5 Internal Advisory Procedure to Review Practices and Working Methods 25 June 2008

6 Presidential Statement "PRST/8/2 Terms of Office of Special Procedure Mandate-Holders", 18 June 2008

7 UNGA resolution A/RES/60/251, operative paragraph 9.

8 Human Rights Council Resolution A/HRC/RES/5/2 operative paragraph 1, 18 June 2007

All UN member states should issue a standing invitation⁹ to Special Procedures and facilitate their requests to go on mission, in accordance with the Special Procedures Terms of Reference for visits. If they have not issued a standing invitation, states should do so when seeking membership of the Human Rights Council. Cooperation should take place during all phases of a mission, including afterwards through follow-up to recommendations.

Cooperation with the Special Procedures should be a key element in assessing a state's suitability for election to the Council.

In 2009 the Special Procedures sent 689 communications to 119 states, concerning at least 1,840 individuals. Yet, as of 31 December 2009, governments had responded to only 32% of these communications.¹⁰ Further, Special Procedures continue to report high number of outstanding visit requests; these are often due to states' lack of response to visit requests or states' delays in proposing or agreeing to dates. Many requests for invitations to visit have been repeatedly ignored over a number of years.

The Council should establish benchmarks for what "cooperation" means in practice.

For example, in the case of urgent appeals, the government concerned should provide a substantive response within five days of the receipt of the communication by the state's diplomatic mission.¹¹

As regards visits, all states should respond to a request for visit within two months. A state that has agreed in principle to a visit should propose dates within a month.

Standing invitations are prima facie indication of cooperation: however, if a state with a standing invitation has failed to respond to a request for visit for over a year, the standing invitation should be deemed to have lapsed.

9 A simple and effective way of facilitating Special Procedures visits is for member states to issue a standing invitation to visit their country to all the Special Procedures. This:

1. Demonstrates their commitment to co-operation with these procedures; 2. Enhances the efficiency of the process by reducing delays and decreasing the administrative burdens on all parties; 3. Enables the procedures (individually and corporately) to plan and prioritize visits more effectively, knowing that the invitation to visit already exists and remains open. As standing invitations still require the government concerned to issue a formal invitation and agree dates for a visit, it is important that states not only issue a standing invitation, but honour it as well.

10 See United Nations Special Procedures Facts and Figures, 2009, http://www2.ohchr.org/english/bodies/chr/special/docs/Facts_Figures2009.pdf. Note that these statistics do not include data from the Working Group on Enforced Disappearances which uses different statistics and working methods

11 If no response is received from the government concerned with 5 days, the communication should be re-sent to the Foreign Ministry

The Council should review regularly states' cooperation with the Special Procedures and explore mechanisms to address persistent cases of non-cooperation. The Special Procedures should bring cases of persistent non-cooperation formally to the attention of the Council.

6 The Council must strongly reject any attempts by states to use the Code of Conduct as an implement to intimidate or otherwise undermine the Special Procedures, individually or collectively.

In adopting the Code of Conduct, the Council urged "all States to cooperate with, and assist, the special procedures in the performance of their tasks"¹². Such cooperation and assistance also requires that all **member states uphold high standards of conduct** when dealing with the Special Procedures. Threats of any kind to a Special Procedure for addressing issues or drawing conclusions with which some states disagree are unacceptable. States that disagree with the findings or conclusions of Special Procedures should address the substance of any such findings or conclusions. Attacks on and threats to the Special Procedures are an attack on the Council itself and the Council should respond appropriately.

7 The Council must respond to **acts of intimidation or reprisals** against those who cooperate or seek to cooperate with Special Procedures.

Appropriate responses include requesting states to investigate allegations of intimidation or reprisals and keep the Council informed of their efforts to investigate such allegations of intimidation or reprisals and to bring perpetrators to justice.

8 The Council should ensure that the system of Special Procedures as a whole is equipped to respond to serious situations of human rights violations and to address in a comprehensive manner human rights protection and promotion.

¹² Ibid. Further article 3(a) of the Code of Conduct, which many States conveniently forget, and which provides: "Mandate-holders are independent United Nations experts. While discharging their mandate they shall (a) act in an independent capacity, and exercise their functions ... free from any kind of extraneous influence, incitement, pressure, threat or interference, either direct or indirect, on the part of any party, whether stakeholder or not, the notion of independence being linked to the status of mandate-holders, and to their freedom to assess the human rights questions that they are called upon to examine under their mandate."

To achieve this, the Council should create new Special Procedure mandates in response to serious situations of human rights violations and to fill gaps in human rights protection and promotion. The Council should consider establishing mechanisms to identify such gaps and it should encourage **Special Procedures to continue to identify both thematic and situation gaps** in their work, according to the terms set out in the institution-building text.¹³ While building on the strengths of existing models for the Special Procedures, such as individual mandate-holders and working groups, the Council should also be prepared to explore new models.

9 The Council must ensure the rigorous application of the **selection and appointment** criteria set out in the institution-building text, to guarantee the selection and appointment of appropriately qualified mandate-holders.

The Council recognised that the **process of appointment** of the Special Procedures mandate-holders must ensure that expertise, experience in the field of human rights, independence, impartiality, personal integrity and objectivity are the paramount considerations in the selection of mandate holders.¹⁴ The principle of transparency underpins the selection process in Chapter II A of resolution 5/1.¹⁵

¹³ Human Rights Council Resolution 5/1, A/HRC/RES/5/3, Annex, paragraphs 58, 60, 63 and 64, 18 June 2007.

¹⁴ Human Rights Council Resolution 5/1, II.A Selection and appointment of mandate-holders.

¹⁵ The new appointment process, established in resolution 5/1 of 18 June 2007 has several stages. The basis of the appointment process is a public list of eligible candidates, reflecting technical and objective requirements, to be prepared, administered and regularly updated by the OHCHR. Resolution 5/1 sets out general criteria for nominating, selecting and appointing mandate-holders. It calls for eligible candidates for appointment as Special Procedures to have demonstrated expertise, relevant experience, independence, impartiality, personal integrity and objectivity. These criteria are to be reflected in the "technical and objective requirements for eligible candidates" to have their name placed on the roster and in the determination of specific requirements for individual mandates by the Consultative Group. The first set of requirements were adopted by the Council at its sixth session in September 2007 in decision 6/102, part C, "Technical and objective requirements for eligible candidates for mandate holders". In determining the second set of requirements, i.e. the necessary expertise, experience, skills, and other relevant requirements for each mandate, resolution 5/1 calls on the Consultative Group to take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders. Resolution 5/1 also requires that all the Consultative Group's recommendations to the President be public and substantiated. On the basis of the recommendations of the consultative group and following broad consultations, in particular through the regional coordinators, the President of the Council is to identify an appropriate candidate for each vacancy and to present to member States and observers a list of candidates to be proposed at least two weeks prior to the beginning of the session in which the Council will consider the appointments. The appointment of the mandate-holders is completed upon the approval by the Council of the President's appointments.

The Council should implement fully the spirit and letter of the selection and appointment criteria as set out in the institution-building text. The nomination, recommendation and appointment processes must be transparent.

In its public report the Consultative Group must substantiate all of its recommendations to the President, in particular by describing how the candidates proposed meet the general criteria for mandate-holders (expertise, experience, independence, impartiality, personal integrity and objectivity) and the specific criteria for each mandate to be filled. All relevant stakeholders should have a real opportunity to contribute to the selection process at each stage.

The role of the Consultative Group should be of an advisory nature. The Group should comprise individuals who are independent and impartial experts. These should be individuals who hold no decision-making position in government or in any other organization or entity which could give rise to a conflict of interest with the responsibilities inherent to being a member of the Consultative Group.

10 Resources for the Special Procedures, both individually and as a system, must be significantly increased and innovative, effective and supportive arrangements should be developed.

The Special Procedures continue to suffer from chronic under-funding because UN regular budget resources are inadequate for their effective functioning. This hinders their ability to perform their functions (e.g., most mandate-holders are now limited to undertaking only two missions a year; some reports are greatly delayed due to lack of resources to translate them into official UN languages), in addition to which Member States ask mandate-holders to take on additional tasks. Hence there is an urgent need for the Regular Budget support to the Special Procedures to be significantly increased. In addition, other options should be explored to remedy the chronic under-resourcing of the system of Special Procedures, including from outside and within the Secretariat. Tasks given to the Special Procedures, and which are in addition to their regular, independently defined work plans in the exercise of their mandates, require additional resources and should be funded. Enhanced staff support, which is of a substantive nature, must also be given due and timely attention by all concerned parties.

BACKGROUND INFORMATION

Following the establishment of the Council in 2006, the system of Special Procedures was subject to a year-long assessment by the Council which aimed to review and, where necessary, improve and rationalize them. The results of that process are contained in the institution-building text and in a Code of Conduct.¹⁶ The institution-building text deals with the appointment process for mandate-holders and sets out a framework for the review of each individual mandate and the creation of new ones or the termination of existing ones.

Subsequently, and during the course of 2007 and 2008, all of the thematic Special Procedures mandates underwent a further individual review before being extended.¹⁷

In contrast, mandates created by the former Commission on Belarus and Cuba were terminated at the time of the adoption of the institution-building text. The institution-building text recalled that the duration of the mandate on the situation of human rights in the Palestinian territories occupied since 1967 “has been established until the end of the occupation”; this provision has been used, unconvincingly, as justification for failure to review this mandate.¹⁸ Mandates on the Democratic Republic of Congo and on Liberia were terminated by the Council without an objective assessment of the need to continue them. The mandate of the Special Rapporteur on Sudan was replaced by an Independent Expert without any convincing rationale offered for the change.¹⁹

¹⁶ Human Rights Council resolution A/HRC/RES/5/2, of 18 June 2007.

¹⁷ No thematic mandates were terminated or merged – indeed, the Council has created 3 new thematic mandates – on access to safe drinking water and sanitation (an initiative led by the governments of Germany and Spain) and on cultural rights (led by the government of Cuba). A mandate on contemporary forms of slavery which had existed under the former Sub-Commission on the Promotion and Protection of Human Rights became a thematic Special Rapporteur.

¹⁸ The Special Rapporteur himself expressed concern about the bias and one-sidedness of the mandate that applies only to Israeli violations of human rights and international humanitarian law in the Occupied Palestinian Territories. In his statement to the Council on 16 June 2008, he also called for the Council to review the mandate.

¹⁹ There was no reason to terminate the mandate of the Special Rapporteur on Sudan to establish an Independent Expert, and particularly as the appointment of a new mandate-holder disrupted the continuity of expert attention to the human rights situation in Sudan.