

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

(GENEVA, 28 NOVEMBER 2006)

PRELIMINARY CONCLUSIONS

**PREPARED UNDER THE AUTHORITY OF THE FACILITATOR
AND VICE-PRESIDENT OF THE HUMAN RIGHTS COUNCIL:**

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Human Rights Council
**1st Session of the Inter-sessional Open-ended Intergovernmental Working Group on the
Implementation of OP 6 of the General Assembly resolution 60/251**

Preliminary Conclusions by the Facilitator on the Review of Mandates:
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The review of mandates had been discussed during the nine meetings of the Working Group holding its 1st Session between 13 and 24 November 2006. In general, the proceedings were meeting the expectations. The Working Group managed to elaborate on both the principals of the review as well on its objectives and structure and enabled to enter into a dialogue with many elaborated and substantive contributions by the delegations as well as the Special Procedures mandate-holders.

The Working Group benefited from the lively and structured debate, which has enabled the progress in negotiations in array of respects. Most of the delegations had forwarded their statements to the Secretariat so that they could be posted on the Extranet-page of the OHCHR.

Conceptual questions were tackled at the outset of the debate. As the number of delegations requested clarification on the character of the topics for discussion, the facilitator highlighted that the enlisted relevant issues should serve only as a guiding tool for discussion as they were of non-exhaustive nature. Nevertheless, the list of relevant issues had been revised twice to respond to additions by some delegations. It was repeatedly confirmed that the non-exhaustive character would be maintained. Following the agreement by the Council's Bureau, the preliminary conclusions of the debate were to be compiled by and at the responsibility of the facilitator, taking due account of the widest possible range of concerns at stake.

Several delegations also requested the background documents to be prepared by the OHCHR as stipulated in the HRC decision 104/2006. 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 to the Secretariat before the WG started, it was only at the meeting when the formal request was raised. The OHCHR in reply specified, that it had started the preparations and that the matrix would be finalised in due time, in order to facilitate further deliberations of the WG. The matrix was posted on the Extranet of the OHCHR on 24 November 2006. This document would serve as a basis for the review of mandates, which needs to take analytical and methodological approach, reaching not only compromises across the board, but also consensus.

The quality of the debate benefited further from the essential presence of the Special Procedures mandate-holders. Ms. Leila Zerrougui, Mr. Vitit Muntarbhorn, Mr. Louis Joinet, Mr. Santiago Corcuera and Mr. Doudou Diéne focused on the cooperation with and by the Governments, access to countries, interaction with the Council and the civil society, instruments for the protection of victims and the implementation of the relevant recommendations. Furthermore, they also acknowledged a need for further refinements of a system, one of which instruments should be the revised manual of the Special Procedures.

The substantive discussion consisted of exchanges on the following issues:

1. Selection and Appointment of mandate-holders

Delegations entered the deliberations with an exchange on criteria for mandate-holders, such as qualification, independence, impartiality, equitable geographic representation and the representation of all legal systems, different cultures and eventually religions. Issues of gender balance, procedure of nomination and setting in office, including the pre-screening were also considered. Among the most debated aspects were the alternatives of either election by the HRC or designation by the President of the HRC upon consultations with regional groups, or any other systems. The term limits, non-cumulation of functions at a time and reappointments were also dwelt upon.

There has been overall agreement on further improvements of the criteria, while retaining the independence. A convergence was achieved on the term-limits, i.e. maximum two consecutive terms, while preventing from the cumulation of functions in the human rights domain within the UN (such as membership of the Expert Advice body or of Treaty Bodies). Only one human rights mandate, within the UN, should be exercised at a time. As to the nominations, participants agreed that the nominations of candidates might come from the OHCHR, Governments, NGOs, regional groups, other HR bodies or be of spontaneous nature. There is also agreement on improving the pre-screening of candidates, possibly through eventual establishment of the advisory panel of the UN High Commissioner for human rights. Such panel might be composed from the representatives of the Coordination Committee of the Special Procedures and the OHCHR, and would be charged with screening the candidates to facilitate appointment or elections and consultation with the regional groups.

A bridgeable differences concern a method of safeguarding the equal representation of different regions or rotation of mandates.

Further discussions need to be devoted to actual mechanism of appointment or election. The delegations did not conclude whether elections would correspond in this respect to the necessary requirement of independence, as it may cause a “conflict of interest”. Whereas the floor had been divided, due account may be taken of, as a way out, of the “hybrid model”. 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 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

The discussion provided for an exchange on the situation that merit attention at the country level and the thematic issues to be analysed, how to safeguard the inter-relatedness of human rights and balanced attention to all violations and evaluation of gaps.

There was overall agreement on a need to further strengthen and refine the role of Special Procedures both to improve the enjoyment of human rights as well as the prevention and protection against human rights violations. 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 in interaction with other relevant UN bodies. On the other hand, the country focus was considered also essential, as the deficiencies regarding the enjoyment and prevention and protection of human rights take place in individual countries. As regards the country mandates, it was agreed that the past controversy over just some of them should not spill-over

to the Council. New and predictable criteria in this respect need to be established. A number of delegations stressed the contribution of Special Procedures with regard to advisory services and technical cooperation. Though, there is scope for further improvement and strengthening in this domain.

Out of the debate arose also bridgeable gaps. Some delegations e.g. requested limiting the country impact of the thematic mandates, although these proposals have not been elaborated upon or specified. Other delegations have called for retaining the country mandates for exceptional circumstances, e.g. to address gross and systematic violations of human rights. Nevertheless, the criteria in this respect need to be set or further refined. It has not been concluded 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 agreed upon by the UN Summit in 2005. In 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 were created by consensus and contribute to the provision of advisory services and technical cooperation.

Further discussions need to dwell on the interaction between the UPR and the Special Procedures, as some delegations would like to see the UPR, and eventually the Special Sessions of the Council, as a primary instrument for country considerations. Others objected, that an envisaged periodicity of the UPR might result in protection gap. Another issue at stake is to what extent could the UPR contribute to the establishment of Special Procedures. Lastly, one delegation presented the criteria, i.e. quorum for tabling the country resolutions and the eventual establishment of country mandates.

Discussion followed by an exchange on the former topic 9:

Review, Rationalisation and Harmonisation of Mandates: General Criteria

Delegations dwelled on means of improving universality of human rights, achieving proper balance between civil, cultural, economic, political and social rights and the right to development, and prospects for increased enjoyment of human rights and level of human rights protection. Related issues of addressing both the thematic and country issues, accountability of actors as a precondition of ensuring human rights, priority areas of thematic mandates, what are the situations that merit 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 for 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.

There has been agreement that the criteria for the review need to be predictable and flexibly applied. The overall goal of improvement of enjoyment and protection against the violations of human rights should benefit from the review. 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 that all the rights stipulated by the Universal Declaration of Human Rights and other human rights instruments will be properly covered. Agreement was also reached that the matrix prepared by the OHCHR shall facilitate the review and will serve as one of its basis. Therefore, the criteria for the review should be applied along the matrix. Moreover, the mandate-holders and Coordination Committee were requested to elaborate on their vision of the outcome of the review. There has been broad support to unification of terminology and the titles of mandates (Special Rapporteurs +

Special Representatives), as well as to the fact that some Special Procedures mandate-holders might be appointed by the Secretary-General.

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 comprehensive approach. Bridgeable differences pertain with regard to criteria for the establishment of mandates. Whereas some favoured their application only when establishing the mandates, others pleaded for their use not only when establishing, but also during their tenure. There was emerging agreement that the thematic mandates need to function in tandem with the country mandates, when it merits or requires, as the general view on consideration of both thematic and country issues had prevailed. Though, further clarification, standardisation and establishment of criteria of 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.

Other issues still need to be discussed, such as inter-relationship between the Council and the Special Procedures. An inherent question arose, 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 in hand. It was stressed that there must be mutual responsiveness. The other question, that of balance was raised by majority of delegations. Whereas a balance has been achieved in numbers, further refinements as regard e.g. financing and the 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 the 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.

3. Achieving coherence and proper coordination between the mandates

The discussion focused i.a. on the eventual mechanism to assess a need for a mandate, standardisation and coordination of working methods, while reflecting on the specific features of individual mandates and the SP manual and the contributions thereto, as well as regulations governing the Status, Basic Rights and Duties of Officials/Code of Conduct. Attention has been also drawn to improvement of responsibilities and to the role of the Special Procedures mandate-holders in streamlining a system (inputs by the Coordination Committee).

The discussion proved that there is agreement on enhancing the coherence with respect to establishment and functioning of the Special Procedures and their working methods. The essential role of the Coordination Committee with regard to harmonisation of the working methods has been recognised. The Working Group could include an issue of draft SP manual as a topic 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 the human rights body etc. It was again recognised, that the thematic and country focus goes in hand.

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

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

4. Relationship with the Human Rights Council

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 interactive dialogue, cluster approach and the regular access to the Council as well as the written and oral updates have been also raised.

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 enjoyed support across the board. There have been common reservations to gaps in follow-up, 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 the UPR to contribute to improving the follow-up.

Only partial agreement has been reached on the relationship between the regular and update reports of the Special Procedures to the Council and on the means of improving the fulfilment of recommendations. The proposals to disperse the information on the extent of fulfilment of recommendations and their follow-up would also merit further considerations.

5. Cooperation by and with Governments

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 to requests for information. Moreover, attention focused also on the level of implementation of recommendations, standing invitations, acceptance to visit and unhindered access to and within countries, follow-up to recommendations and visits, while dwelling on the evaluation of overall cooperation.

A large number of issues have been discussed, most of which bear support, 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 UN Charter, as well as one of the indicators of commitment to human rights. The members of the Council were called-upon to consider issuing the standing invitations, as the country visits are *sine qua non* for fulfilling the mission of Special Procedures. Nevertheless, the country visits presume the consent by the concerned Government. The discussion proved that the cooperation pre-empts the effectiveness of the Special Procedures. The same pays for dealing with the urgent appeals, which require timely responses by the Governments. Different time-limits for regular and urgent responses, but always in real time, seem to be also acceptable. Standardisation of the procedure, form and presentation of urgent appeals were encouraged, as was the standardisation of working methods through the manual of the Special Procedures. The draft manual entails the position of the Coordination Committee on the future shape of a system.

The collection and articulation of the principles to be respected both by the Governments and the Special Procedures is another related issue that merits attention.

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 in countries that do not cooperate, e.g. by SP in tandem with the OHCHR. At the same time criteria for the cooperation with Governments need to be predictable and just, to allow for mutual trust. An objectivity of the reports, including the reactions of Governments to findings by the Special Procedures, has been highlighted. It was agreed that the standardised procedure would be beneficial to the interactive dialogue. Moreover, standardisation of the format of urgent letters and of allegation letters should be also envisaged. The unification of terminology and clarification of terms would make the system understandable to wider audience. The mandate-holders were encouraged to authorise the communications by the Special Procedures and to base them on credible information.

Several delegations tried to set the parameters of the cooperation of the Special Procedures with the Governments and UN country teams, including stressing the rights and duties of all concerned. The emphasis were laid at the same time on unhindered access to and within countries and its conditions. A cooperation between the Special Procedures, OHCHR and the Governments should take a form of interaction rather than interference, so that the Special Procedures would contribute to fulfilling the obligations of States.

A potential of the UPR to contribute to the fulfilment of recommendations by the Special Procedures was confirmed again. Moreover, it was stressed, that the UPR may enhance the cooperation with the Special Procedures as it can legitimise their action.

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

Under this topic the discussion ensued i.a. on the cooperation and sharing observations between the different mandate-holders, relation between the UPR and complaint procedure and the Special Procedures, means of addressing thematic issues and the interaction with the treaty bodies and NGOs.

As regards the cooperation and sharing the observations, majority accentuated 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 going into details of individual mandates. Instead of focussing on follow-up to individual recommendations, it should contribute to enhancing the coordination of working methods, requests for information, dealing with urgent appeals, going for country visits etc. Mandate-holders were almost unequivocally encouraged to undertake joint activities. An insufficient level of and attention to the *follow-up* have been raised again. Therefore, proposals for the Council to monitor systematically the fulfilment of recommendations were presented. Several delegations have elaborated on the interaction with the UPR. Whereas there is an agreement that the findings and recommendations of the Special Procedures will form a part of the background materials for the UPR, against which the compliance will be assessed, there is no agreement whether and when the mandate-holders could interact with the UPR. With respect to the interaction with the “complaint mechanism”, a confidential character of the complaint procedure should be taken into account. But the interaction of the Special Procedures with the Complaint Procedure through sharing their findings has been supported.

Discussion focused again also on 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. Acknowledging that there is still merit in retaining the

thematic and country focus of Special Procedures, a consensus has been emerging as the country mandates should be established only once meeting predictable criteria, avoiding thus the politicisation 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, as the Special Procedures have been mandated to contribute to improving the enjoyment of human rights and identify shortcomings while safeguarding the human rights protection.

The Special Procedures have been also encouraged to improve the interaction with the treaty bodies, although these two pillars should remain distinct. The potential of contribution to the development of general comments and concluding observations of the treaty bodies does not seem to be exhausted. The 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 the implementation of findings. NGOs should continue to play their role in response to needs of individual victims, if necessary by contributions to public appeals. Several delegations have criticised targeting the NGOs' representatives for cooperation with the Special Procedures.

7. Organisation and Logistics – support to the Special Procedures by the OHCHR

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

Delegations pointed out to 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 Summit to double the regular budget resources for the OHCHR within next five years. Expected increase in regular funding should not preclude voluntary contributions, preferably of un-earmarked or lightly earmarked nature. There has been almost unanimous support to hiring the long-term, professional, regionally balanced staff to the Special Procedures Branch that needs to provide stable surrounding to the mandate-holders. Some of the latest improvements on part of the OHCHR have been presented by the Secretariat, such as functioning of the Quick Response Desk, impact of increase in regular budget funding, induction courses to the mandate-holders and to secretarial staff. Nevertheless, further information in this regard may enlighten the delegations.

8. Other issues related to working methods

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

A general agreement has been reached on the two-way cooperation of the Special Procedures with the UN 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.

There was only partial agreement on the extent of cooperation of the Special Procedures with the other UN bodies, as the bodies should dwell on the core of their mandates.



Review of Mandates

Topics for discussion (Revised version of 16/11/06)

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 the OHCHR, HR bodies, Governments, NGOs**
+ **spontaneous nominations**),
- procedure of setting in office, pre-evaluation by an advisory board?,
- election by the HRC or designation by the President of the HRC upon consultations with regional groups, or other systems?
- term limits (**2 consecutive terms?**), non-cumulation of functions at a time and reappointments
(**after 3 years?**);

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

- **means of improving universality of human rights**,
- proper 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,
- what are the situations that merit 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, to dignity without poverty, minority rights**);

3. Achieving coherence and proper coordination between the mandates

- mechanism to assess a need for a mandate,
- standardisation and coordination of working methods while reflecting on the specific features of individual mandates,
- SP manual **and the 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 HRC,
- guiding role of the HRC,
- submission of information and preparations of reports,
- consideration of reports and follow-up to recommendations,
- interactive dialogue, cluster approach,

- regular access to the HRC 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 the UPR and complaint 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 the 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;

A Review of individual mandates:

A) 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;

B) 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;

C) Recommendations to streamline the working methods or individual mandates

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