

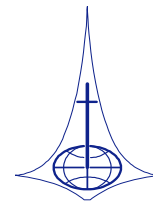


INTERNATIONAL COMMISSION OF JURISTS
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UN Human Rights Council: Criteria for a successful outcome of the Review of Special Procedures



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The Lutheran World Federation



“The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups ...in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources...All states are asked to cooperate fully with these procedures and mechanisms”.
Vienna Declaration and Programme of Action, June 1993

In UN General Assembly’s resolution 60/251 (GA Res. 60/251) establishing the Human Rights Council member states decided that (Operative paragraph 6) ” *the Council 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”.*

The process of the review should entail consideration of the existing system (“all mandates , mechanisms.”) in order to make changes to it through strengthening it (“improve”) or making it more effective (“rationalize”), including through adding, combining or terminating particular mandates/activities.

This document outlines the criteria for a successful outcome of the Special Procedures¹ review:

- **The Special Procedures are at the core of the UN’s human rights machinery. They are among the most innovative, responsive and flexible tools of the human rights machinery, and they play a critical and often unique role in protecting and promoting human rights. Without independent and objective experts who are able to monitor and respond rapidly to allegations of violations occurring anywhere in the world, the ability of the UN – in particular the Human Rights Council - to respond to violations will be severely compromised;**
- **The Special Procedures were created to provide independent, objective, expert advice. Any failure to preserve the independence, objectivity or expertise of the Special Procedures would call into question the review, the Council and the UN as a whole;**
- **It is not enough to merely preserve the existing system of Special Procedures, the system must be strengthened and improved;**
- **The review must lead to a comprehensive and coherent system of Special Procedures;**

The Special Procedures have evolved over time and without any overall institutional framework. As the Special Procedures were never conceived as a “system”, there are recurring difficulties associated with coordination, consistency and overlaps. GA Res. 60/251 OP6 mandates the Human Rights Council to undertake a review in order “to maintain a system of special procedures”. A "system" is more than an accretion of

¹ The term “Special procedures” is used to describe the special rapporteurs, special representatives, independent experts and working groups established by the former UN Commission on Human Rights. Also known as “extra-conventional mechanisms” or “Charter-based mechanisms”, they are sometimes 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 13 country mechanisms and 28 thematic mechanisms (a list of Special Procedure mandates is available at the following link: <http://www.ohchr.org/english/bodies/chr/special/index.htm>)

individual procedures; it is a unified whole acting coherently, harmoniously and effectively. As a stronger, more comprehensive and coherent system, the special procedures will be better able to assist the Council in fulfilling its responsibility to promote universal respect for the protection of all human rights for all, including through more effective contribution to the Universal Periodic Review.

- The appointment process must preserve the independence, professionalism and expertise of Special Procedures;

Independence, professionalism and expertise of mandate holders are absolutely critical to the performance and success of Special Procedures. The extent to which the mandates are filled by individuals who are both independent and expert is dependent in large part upon the quality of the appointment process. A very important element of a good appointment process for Special Procedures mandate-holders is transparency. Many criticisms made of the appointment process in the former Commission on Human Rights (the Commission), boil down to dissatisfaction with the lack of transparency of the process. The appointment process would benefit from increased transparency at all stages. There is also currently a limited pool from which selection is made, and therefore ways must be found to expand the pool of persons identified as qualified to hold Special Procedures' mandates, including steps to redress on-going gender imbalance.

- The independence and expertise of Special Procedures must be preserved through maintaining the mandate-holders' ability to establish and develop their own working methods;

The working methods of the Special Procedures have, like the Procedures themselves, developed incrementally over the years. From the early days of the Special Procedures' existence, the working methods have been described in Special Procedures' reports to the Commission. The bulk of the common working methods has been distilled in the Manual of the United Nations Human Rights Special Procedures (the Manual), which was adopted by the Special Procedures mandate-holders in 1999². A revised version of the Manual has been made available to all stakeholders for comment to be received by 31 December 2006³.

The ability of the Special Procedures to develop their own working methods has enabled them to adapt to new situations or particular circumstances. Efforts to negotiate the working methods of the Special Procedures and impose a code of conduct threaten to seriously interfere with the independence of the Special Procedures, limit their effectiveness in protecting human rights and thereby undermine the credibility of both the new Human Rights Council and the United Nations as a whole.

To the extent that there are perceived concerns about the working methods of the Special Procedures, those could be addressed through the process of consultation and revision of the draft Manual that is underway.

- The review must establish measures to ensure that governments actually cooperate with Special Procedures;

² "Manual for Special Rapporteurs/Representatives/Experts and Chairpersons of Working Groups of the special procedures of the Commission on Human Rights and of the advisory services programme"

³ The Manual was revised in the spring of 2006 and reviewed at the 13th annual meeting of the Special Procedures in June 2006, when a decision was also taken to invite comments from governments, civil society organizations, independent experts and all other stakeholders on the revised Manual. That intention was announced to the Human Rights Council on 23 June 2006 by Vítit Muntarhorn in his capacity as Chair of the Coordination Committee. After some delays due to translation of the Manual into French and Spanish, the OHCHR invited comments through a circular note of 5 September 2006.

There is currently a *de facto* absence of universal geographical coverage by Special Procedures' work that is in part attributable to the failure of some governments to cooperate. This is inconsistent with the emphasis in GA Res. 60/251 on ensuring (PP9) "universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization". It is also inconsistent with the requirement in OP9⁴ that members of the Council fully cooperate with the Council. The principle of universality suggests that a system of Special Procedures should have scope to consider the human rights situation in all member states. The effectiveness of the Special Procedures system relies upon cooperation in terms of states' acceptance of country visits on the basis of the Special Procedures' established terms of reference for fact-finding missions, responses to communications, including urgent appeals, protection of individuals who meet or otherwise cooperate with Special Procedures from acts of intimidation or reprisal, and provision of information about implementation of Special Procedures' recommendations or explanation of impediments to implementation.

- The review must lead to proper integration of Special Procedures' work into the Human Rights Council's deliberations and decision-making

The Human Rights Council can reduce the influence of double-standards, selectivity and excessive politicization that over the years distorted the Commission's efforts by, among other things, paying attention to and acting upon the reports and recommendations of its Special Procedures. Too often the contribution of the Special Procedures was only marginally taken into account in the political decision-making processes of the Commission. Their reports received little scrutiny, even when they identified situations on the brink of massive human rights violations.

Mandate-holders must be able to respond rapidly to information indicating a significant deterioration in the human rights situation of a particular state, including by bringing this information to the attention of the international community.

- The review must lead to better follow-up to Special Procedures' recommendations and analysis

The review must lead to better follow-up to Special Procedures' mission and country reports, to communications and generic studies, each of which have their own particular requirements for follow-up. With its Res. 60/251 (OP 12) the General Assembly decided that "the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be *results-oriented*, allow for subsequent *follow-up* discussions to recommendations and their implementation and also *allow for substantive interaction with special procedures and mechanisms*" [emphasis in italics added].

- The ability of Special Procedures to identify human rights issues and help to develop a better understanding of them and how to address them must also be preserved.

- Adequate support to Special Procedures both individually and as a system must be guaranteed;

⁴ OP 9 "*Decides also* that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership"