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## **United Nations Special Procedures: Building on a cornerstone of human rights protection**



October 2005  
AI Index: IOR 40/017/2005

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM



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October 2005

Summary

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*“During the review, it was widely observed that the special procedures have been one of the Commission’s major achievements and constitute an essential cornerstone of the UN’s efforts to promote and protect internationally recognized human rights and contribute to the prevention of their violation”.*

Report of the Bureau of the 54<sup>th</sup> session of the Commission on Human Rights, December 1998

The Special Procedures are at the core of the UN human rights machinery. As independent and objective experts who are able to monitor and rapidly respond to allegations of violations occurring anywhere in the world, they play a critical and often unique role in promoting and protecting human rights. They are among the most innovative, responsible and flexible tools of the human rights machinery.

However, since the creation of the first Special Procedure mandate nearly 40 years ago, they have been undermined by chronic under-funding, a lack of co-operation from states, marginalization by the Commission on Human Rights in its political decision-making processes, and the variable quality of work of a few mandate-holders. Further, the Special Procedures have developed without an overall institutional framework, which has resulted in recurring difficulties with co-ordination, consistency and overlap.

The decision taken at the United Nations (UN) World Summit in September 2005 to establish a new Human Rights Council to replace the Commission on Human Rights followed months of negotiations in which a broad consensus emerged between member states around the importance of preserving the Special Procedures in any new human rights structure. Amnesty International believes that the creation of the Human Rights Council presents an important

opportunity to fortify the Special Procedures system to enable it to support the principle human rights organ of the UN. In this document, Amnesty International makes a number of recommendations as to how this could be achieved.

This report summarises a 30-page document (9,419 words): *United Nations Special Procedures: building on a cornerstone of human rights protection* (AI Index: IOR 40/017/2005) issued by Amnesty International in October 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

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### **TABLE OF CONTENTS**

1.	Introduction.....	2
2.	Background .....	3
3.	The role and functions of the Special Procedures .....	4
	Recommendations: role and functions of the Special Procedures.....	6
3.a.	The appointment of mandate-holders .....	6
	Recommendations: nominations and appointments process.....	9
3.b.	Managing the growth of the Special Procedures .....	9
	Recommendations: managing the growth of Special Procedures .....	10
4.	Working methods of mandate-holders .....	10
	Recommendation: operations manual .....	11
4.a.	Communications .....	11
	Recommendations: communications .....	13
4.b.	Urgent appeals.....	14
	Recommendations: urgent appeals .....	15
4.c.	Substantive reports .....	16
	Recommendations: substantive reports .....	17
4.d.	Fact-finding missions.....	17
	Recommendations: fact-finding missions.....	20
5.	Follow-up to the work of mandate holders.....	21
	Recommendations: follow-up .....	22
6.	Resources .....	23
	Recommendations: resources.....	24
7.	COMPILATION OF RECOMMENDATIONS.....	24
	Appendix 1 - Current Special Procedure mandates .....	28
	Appendix 2 – Joint NGO Statement, 22 June 2005 .....	30

# United Nations Special Procedures: Building on a cornerstone of human rights protection

*“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*

## **1. Introduction**

This document is a contribution by Amnesty International to the open-ended seminar on “Strengthening and enhancing the effectiveness of the Special Procedures”, which will take place from 12 to 13 October 2005 in Geneva.<sup>1</sup> The meeting arises chiefly from the adoption by the Commission on Human Rights (the Commission) at its 61st session of decision 2005/113 which called on the Office of the High Commissioner for Human Rights (OHCHR) to undertake a number of initiatives as part of the effort to enhance the Special Procedures. Such steps have included convening an informal consultation between member states, mandate-holders and non-governmental organizations (NGOs) on 21 June 2005 during the 12<sup>th</sup> annual meeting of the Special Procedures.<sup>2</sup>

In the meantime, the United Nations (UN) World Summit, held from 14 to 16 September 2005, endorsed an Outcome Document which calls for the establishment of a new Human Rights Council to replace the Commission – the body which has created the Special Procedures.<sup>3</sup> This followed months of negotiations in which a broad consensus emerged

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<sup>1</sup> The term “Special procedures” is used to describe the special rapporteurs, special representatives, independent experts and working groups established by the 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 a particular violation on a global scale, and “country mechanisms” if their mandate is specific to one country or territory. The Special Procedures are experts from all over the world who serve in an independent and unpaid capacity. Currently, there are 13 country mechanisms and 28 thematic mechanisms, as listed in Appendix 1.

<sup>2</sup> A joint statement made by Amnesty International and 21 other NGOs at that meeting is annexed to this document as Appendix 2.

<sup>3</sup> *2005 World Summit Outcome Document*, UN Doc. A/60/L.1, 20 September 2005, paragraphs 157 to 160. See also Amnesty International *Meeting the challenge: Transforming the Commission on Human Rights into a Human Rights Council*, AI Index: IOR 40/008/2005, 27 April 2005.

between member states from all regions around the importance of preserving the Special Procedures in any new human rights structure.<sup>4</sup> The decision to create a new Human Rights Council presents an opportunity to fortify the Special Procedures system to enable it to better support the principal human rights organ of the UN.

In this paper Amnesty International makes a number of specific recommendations for strengthening the Special Procedures system and ensuring its effective integration in the new Human Rights Council.

## **2. Background**

The Special Procedures are at the core of the UN human rights machinery. As independent and objective experts who are able to monitor and rapidly respond to situations and allegations of violations against individuals or groups occurring anywhere in the world, they play a critical and often unique role in promoting and protecting human rights. This poses a dilemma when it comes to reviewing their effectiveness and identifying ways to strengthen them. The Special Procedures have evolved haphazardly and without any overall institutional framework. Over a period of nearly forty years, they have been undermined by chronic underfunding, a lack of co-operation from states, marginalization by the Commission in its political decision-making processes, and the variable quality of work of the mandate-holders. At the same time, there is the suspicion that some governments would like to use efforts to enhance the Special Procedures in order to emasculate them by imposing unnecessary restrictions on their working methods. As the Special Procedures were never conceived as a “system”, there are recurring difficulties associated with co-ordination, consistency and overlap, which were identified by the World Conference on Human Rights and have continued to resonate through subsequent resolutions adopted by the Commission.<sup>5</sup>

In the last decade, three reviews have attempted to tackle some of these deficiencies. Both the Bureau and an intergovernmental working group of the Commission examined the Special Procedures between 1998 and 2000.<sup>6</sup> In 2002, the UN Secretary-General considered the

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<sup>4</sup> For example, the *Summary of the open-ended informal consultation prepared by the Chairperson of the 61<sup>st</sup> session of the Commission on Human Rights pursuant to ECOSOC Decision 2005/217* records that “Most delegations were of the opinion that the reform process should retain the best features and achievements of the Commission. Among them, the special procedures were often mentioned as playing a critical role which would need to be further strengthened”. Report available at: <http://www.ishr.ch/About%20UN/Reports%20and%20Analysis/UN-reform/SummaryInformSession-20-6-05.pdf>

<sup>5</sup> *Vienna Declaration and Programme of Action*, June 1993, paragraph 17. See also resolution 2004/76 on *Human Rights and Special Procedures*, adopted by the 60<sup>th</sup> Commission on Human Rights in 2004.

<sup>6</sup> See UN Doc. E/CN.4/1999/104, *Report of the Bureau of the 54<sup>th</sup> session of the Commission on Human Rights pursuant to Commission Decision 1998/112*, 18 December 1998 and UN Doc. E/CN.4/2000/112, *Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights*, 16 February 2000. Through the adoption of decision 2000/109, the Commission “decided, without a vote: (a) To approve and

Special Procedures in his report “Strengthening of the United Nations: an agenda for further change”.<sup>7</sup> Under Action 4 of that report, the Secretary-General highlighted two related sets of measures: improvement in the quality of reports of the Special Procedures and increased support for their functions. The Special Procedures themselves have also sought to improve their operation, notably through their annual meetings which are convened primarily for this purpose.<sup>8</sup>

### **3. The role and functions of the Special Procedures**

***“The special rapporteurs and experts appointed by the Commission on Human Rights have continued to perform an indispensable role as front-line protection actors”***

*UN Secretary-General Kofi Annan, Report of the Secretary-General on the work of the Organization, August 2003*

The Special Procedures have identified their main role as being to “render the international norms that have been developed more operative. We do not merely deal with theoretical questions, but strive to enter into more constructive dialogues with Governments and to seek their cooperation as regards concrete situations, incidents and cases. The core of our work is to study and investigate in an objective manner with a view to understanding the situations and recommending to Governments solutions to overcome the problem of securing respect for human rights”.<sup>9</sup>

The first of the so-called “thematic mechanisms”, the Working Group on Enforced or Involuntary Disappearances (WGEID), established in 1980, pioneered the functions which have come to characterize the Special Procedures in their efforts to “respond effectively” to allegations of violations.<sup>10</sup> Both the thematic and “country mechanisms” undertake some or all of the following:

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implement comprehensively and in its entirety the report of the Inter-sessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission (E/CN.4/2000/112) (see annex below) adopted by consensus by the Working Group on 11 February 2000”.

<sup>7</sup> UN Doc. A/57/387, 9 September 2002.

<sup>8</sup> The Special Procedures have met annually since 1994, when the High Commissioner for Human Rights chaired their first meeting. This initiative was in response to the call by the World Conference on Human Rights for the Special Procedures to harmonize and rationalize their work through periodic meetings (*Vienna Declaration and Programme of Action, paragraph 95*). The outcome of the most recent annual meeting is contained in the *Report of the twelfth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme*, UN Doc. E/CN.4/2006/4, 20 July 2005.

<sup>9</sup> UN Doc. A/CONF.157/9, *Joint Declaration of the independent experts responsible for the special procedures for the protection of human rights*, June 1993.

<sup>10</sup> UN Doc. E/CN.4/RES/1980/20, *Question of missing and disappeared persons*, 1980. The first country mechanism was the *ad hoc* Working Group of Experts to investigate the charges of torture and

- Act urgently on information that suggests that a human rights violation is about to happen, or is already occurring. Urgent action usually takes the form of direct contact with the foreign ministry of the country concerned, or through the release of a public statement.
- Respond to allegations that a violation has already taken place, through direct contact with the permanent mission of the country concerned in Geneva (or New York if necessary), or through a public statement.
- Undertake fact-finding missions to examine, at first-hand, allegations of violations and provide detailed recommendations and advice to the government concerned.
- Examine the global phenomenon of a type of violation through studies in order to provide an understanding of the problem and its solutions.
- Clarify the applicable international legal framework to address a particular violation.
- Present annual reports to the Commission (and in some cases interim reports to the General Assembly) documenting their activities, which can include a summary of communications with governments, mission reports and mission follow-up, studies and recommendations.

The Special Procedures are among the most innovative, responsive and flexible tools of the human rights machinery. In preserving the Special Procedures for a new Human Rights Council, mandate-holders must be able to continue to perform these core tasks (more information is provided on working methods under section 2 of this report).

The Human Rights Council can minimize the charge 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 has been only marginally taken into account in the political decision-making processes of the Commission. Their reports have received little scrutiny, even when they identify situations on the brink of massive human rights violations.<sup>11</sup>

The Human Rights Council should set out to integrate fully and throughout its deliberations information about both countries and themes produced by the Special Procedures. All reports emanating from the Special Procedures will be pertinent to the discussions of the Human Rights Council, whether they concern urgent and routine allegations of violations and states' responses thereto, outstanding mission requests, steps taken by states to follow-up on recommendations, suggestions for technical assistance needs, or clarification of applicable international law. Should the Human Rights Council decide to adopt a system of global

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ill-treatment of prisoners, detainees or persons in police custody in South Africa. It was established in 1967.

<sup>11</sup> Supra 3, *Meeting the Challenge: Transforming the Commission on Human Rights into a Human Rights Council*, footnote 8.

human rights reviews (whether by peer governments or experts), the work of the Special Procedures must be a primary source of information. The Special Procedures' information must be processed so that it is both regularly and readily available to the Human Rights Council throughout the year.

The Human Rights Council should ensure it regularly gives adequate attention to the reports of the Special Procedures mandate-holders. Building on the positive initiative started at the Commission in 2003, the Human Rights Council should establish an interactive discussion when the Special Procedures present their reports so that there is sufficient time for an extended dialogue with the Special Procedures to allow for a thorough debate on the reports' contents.

### ***Recommendations: role and functions of the Special Procedures***

- **The Special Procedures should be preserved in the new Human Rights Council and strengthened in their ability to perform their core functions of issuing urgent appeals and transmitting allegations, engaging in fact-finding missions, undertaking studies, clarifying international law, and preparing annual and other reports with recommendations for action by governments to protect human rights.**
- **The Human Rights 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 Human Rights 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.**
- **To do so, information from the Special Procedures should be made regularly and readily available throughout the year.**
- **The Human Rights Council should provide for routine, substantive interactive discussion with the Special Procedures to hear their findings and recommendations to promote and protect human rights.**

#### **3.a. The appointment of mandate-holders**

*“The overriding considerations in the appointment of mandate holders should be to ensure the highest standard of professionalism and independence. The requisite independence and impartiality were not compatible with the appointment of individuals currently holding decision-making positions within the executive or legislative branches of their Governments”.*

*Report of the Twelfth Annual Meeting of the Special Procedures  
20 July 2005*

Appointing mandate-holders from all regions of the world who are independent, impartial and have the necessary competence and human rights expertise is key to ensuring a good functioning system. To achieve this, there is a need for increased transparency in the entire nominations and appointments process.

Nominations for candidates may come from states, NGOs in consultative status with ECOSOC and other “appropriate sources”. Special Procedures mandate-holders are usually selected by the Chairperson of the Commission on the basis of consultations with the Bureau of the Commission and the representative of each regional group.<sup>12</sup> Notwithstanding the adoption of Commission decision 2000/109 which endorsed a recommendation that “the professional and personal qualities of the individual – expertise and experience in the area of the mandate, integrity, independence and impartiality – will be of paramount importance” in appointing mandate-holders, some member states have nominated, and the Chairperson has subsequently appointed, candidates who simultaneously held positions within their national government. This is the case in relation to at least two of the current mandate-holders.<sup>13</sup> The process of nominating Special Procedures mandate-holders is usually neither publicized at the national level nor subject to broad consultation. A transparent process should be put in place, which provides for broad consultation with civil society at the national level to attract the best possible candidates. Efforts must be made to redress the on-going gender imbalance. At present, only 16 out of 55 mandate-holders are women.<sup>14</sup>

The OHCHR has proposed the establishment of an “Advisory Panel”, which would be chaired by the High Commissioner for Human Rights (HCHR) and comprise individuals from all regions and belonging to all constituencies (UN system, NGOs, national institutions and mandate-holders). Amnesty International considers that the HCHR should select the panel members, who should include former mandate-holders. The remit of the Advisory Panel will be to broaden the list of Special Procedures candidates on the roster which is maintained by the OHCHR, ensuring more gender-balanced distribution and the widest possible geographic

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<sup>12</sup> There are three exceptions: the Secretary-General has appointed some Special Representatives and an Independent Expert, the High Commissioner for Human Rights has appointed one Independent Expert and one Personal Representative, and the Commission has adopted resolutions which have named a Special Rapporteur and an Independent Expert in the text. See UN Doc. E/CN.4/RES/2000/82 and E/CN.4/RES/2002/68.

<sup>13</sup> To Amnesty International’s knowledge, two of the current mandate-holders were holding government positions at the time of their appointment: the Special Rapporteur on freedom of opinion and expression, and a member of the Working Group on mercenaries as a means of impeding the exercise of the right of peoples to self-determination. In resolution 2004/76, the Commission requested the Secretary-General to “present annually a list of all persons currently mandated to carry out the special procedures mandates, including their country of origin and summaries of their professional background and activities, in an annex to the annotations to the provisional agenda of each session of the Commission;” (OP 12 (a)) The annotated agenda for the 61<sup>st</sup> session of the Commission contains such as a list as an annex, but does not give details of their professional background and activities.

<sup>14</sup> Although there are 41 mandates in total, there are four working groups, each comprising five members.

representation. The Advisory Panel would review the candidates and make suggestions to the Chair of the Human Rights Council.<sup>15</sup>

The Advisory Panel should develop standardized “profiles” for each mandate, linked directly to the mandate and outlining the requirements of the post in greater detail, such as the types of skills and expertise necessary to fulfil the mandate. The Advisory Panel should proceed with putting forward multiple candidates for nomination as soon as a mandate is created or vacant, in order to avoid undue delays.

Thematic mandate-holders serve for two three-year terms, while country-focused mandate-holders are appointed for one year, for a maximum period of six years.<sup>16</sup> Knowing when the mandate-holder’s term will expire means that states, NGOs and other actors can publicize “vacancies” at the national level well in advance, using the proposed OHCHR profiles, and invite experts to put their candidacy forward. The list of applicants should then be made publicly available at the national level to enable civil society to comment. Thereafter, suitable nominations should be submitted to the proposed Advisory Panel.

The curricula vitae of all current Special Procedure mandate-holders should be posted on the OHCHR website.<sup>17</sup>

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<sup>15</sup> *Enhancing the effectiveness of the Special Procedures of the Commission on Human Rights*, paper by the OHCHR (no official UN reference is available).

<sup>16</sup> At its 55<sup>th</sup> session in 1999, the Commission decided that “(ii) To help maintain appropriate detachment and objectivity on the part of individual office-holders, and to ensure a regular infusion of new expertise and perspectives, any individual’s tenure in a given mandate, whether thematic or country-specific, will be no more than six years. As a transitional measure, office-holders who have served more than three years when their current mandates expire will be limited to at most three years of further renewals in these posts. Reassignments of individuals to other mandates will be considered only in exceptional circumstances”. See Chairperson’s statement contained in UN Doc. E/1999/23. The mandate of the Special Rapporteur on the human rights in the Palestinian territories occupied since 1967 is an exception to the one-year practice as this post is mandated to “To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories” (E/CN.4/RES/1993/2, OP 4 (c)).

<sup>17</sup> The curricula vitae are available on the OHCHR website for the Independent Expert on extreme poverty, the Independent Expert on minority issues, the Special Representative on human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on trafficking in persons, especially in women and children. The recommendation for posting curricula vitae on the website was made by the Inter-sessional working group on enhancing the effectiveness of the mechanisms for the Commission on Human Rights. See UN Doc. E/CN.4/2000/112, 16 February 2000, paragraphs 6 and 7. In resolution 2004/76, the Commission requested the Secretary-General to “present annually a list of all persons currently mandated to carry out the special procedures mandates, including their country of origin and summaries of their professional background and activities, in an annex to the annotations to the provisional agenda of each session of the Commission;” (OP 12 (a)) The annotated agenda for the 61<sup>st</sup> session of the Commission contains such as a list as an annex, but does not give details of their professional background and activities.

### **Recommendations: nominations and appointments process**

- The HCHR should pursue her plans to constitute an Advisory Panel comprising individuals from all constituencies, including former mandate-holders, and drawn from all regions.
- The process of identifying and nominating candidates should be much more transparent, and involve broad consultation at the national level to ensure the nomination of individuals meeting the required standards of independence and impartiality, skill and expertise. Nominators should also seek to redress the current gender imbalance in the mandate-holders.
- When reviewing nominations for Special Procedure appointments, the Advisory Panel should request details of the process undertaken by the nominators to identify potential candidates.
- To avoid undue delays in the appointments process, the OHCHR should continue to maintain and update a roster of suitable candidates from all regions.
- The curricula vitae of all Special Procedure mandate-holders should be available on the OHCHR website.
- Consideration should be given to options for removing practical limitations on the participation of suitable qualified experts as mandate-holders

### **3.b. Managing the growth of the Special Procedures**

Since the establishment of the first Special Procedure, the *ad hoc* Working Group of Experts to investigate the charges of torture and ill-treatment of prisoners, detainees or persons in police custody in South Africa in 1967, the Commission has responded to some of the most serious violations of human rights through the creation of expert mandates - 33 thematic mechanisms and 30 country mechanisms in total.<sup>18</sup> The growth in mandates has been most prolific in recent years – since 1997, the number of Special Procedures has increased from 29 to the current level of 41. At the same time, the Commission has prematurely terminated several country mandates, despite clear evidence of a continuing serious human rights situation in the country concerned.<sup>19</sup>

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<sup>18</sup> The “thematic” mechanisms include experts appointed in respect of standard-setting – for example, the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances.

<sup>19</sup> See Amnesty International news service *United Nations Commission on Human Rights fails once again to protect victims of human rights violations*, AI Index: IOR 41/014/2003, 25 April 2003 regarding Sudan.

The Human Rights Council must be responsive to grave and serious violations of human rights, and the creation of new mandates must be among the options available to it. Whether thematic or country-based, new Special Procedures mandates should be established for an initial renewable period of three years so as to ensure continuity and adequate time for mandate-holders to discharge their functions. Situations of gross violations of human rights in a country or territory are seldom rectified in a time-frame of less than three years. Indeed, the Commission has kept on its agenda for at least 10 years, nine out of the 13 countries/territories which have a dedicated country mechanism at present. Only two country mechanisms have ever been disestablished by the Commission after a period of only one year, which would indicate a need for a longer initial mandate.<sup>20</sup> If the situation in a country improved to the extent that a monitoring function were no longer necessary, it would be desirable that a mandate-holder could still act to develop a sustainable program of technical assistance.

Concerns have been voiced about overlapping mandates. However, given that all human rights are interdependent and interrelated, it is inevitable that there are overlaps between some mandates. Nevertheless, it is important for the Special Procedures to pursue their efforts in avoiding duplication as they execute their mandates.

### ***Recommendations: managing the growth of Special Procedures***

- **The Human Rights Council should consider the creation of new country or thematic mandates in response to serious situations of human rights violations.**
- **All new country mandates should be established for an initial renewable period of three years.**
- **The Human Rights Council should be required to take an explicit decision in order to terminate a thematic mandate.**

## **4. Working methods of mandate-holders**

Despite the individual nature of the Special Procedures' mandates and the importance of mandate-holders acting independently, many elements of the Special Procedures working methods are now common to all. They have been compiled into a single document entitled "*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*" (the Manual).<sup>21</sup> The Manual was drafted in response to a request by the

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<sup>20</sup> The mandate of the independent expert on Chad was discontinued after one year in 2005. The mandate of the Special Rapporteur on occupied Kuwait was also discontinued after a year, in 2003.

<sup>21</sup> *Manual for Special Rapporteurs, Representatives, Expert and Chairpersons of Working Groups of the special procedures of the Commission on Human Rights and of the advisory services programme*, June 1999.

first annual meeting of the Special Procedures held in 1994, and adopted by the Special Procedures at their sixth annual meeting in 1999. It has been revised over the course of a number of years and aims to provide guidelines to mandate-holders in the exercise of their functions. The Manual deals with methods of work including sources of information, admissibility, communications with government, and missions. As such it can serve as a basis for inducting new Special Procedure appointees and their staff.

### ***Recommendation: operations manual***

- **The Special Procedures with the OHCHR should revise the Manual so that it reflects best current practice, make it publicly available (including on its website) ensure that it is regularly updated and use it as the basis for inducting new appointees and their staff.**

#### **4.a. Communications**

*“The ability to intercede with governments at the highest level, in a timely and urgent fashion, represents real progress. Urgent interventions take place on a regular basis when there is still hope of preventing possible violations of the rights to life, physical and mental integrity, and security of person. This type of intervention has saved lives, and continues to save lives. Moreover, we are sometimes able to intervene on purely humanitarian grounds to protect people against violations”.*

*Joint Declaration of the Special Procedures*

*Presented at the World Conference on Human Rights, June 1993*

Each year, the OHCHR receives a large number of communications from individuals, or their representatives, seeking prompt action to protect their human rights. If the relevant mandate-holder(s) find(s) the allegations to be credible, she/he communicates with the government, usually in writing. Except in the case of urgent appeals (see below), the Special Procedures communicate “allegation letters” on a periodic basis, with a request for a reply within a fixed period of time of one month. Over 50% of communications are now signed by two or more Procedures as part of their efforts to co-ordinate activities.<sup>22</sup> During 2004, the Special Procedures sent 1,356 communications to 142 states, addressing 4,448 individual cases.<sup>23</sup>

It is the responsibility of mandate-holders to assess the reliability of the information, including the credibility of the source, the consistency of the allegations received, and the precision of the factual details contained in the communication. This process would benefit significantly from the enhancement of the geographical desk officers at the OHCHR as envisaged in the OHCHR’s *Plan of Action*, who will develop further their knowledge of

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<sup>22</sup> *Supra*. 15

<sup>23</sup> *OHCHR Annual Report 2005*.

individual country situations, including national actors, and be able to advise mandate-holders accordingly.<sup>24</sup>

Unlike the individual communications procedures established under the international human rights treaties, there is no pre-condition that the Special Procedures can only act on a case where domestic remedies have been exhausted. Neither the WGEID, which has carefully developed criteria for the submission of cases, nor the Working Group on arbitrary detention (WGAD), which is the only Special Procedure with an explicit mandate to consider individual cases, require the exhaustion of domestic remedies.<sup>25</sup> Likewise, the Special Procedures' counterparts of the African Commission on Human and Peoples' Rights may take up cases without prior exhaustion of domestic remedies. For the Special Procedures system, which is neither quasi-judicial, nor treaty-based, or accusatory, the introduction of a threshold requiring exhaustion of domestic remedies before mandate-holders can act would stifle the responsiveness of the Special Procedures that has been so important in saving lives and preventing violations. As former rapporteur Prof Peter Kooijmans commented: "...humanitarian intervention asks for speed and effectiveness rather than for proper procedures connected with the concept of State responsibility."<sup>26</sup>

Recognizing the need for the Special Procedures to solicit the maximum amount of information from the source to inform their handling of a case, it is important that the "model questionnaires" currently in use by mandate-holders continue to be developed. The questionnaire could seek information about remedies pursued without making it a condition of the case being taken up. The questionnaires should be made readily available on all relevant Special Procedures' webpages, in OHCHR fact-sheets and in the Manual.

In addition, the communications process must enable all Special Procedures to establish a dialogue with the source of the complaint and the government concerned, to provide the source with copies of government responses for further observations and information, and to communicate such further information to the government, while protecting the confidentiality of the source whenever necessary. This is the system in operation by the WGEID.

Although the Commission adopts a biennial resolution calling on states to co-operate with the Special Procedures, including by responding without undue delay to requests for information, the relationship between the Special Procedures and states has been characterized by a lack of co-operation by many governments. For example, in their reports to the 61<sup>st</sup> session of the Commission, the WGAD recorded that it had received replies to only 33.66% of its urgent

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<sup>24</sup> UN Doc. A/59/2005/Add.3, *In Larger Freedom: towards development, security and human rights for all, Report of the Secretary-General*, 26 May 2005.

<sup>25</sup> The WGEID requires the author to provide information showing that "efforts to use domestic remedies were frustrated or otherwise inconclusive". The WGAD requests information about "... action taken, including investigatory action or the exercise of internal remedies, in terms of both approaches to the administrative and judicial authorities, particularly for verification of the measure of deprivation of liberty, and steps at the international or regional levels, as appropriate, the results of such action or the reasons why such measures were ineffective or were not taken".

<sup>26</sup> See *The Role and Action of the UN Special Rapporteur on Torture*, by Peter H Kooijmans in *The International Fight against Torture*, Antonio Cassese (ed), 1991

appeals, while the Special Representative on human rights defenders sent 316 communications but received only 139 replies.<sup>27</sup> The Special Rapporteur on extrajudicial, summary or arbitrary executions recorded a response rate of, on average, 54% to his communications, which he considered to be "...problematic, particularly in the case of a long-established procedure which, for the most part, addresses issues as grave as alleged violations of the right to life".<sup>28</sup> In his recent report to the General Assembly, the Special Rapporteur on torture noted that from December 2001 to November 2004, the rate of response to urgent appeals was only 41%, and that 33 governments had never responded to these appeals at all.<sup>29</sup>

Within the Special Procedures Branch of the OHCHR, the Quick Response Desk has developed a thematic database for processing, sending and filing communications. This has made it possible to find statistics on trends of each mandate, the number of individuals covered, the number of communications sent and government replies received, and analyses of communications sent to and replies received from states. This important information must be an element in the deliberations of the Human Rights Council. Further, public access to this data would facilitate follow-up by NGOs and other stake-holders, in particular at the domestic level.

As more of the Special Procedures start to provide a detailed breakdown of the number of responses received from governments and their assessment as to whether those responses constitute a full and satisfactory reply, it will be easier to identify serious problems in co-operation with the Special Procedures by individual states. Governments should take account of each candidate state's co-operation with the Special Procedures when considering candidates for election to the Human Rights Council.

### ***Recommendations: communications***

- **A primary function of the Special Procedures must continue to be to establish an open and constructive dialogue about allegations of human rights violations with governments.**
- **"Model questionnaires" should be developed for all mandates that are not solely study-based, posted on the OHCHR webpages and included in relevant OHCHR publications.**

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<sup>27</sup> UN Doc. E/CN.4/2005/6, *Report of the Working Group on arbitrary detention*, 11 December 2004 and UN Doc. E/CN.4/2005/101, *Report of the UN Special Representative of the Secretary-General on human rights defenders*, 13 December 2004.

<sup>28</sup> UN Doc. E/CN.4/2005/7, *Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions*, 22 December 2004.

<sup>29</sup> UN Doc. A/60/316, *Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 30 August 2005.

- **Communications should be shared with the source in order to provide the source with copies of government responses for further observations and information, and to communicate such further information to the government<sup>30</sup>.**
- **Information about cases taken up by the Special Procedures, and government responses to them, should be available publicly, provided no threat exists to the source.**
- **Information about communications, including details of states which do not respond to communications at all, do so only partially or else deny the allegations but without substantive explanation, should be regularly considered by the Human Rights Council.**
- **An assessment of the extent of states' co-operation with mandate-holders through providing full and timely responses to communications should be provided by all Special Procedures in their reports.**
- **The Human Rights Council should review states' willingness to respond quickly and fully to the Special Procedures' communications and take steps to encourage those states that persistently fail to do so, including by requesting the HCHR and the Secretary-General to raise such situations at the highest levels.**
- **In considering candidates for election to the Human Rights Council, governments should take account of each candidate state's co-operation with the Special Procedures.**

#### **4.b. Urgent appeals**

A rapid response mechanism to deal with the threat of serious violations in order to avoid irreparable harm was developed by the WGEID and has remained at the core of the Special Procedures ever since. For the most part, urgent appeals are addressed directly to the ministry of foreign affairs of the relevant state, but may also be issued through a public statement if that is more appropriate and effective to the situation concerned. A key feature of the urgent appeals is that they are not accusatory, but rather aimed at preventive measures.<sup>31</sup> Although most urgent appeals concern individuals or groups, the Special Procedures have also intervened in relation to negative institutional developments.

The thematic mechanisms dealing with civil and political rights issue hundreds of urgent appeals each year, and it is a positive development that some of the mandates dealing with economic, social and cultural rights - such as the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Special Rapporteur on the

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<sup>30</sup> This procedure should be followed provided that it would not put the source at risk of harm

<sup>31</sup> Further information about the urgent action procedure can be found in a chapter by former Special Rapporteur on torture Sir Nigel Rodley entitled "Urgent Action" in *International Human Rights Monitoring Mechanisms – Essays in Honour of Jakob Th. Möller*, 2001.

right of everyone to the highest attainable standard of physical and mental health – also use this procedure<sup>32</sup>

Urgent appeals made through public statements can also be an effective way to draw the attention of states and the international community to serious situations of human rights and should be considered among the options for rapid response. So far in 2005, the Special Procedures have issued 103 news releases, of which approximately 16 have been concerned with urgent or preventive action.<sup>33</sup> Such initiatives should not be delayed by unnecessary procedural measures which might impede speedy intervention. While, as a matter of courtesy, it may be appropriate for the mandate-holder concerned to advise the state concerned that an urgent public appeal is to be made, this should not hinder in any way the statement being released rapidly.

Governments should be given very short deadlines to respond to urgent appeals. If they do not respond quickly, or in full, the Special Procedure should be able to treat the information it has received as valid and act upon it as appropriate, including by bringing it to the attention of the Human Rights Council.

### ***Recommendations: urgent appeals***

- **Urgent appeals in response to threats or occurrences of serious human rights violations is the essence of the protective function of the Special Procedures system and must be preserved in the Human Rights Council.**
- **Special Procedures should continue to issue urgent appeals through public statements where they deem it appropriate.**
- **In situations where the government concerned fails to respond promptly to an urgent appeal, Special procedures should bring the urgent appeal and the situation of human rights in the country concerned to the attention of the Human Rights Council.**

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<sup>32</sup> See, for example, UN Doc. E/CN.4/2005/48/Add.1, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, 17 January 2005 and the UN Doc. E/CN.4/2005/51/Add.1, *Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health*, 5 February 2005.

<sup>33</sup> Urgent or preventive appeals made through public statements included the following situations: use of diplomatic assurances by the UK, massive internal displacement and forced evictions in Zimbabwe, food shortages in Niger, the killing of demonstrators in Andizhan, Uzbekistan, continuing detention without charge or trial of individuals held in Guantanamo, killings in Sudan, execution of an individual in Barbados, assumption of direct power by the King of Nepal.

#### **4.c. Substantive reports**

All of the Special Procedures present an Annual Report to the Commission and some are mandated to provide interim reports to the General Assembly. These reports provide an important contribution to the assessment of the situation of human rights in the world, even though mandate-holders emphasize that each report can only be a “snap shot” of the true picture. Limitations have been imposed on the length of reports by the General Assembly so that the Annual Reports of the Special Procedures to the Commission have been restricted to a maximum of 32 pages.<sup>34</sup> At the time, the Special Procedures expressed their unanimous opinion that “such limits undermined their role and effectiveness in carrying out their mandates”<sup>35</sup>. Subsequently, further restrictions have been imposed so that reports of the Special Procedures are now limited to 20 pages<sup>36</sup>.

The Special Procedures’ Annual Reports contain the results of their in-depth studies to advance understanding about the progress and impediments to the full enjoyment of human rights. For example, the Special Rapporteur on torture’s report to the 60th session of the Commission contained his study into the trade and production of equipment which is specifically designed to inflict torture and other cruel, inhuman or degrading treatment or punishment, its origin, destination and form<sup>37</sup>. Although this study was requested by the Commission, mandate-holders have not limited themselves to focusing only on issues identified by a political body. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for example, has used his reports to advance understanding about areas which have otherwise received little attention, such as mental disability and the right to health<sup>38</sup>. Other mandate-holders have prepared reports reviewing developments during their term. The Special Rapporteur on violence against women, its causes and consequences presented a lengthy report which reviewed national, regional and international developments and best practices in combating

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<sup>34</sup> A/RES/52/214, adopted on 22 December in 1997. The resolution invited “all intergovernmental bodies to consider, where appropriate, the possibility of reducing the length of their reports from the desired limit of 32 pages to 20 pages over a period of time without adversely affecting either the quality of presentation or the content of the reports” and decided to keep the length and quality of all documents under review.

<sup>35</sup> Follow-up to the World Conference on Human Rights: note by the High Commissioner for Human Rights, UN Doc. E/CN.4/1997/3, 30 September 1996

<sup>36</sup> UN Doc.4.2003.1 “The report on the ninth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services program, 24 to 27 May, 22 August 2002

<sup>37</sup> UN. Doc E/CN.4/2005/62, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 15 December 2004

<sup>38</sup> UN Doc. E/CN.4/2005/51, *Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health*, 11 February 2005

violence against women from 1994 to 2003<sup>39</sup>. These substantive reports provide important analysis, even benchmarks, in the development of international law, as well as recommendations for governments. It will be important that the Human Rights Council takes account of the findings of these reports and encourages member states to act on the recommendations.

### ***Recommendations: substantive reports***

- **The Special Procedures should continue to produce comprehensive and focused reports to provide in-depth analysis on aspects of their mandates.**
- **The Human Rights Council should take account of their findings and encourage states to act on the recommendations contained in those reports.**
- **The Human Rights Council should consider measures to compensate for the detrimental effect on the content of Special Procedures' reports by the current limitations on their length.**

#### **4.d. Fact-finding missions**

Fact-finding missions make a valuable contribution to the preparation of focused reports by the Special Procedures. The missions can create a space for public discourse around the issues which they raise, which in turn can inform policy-makers and opinion formers. They provide the Special Procedures with an opportunity to meet with victims and their families, NGOs as well as representatives of government, and to visit different sites in the country, such as places of detention, schools and slums to see the situation at first-hand. The recommendations of the Special Procedures which follow a country visit can provide a blue-print for measures to be taken at the legislative, administrative and policy levels. They can also be used by partners within the UN system to shape technical assistance programmes.<sup>40</sup> The establishment of a Coordination Committee of the Special Procedures following their last annual meeting offers the possibility for better organization of missions, so that joint visits can be co-ordinated as relevant, and visits to one country by multiple mandate-holders within a short period of time are avoided.<sup>41</sup>

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<sup>39</sup> UN Doc. E/CN.4/2003/75/Add.1, *Report of the Special Rapporteur on violence against women, its causes and consequences – international, regional and national developments in the area of violence against women, (1994 – 2003)*, 27 February 2003.

<sup>40</sup> For example, the recommendations which came out of the visit of the Special Rapporteur on torture to Mexico in 1997 have been an important influence on the government's plans for reform. See UN. Doc E/CN.4/1998/38/Add.2, *Report of the Special Rapporteur on torture: Visit to Mexico*, 14 January 1998.

<sup>41</sup> Joint missions have been undertaken occasionally by mandate-holders since 1992, when the Commission requested four thematic mechanisms to undertake joint missions to the former Yugoslavia with the newly-established country rapporteur.

The Special Procedures have resources to be able to undertake two or three annual fact-finding missions. However, states need to issue an invitation and then facilitate the mission according to established guidelines in order for it to take place.<sup>42</sup> An initiative by the Friends World Committee for Consultation at the UN (Quakers UN Office - Geneva) in 1999 to encourage governments to facilitate missions led to a call for states to issue a standing invitation to the Special Procedures. To date, 52 states from all regions have issued such an invitation to signal their readiness to accommodate requests to visit from the Special Procedures.<sup>43</sup> While this is a considerable number of states, it also means that nearly three-quarters of members have not issued such an invitation.

Many requests for invitations to visit have been repeatedly ignored over a number of years. The Special Rapporteur on torture, for example, is still awaiting a positive response to invitations sought from the governments of India and Indonesia, which were requested in 1993. Some mandate-holders have made urgent requests to visit countries to investigate allegations of massive human rights violations, which have not met with a favourable response. A few states have refused access to country rapporteurs appointed to monitor the situation in their country. The Human Rights Council should develop a mechanism so that states which persistently ignore or refuse requests to visit by the Special Procedures, including as part of an urgent appeal, are asked to account for their actions.

Information about outstanding requests to visit, whether an invitation has been agreed in principle or is under consideration, and those which have been undertaken with a link to the mission report, is available on the OHCHR website.<sup>44</sup> This could usefully be further expanded to include details about whether a mission has been refused, is delayed or has received no response from the government concerned. The information shows that there are 76 states which have not received a visit from any of the Special Procedures since 1998, 22 of which have received a request for an invitation to visit by at least one mandate-holder.<sup>45</sup> This information should be used by the Human Rights Council in its debates about countries, including during a process of global review.

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<sup>42</sup> UN Doc. E/CN.4/1998/48.

<sup>43</sup> Information on which states have extended a standing invitation is available from the OHCHR webpage at <http://www.ohchr.org/english/bodies/chr/special/invitations.htm>. Only two states from the Africa region and two from the Asia region have issued standing invitations. This is notwithstanding the receptiveness of many African countries to visits by the Special Procedures.

<sup>44</sup> <http://www.ohchr.org/english/bodies/chr/special/countryvisitsa-e.htm>.

<sup>45</sup> According to the OHCHR website, these states are: Democratic People's Republic of Korea, Eritrea, Guinea-Bissau, Israel (three outstanding requests to visit, and two agreed in principle - a mission by the Special Representative on human rights defenders is due to take place immediately before the start of this October seminar), Liberia, Libya (one visit agreed in principle), Malawi, Mali (one visit agreed in principle), Mauritius, Nauru, New Zealand (which has issued a standing invitation and has agreed to a visit in principle by the Special Rapporteur on indigenous people), Papua New Guinea, Senegal (two visits agreed in principle), Swaziland, Switzerland (one visit agreed in principle), Syria, Togo, Turkmenistan, Ukraine (one visit agreed in principle), Tanzania (two visits agreed in principle), Zambia and Zimbabwe.

Even if a state does agree in principle to a visit, there can still be many obstacles to facilitating the mission quickly. These include: the date of the mission (which can in turn be affected by climatic conditions, national holidays and so forth); the duration of the visit, which must necessarily take into account distances involved between different sites, (particularly places of detention which can be in inaccessible places) and the places the mandate-holder wishes to visit, which can be the subject of lengthy negotiations with the government. Once in country, the mandate-holders may encounter further difficulties regarding access to people they wish to interview, where the interview is to be held, and the confidential nature of that discussion.<sup>46</sup>

The Special Procedures have developed “Terms of Reference” for carrying out their missions, which are publicly available on the website of the HCHR and which constitute the minimum standards that the host governments is expected to respect.<sup>47</sup> States should respect these basic terms of reference and co-operate fully with the mission. Mandate-holders must be entitled to determine whether the conditions to carry out the investigations are such as required to ensure the integrity of the mission and allow the conduct of a proper field visit. “Insistence on the conditions of access contained in the standard Terms of Reference for fact-finding visits makes possible, in [Sir Nigel Rodley’s] experience, substantial uncovering of those aspects of the reality that governments prefer to conceal and which, indeed, may be unknown to important high-level decision makers, whether by preference or inadvertence”.<sup>48</sup>

Reports of missions are published as separate addenda to annual reports of the Special Procedures, which makes them more accessible. Due to the constraints placed on the Special Procedures in translating and publishing their reports, many mission reports have only been made public just prior to the Commission. In some cases this has resulted in a significant delay between the mission taking place and the release of the report, during which time valuable momentum for follow-up by domestic constituencies at the national level has been lost. It is critical for these reports to be published as soon as possible after the mission, at least in a language used by the country concerned. Reports should be made available to the Human Rights Council as soon as possible following missions.

Too often, the recommendations of the Special Procedures which flow from missions are neglected by states. While country mechanisms can incorporate follow-up as part of their work, this has not consistently been the case with the thematic mechanisms. There are examples of states which have facilitated a number of fact-finding missions by the thematic mechanisms, but have yet to implement even one recommendation and many examples of states which have implemented only a handful of recommendations. (Follow-up to missions is explored further in the next section). At the time when mission reports of Special Procedures

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<sup>46</sup> See the description of the WGAD’s experience with country missions as described by former Chairperson Louis Joinet in “*The Prevention of Human Rights Violations*”, Linos-Alexander Sicilianos (ed), 2001.

<sup>47</sup> <http://www.ohchr.org/english/bodies/chr/special/visits.htm>

<sup>48</sup> “*United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementary or Competition?*”, Sir Nigel Rodley, *Human Rights Quarterly* 25 (2003), page 894.

are discussed by the Human Rights Council, the state concerned should be invited to present a detailed response to the report's recommendations. This should normally include a time-bound plan of action to implement the recommendations, and a commitment to report back to the Special Procedure concerned and the Human Rights Council on steps taken to give effect to the recommendations made.

Lastly, despite guarantees contained in the Terms of Reference, there have been a number of incidents whereby individuals, or their family members, who have met with mandate-holders during missions (or indeed communicated with them via the OHCHR) have subsequently suffered intimidation or reprisals, including death. The Commission has received reports and adopted resolutions on this topic. The Human Rights Council must receive, consider and act promptly on allegations of this type as well. The HCHR should bring allegations of reprisals to the immediate attention of the Council.

### ***Recommendations: fact-finding missions***

- **All member states should issue a standing invitation to the Special Procedures and facilitate their requests to go on mission, according to the existing Terms of Reference. If they have not already issued a standing invitation, states should pronounce their willingness to issue a standing invitation when seeking membership of the Human Rights Council.**
- **Information about the status of mission requests should be examined regularly by the Human Rights Council. Situations concerning countries where the request has been outstanding for many years should be given special attention and action taken accordingly.**
- **Mission reports should be published separately from the mandate-holder's main report, made publicly available as soon as possible in a language of the country concerned, and tabled with the Human Rights Council on publication.**
- **The Human Rights Council should develop a procedure so that states which persistently ignore requests to visit by the Special Procedures, including as part of urgent appeal, are asked to account for their actions.**
- **States should provide a detailed response to recommendations arising from the Special Procedures' fact-finding missions. They should provide information to the Human Rights Council on how they plan to act on the recommendations and when they will report back.**
- **States should ensure that acts of intimidation or reprisal are not carried out against those who meet or otherwise cooperate with the Special Procedures and that any such acts are promptly investigated and the perpetrators are held accountable. States should also provide, where necessary, active protection to persons, or their family members, cooperating with Special Procedures. The Human Rights Council should take a particular interest in specific incidents of intimidation or reprisal.**

- The HCHR should bring allegations of reprisals to the immediate attention of the Council.

## **5. Follow-up to the work of mandate holders**

*“Follow up on recommendations should become a priority matter for consideration by the Commission on Human Rights”.*

*Vienna Declaration and Programme of Action, June 1993*

Follow-up is defined as “encompassing the variety of measures taken to encourage, facilitate and monitor implementation of recommendations” by the Special Procedures.<sup>49</sup> It should pursue the ultimate objective of ensuring a state’s compliance with its international obligations. Over the years, the Commission has been undermined by its repeated failure to follow-up on its own resolutions and decisions and the recommendations of its Special Procedures. It will be important that the Human Rights Council does not repeat this mistake.

In recent years, different actors have sought ways to encourage states to follow-up on Special Procedures’ recommendations. A study prepared by two mandate-holders in 1999 on strengthening the Special Procedures proposed that “the follow-up of recommendations should be integrated into the overall work plans and objectives of the Office of the High Commissioner”.<sup>50</sup> The Plan of Action of the OHCHR identifies a variety of strategies aimed at closing “implementation gaps”, including through increased country engagement, and provides an excellent basis upon which the OHCHR can support initiatives aimed at following-up on Special Procedures’ recommendations.

As called for by Commission resolution 2004/76, an increasing number of mandate-holders are beginning to develop follow-up procedures, primarily in relation to country missions.<sup>51</sup> The Working Group on arbitrary detention, the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions are three examples of mandate-holders taking important initiatives to establish clear deadlines for receipt of information on follow-up from governments and other stake-holders, and to make this information publicly available either in a separate report or as part of their annual report. The Special Rapporteur on torture has created a questionnaire which is available on the OHCHR website to encourage NGOs and other civil society actors to provide information about follow-up. This questionnaire could be used as a model for other mandate-holders. The Special Procedures could also consider other practical measures to follow-up on mission recommendations,

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<sup>49</sup> UN Doc. E/CN.4/2006/4, *Report of the twelfth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme*, 20 July 2005.

<sup>50</sup> See the study prepared by Thomas Hammerberg and Mona Rishmawi entitled *Capacity-building to strengthen the special procedures system of the United Nations Human Rights Program*, 1999.

<sup>51</sup> Operative paragraph (g) of that resolution calls on the Special Procedures “To include in their reports information provided by Governments on follow-up action, as well as their own observations thereon, including in regard to both problems and improvements, as appropriate”.

including by working through other actors such as OHCHR geographical desk officers, field offices, treaty bodies, UN country teams, the HCHR and national constituencies.

Follow-up on communications is also necessary. A communication should remain pending until the mandate-holder is satisfied that it has been adequately addressed by the government. This includes the period after the immediate danger to the victim has passed to ensure that appropriate redress is provided. Statistics of pending cases by country should be included in the reports to the Human Rights Council, and detailed information about pending communications should be readily available. Commission resolution 2004/76 asked the Special Procedures to include in their reports comments on problems of responsiveness. Increased information about, and attention to, the extent to which states respond in full to communications will be an important element in the follow-up process.

At their recent 12<sup>th</sup> annual meeting, the Special Procedures examined the topic of follow-up and agreed a number of detailed and innovative recommendations which should be implemented by mandate-holders, the OHCHR and the Human Rights Council.<sup>52</sup> It is a welcome development that follow-up will become an agenda item of future annual meetings of the mandate-holders.

In support of the efforts by the Special Procedures and the OHCHR, the Human Rights Council should make follow-up a focus of attention. This will mean not only receiving reports and other information on measures taken, but also devoting specific discussion to follow-up, demanding responses to recommendations and taking action to encourage implementation of recommendations.

### ***Recommendations: follow-up***

- **The OHCHR should better integrate recommendations of the Special Procedures into its overall work plans, including in country strategies**
- **All Special Procedures should take steps to facilitate and monitor follow-up, and consider working through other actors, such as the OHCHR to encourage follow-up.**
- **Communications should remain pending until they have been adequately addressed, including through the provision of appropriate redress. Statistics of pending cases should be included in reports to the Human Rights Council. Detailed information should be available on request of delegations accredited to the Council.**
- **The recommendations on follow-up agreed by the Special Procedures at their 12<sup>th</sup> (2005) Annual Meeting should be implemented.**
- **The Human Rights Council should incorporate follow-up across its activities, including through dedicated reviews of follow-up measures as part of its agenda.**

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<sup>52</sup> *Supra.* 49

## **6. Resources**

*“Despite our best efforts, we sometimes appear ineffective in critical situations simply because the most basic support structure is not available....Moreover, in terms of financial resources, what we are speaking about seems almost ridiculous given the minimal sums at stake compared with the overall resources of the United Nations”.*

*Joint declaration of the independent experts responsible for the special procedures for the protection of human rights  
World Conference on Human Rights, June 1993*

The chronic situation of under-funding of the Special Procedures, as with the rest of the OHCHR, has been frequently raised by mandate-holders and the HCHR. It is all the more alarming to consider that the mandate-holders, these most vital components of the human rights machinery, offer their services for free. Any budgetary requirements for the Special Procedures are to fund their travel and mission expenses, support staff at OHCHR and administrative activities, but do not represent the true cost of financing a human rights protection system. Consideration should be given to establishing paid positions for Special Procedure mandates.

In her Annual Appeal 2005, the HCHR records that US\$2,734,100 was approved from the regular budget for the Special Procedures for the biennium 2004-2005. This equates to less than US\$1.5 million to fund 41 mandates – less than US\$34,000 each per year. Consequently the HCHR appealed for a further US\$3,985,623 in voluntary funding to supplement the shortfall. In doing so, the HCHR noted that most of the voluntary funds (96%) would be devoted to extending the contract of staff members assigned to service the Special Procedures.

The OHCHR has made progress in ensuring that each mandate is serviced by at least one full-time professional, in addition to other part-time assistance as necessary, and that other programs within OHCHR can provide vital support to the Special Procedures, for example in the area of information management. However, a lack of adequate and regular funding continues to have implications for the Special Procedures program, including the OHCHR’s ability to recruit and retain staff of the highest calibre and expertise, and its reliance on earmarked funds.<sup>53</sup>

At the recent World Summit, member states agreed to strengthen the OHCHR by doubling the regular budget contributions, from an amount which is currently less than 2% of the UN’s regular budget. Although welcome, this decision falls far short of the doubling of the OHCHR’s overall resources that the HCHR had requested, a bid made on the basis of her Plan of Action. Nevertheless, it will be important that states translate their resolve into action through their participation in the Fifth Committee of the General Assembly, meeting later this

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<sup>53</sup> The Annual Report 2004 records that six governments pledged US\$1,087,883 in unearmarked funds. Another nine governments pledged US\$1,933,023 of earmarked funds for the Special Procedures, and a tenth pledged a specifically earmarked further US\$150,000.

year, by ensuring additional specific and substantial budgetary allocations for the human rights program. An upward revision of around US\$30 million over the first two years would be an appropriate start, and would enable the HCHR to devote increased regular budget funds to the Special Procedures.

### ***Recommendations: resources***

- States should ensure that commitments to increase regular funding for the human rights program are honoured in their negotiations during the current 60<sup>th</sup> session of the General Assembly.
- The apportionment from the regular budget for the Special Procedures should be increased significantly to enable OHCHR to retain and recruit sufficient staff of the highest calibre to support mandate-holders.

## **7. COMPILATION OF RECOMMENDATIONS**

### ***Recommendations: role and functions of the Special Procedures***

- The Special Procedures should be preserved in the new Human Rights Council and strengthened in their ability to perform their core functions of issuing urgent appeals and transmitting allegations, engaging in fact-finding missions, undertaking studies, clarifying international law, and preparing annual and other reports with recommendations for action by governments to protect human rights.
- The Human Rights 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 Human Rights 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.
- To do so, information from the Special Procedures should be made regularly and readily available throughout the year.
- The Human Rights Council should provide for routine, substantive interactive discussion with the Special Procedures to hear their findings and recommendations to promote and protect human rights.

### ***Recommendations: nominations and appointments process***

- The HCHR should pursue her plans to constitute an Advisory Panel comprising individuals from all constituencies, including former mandate-holders, and drawn from all regions.
- The process of identifying and nominating candidates should be much more transparent, and involve broad consultation at the national level to ensure the nomination of individuals meeting the required standards of independence and

impartiality, skill and expertise. Nominators should also seek to redress the current gender imbalance in the mandate-holders.

- When reviewing nominations for Special Procedure appointments, the Advisory Panel should request details of the process undertaken by the nominators to identify potential candidates.
- To avoid undue delays in the appointments process, the OHCHR should continue to maintain and update a roster of suitable candidates from all regions.
- The curricula vitae of all Special Procedure mandate-holders should be available on the OHCHR website.
- Consideration should be given to options for removing practical limitations on the participation of suitable qualified experts as mandate-holders

### ***Recommendations: managing the growth of Special Procedures***

- The Human Rights Council should consider the creation of new country or thematic mandates in response to serious situations of human rights violations.
- All new country mandates should be established for an initial renewable period of three years.
- The Human Rights Council should be required to take an explicit decision in order to terminate a thematic mandate.

### ***Recommendation: operations manual***

- The Special Procedures with the OHCHR should revise the Manual so that it reflects best current practice, make it publicly available (including on its website) ensure that it is regularly updated and use it as the basis for inducting new appointees and their staff.

### ***Recommendations: communications***

- A primary function of the Special Procedures must continue to be to establish an open and constructive dialogue about allegations of human rights violations with governments.
- “Model questionnaires” should be developed for all mandates that are not solely study-based, posted on the OHCHR webpages and included in relevant OHCHR publications.
- Communications should be shared with the source in order to provide the source with copies of government responses for further observations and information, and to communicate such further information to the government<sup>54</sup>.
- Information about cases taken up by the Special Procedures, and government responses to them, should be available publicly, provided no threat exists to the source.
- Information about communications, including details of states which do not respond to communications at all, do so only partially or else deny the allegations

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<sup>54</sup> This procedure should be followed provided that it would not put the source at risk of harm

but without substantive explanation, should be regularly considered by the Human Rights Council.

- An assessment of the extent of states' co-operation with mandate-holders through providing full and timely responses to communications should be provided by all Special Procedures in their reports.
- The Human Rights Council should review states' willingness to respond quickly and fully to the Special Procedures' communications and take steps to encourage those states that persistently fail to do so, including by requesting the HCHR and the Secretary-General to raise such situations at the highest levels.
- In considering candidates for election to the Human Rights Council, governments should take account of each candidate state's co-operation with the Special Procedures.

***Recommendations: urgent appeals***

- Urgent appeals in response to threats or occurrences of serious human rights violations is the essence of the protective function of the Special Procedures system and must be preserved in the Human Rights Council.
- Special Procedures should continue to issue urgent appeals through public statements where they deem it appropriate.
- In situations where the government concerned fails to respond promptly to an urgent appeal, Special procedures should bring the urgent appeal and the situation of human rights in the country concerned to the attention of the Human Rights Council.

***Recommendations: substantive reports***

- The Special Procedures should continue to produce comprehensive and focused reports to provide in-depth analysis on aspects of their mandates.
- The Human Rights Council should take account of their findings and encourage states to act on the recommendations contained in those reports.
- The Human Rights Council should consider measures to compensate for the detrimental effect on the content of Special Procedures' reports by the current limitations on their length.

***Recommendations: fact-finding missions***

- All member states should issue a standing invitation to the Special Procedures and facilitate their requests to go on mission, according to the existing Terms of Reference. If they have not already issued a standing invitation, states should pronounce their willingness to issue a standing invitation when seeking membership of the Human Rights Council.
- Information about the status of mission requests should be examined regularly by the Human Rights Council. Situations concerning countries where the request has been outstanding for many years should be given special attention and action taken accordingly.

- Mission reports should be published separately from the mandate-holder's main report, made publicly available as soon as possible in a language of the country concerned, and tabled with the Human Rights Council on publication.
- The Human Rights Council should develop a procedure so that states which persistently ignore requests to visit by the Special Procedures, including as part of urgent appeal, are asked to account for their actions.
- States should provide a detailed response to recommendations arising from the Special Procedures' fact-finding missions. They should provide information to the Human Rights Council on how they plan to act on the recommendations and when they will report back.
- States should ensure that acts of intimidation or reprisal are not carried out against those who meet or otherwise cooperate with the Special Procedures and that any such acts are promptly investigated and the perpetrators are held accountable. States should also provide, where necessary, active protection to persons, or their family members, cooperating with Special Procedures. The Human Rights Council should take a particular interest in specific incidents of intimidation or reprisal.
- The HCHR should bring allegations of reprisals to the immediate attention of the Council.

#### *Recommendations: follow-up*

- The OHCHR should better integrate recommendations of the Special Procedures into its overall work plans, including in country strategies
- All Special Procedures should take steps to facilitate and monitor follow-up, and consider working through other actors, such as the OHCHR to encourage follow-up.
- Communications should remain pending until they have been adequately addressed, including through the provision of appropriate redress. Statistics of pending cases should be included in reports to the Human Rights Council. Detailed information should be available on request of delegations accredited to the Council.
- The recommendations on follow-up agreed by the Special Procedures at their 12<sup>th</sup> (2005) Annual Meeting should be implemented.
- The Human Rights Council should incorporate follow-up across its activities, including through dedicated reviews of follow-up measures as part of its agenda.

#### *Recommendations: resources*

- States should ensure that commitments to increase regular funding for the human rights program are honoured in their negotiations during the current 60<sup>th</sup> session of the General Assembly.
- The apportionment from the regular budget for the Special Procedures should be increased significantly to enable OHCHR to retain and recruit sufficient staff of the highest calibre to support mandate-holders.

## **Appendix 1 - Current Special Procedure mandates**

### **Thematic mechanisms**

**Working Group on Enforced or Involuntary Disappearances**  
**Special Rapporteur on extrajudicial, summary or arbitrary executions**  
**Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**  
**Special Rapporteur on freedom of religion or belief**  
**Special Rapporteur on the sale of children, child prostitution and child pornography**  
**Working Group on arbitrary detention**  
**Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**  
**Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**  
**Special Rapporteur on the independence of judges and lawyers**  
**Special Rapporteur on violence against women, its causes and consequences**  
**Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and waste on the enjoyment of human rights**  
**Independent Expert on the question of human rights and extreme poverty**  
**Special Rapporteur on the human rights of migrants**  
**Independent Expert on the effects of economic reform policies and foreign debt**  
**Special Rapporteur on the right to food**  
**Special Rapporteur on adequate housing as a component of the right to an adequate standard of living**  
**Special Representative of the Secretary-General on the situation of human rights defenders**  
**Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people**  
**Working Group on people of African descent**  
**Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**  
**Representative of the Secretary-General on the human rights of internally displaced persons**  
**Special Rapporteur on trafficking in persons, especially women and children**  
**Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination**  
**Special Rapporteur on the promotion and protection of human rights while countering terrorism**

**Independent Expert on human rights and international solidarity**  
**Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises**  
**Independent Expert on minority issues**

### **Country mechanisms**

**Special Rapporteur on the situation of human rights in Myanmar**  
**Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967**  
**Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia**  
**Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti**  
**Independent Expert on technical cooperation and advisory services in Liberia**  
**Independent Expert on the situation of human rights in Burundi**  
**Independent Expert on the situation of human rights in the Democratic Republic of the Congo**  
**Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea**  
**Special Rapporteur on the situation of human rights in Belarus**  
**Personal Representative of the High Commissioner for Human rights on the situation of human rights in Cuba**  
**Special Representative of the Secretary-General for human rights in Cambodia**  
**Special Rapporteur on the situation of human rights in the Sudan**  
**Independent Expert on the situation of human rights in Uzbekistan (1503 procedure)**

## **Appendix 2 – Joint NGO Statement, 22 June 2005**

### **SPECIAL PROCEDURES INFORMAL CONSULTATION IN RESPONSE TO DECISION 113 OF THE 61ST SESSION OF THE UN COMMISSION ON HUMAN RIGHTS**

#### **JOINT STATEMENT OF 22 NON-GOVERNMENTAL ORGANISATIONS IN CONSULTATIVE STATUS WITH ECOSOC**

*Delivered on 22 June 2005*

Thank you, Chairperson

This statement is made on behalf of the following 22 NGOs in consultative status with ECOSOC: Amnesty International, Association for the Prevention of Torture (APT), Bahá'í International Community, Centre on Housing Rights and Evictions (COHRE), Federation of Associations for the Defence and Promotion of Human Rights-SPAIN, Franciscans International, Friends World Committee for Consultation (Quakers), Human Rights Watch, International Alliance of Women, the Inter-African Committee on Traditional Practices (IAC), International Commission of Jurists, International Federation of Human Rights Leagues (FIDH), International Federation of Social Workers, International Federation of University Women, International Association for Religious Freedom, International Council of Jewish Women, International Movement for the Fraternal Union among Races and People (UFER), International Service for Human Rights (ISHR), the Lutheran World Federation, Pax Romana, World Organisation Against Torture (OMCT), World Vision International.

We welcome this opportunity to address today's informal consultation on the need to strengthen the Special Procedures. The widespread support for the continuation of the Special Procedures in any new political human rights body emerging from the Secretary-General's UN reform initiative, underlines how these procedures have become a vital part of the UN human rights system. The Special Procedures exist to promote and protect human rights. They have a unique role in this regard. Chief among their defining features is their ability to respond rapidly to allegations of human rights violations occurring anywhere in the world at any time. The Plan of Action of the High Commissioner for Human Rights builds on the steps already taken to implement Action 4 of the recommendations contained in the Secretary-General's report "*An agenda for further change*", and merits all of our support.

We believe that in order to strengthen and improve the Special Procedures system the following measures are necessary:

- **an increased capacity of the Special Procedures to address and respond to emerging situations of serious 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. Thus, the Special Procedures need to be able to make their information regularly available throughout the year as well as to issue public statements as necessary. The activities of the Special Procedures are integral to the early warning, rapid response and fact-finding mechanisms which are being developed by the Office of the High Commissioner.
- **a right of access of the Special Procedures to all countries and territories.** The Special Procedures should be able to visit countries, according to their established terms of reference for fact-finding missions, and without having to negotiate specific invitations to visit, which sometimes takes many years.
- **increased willingness and action by all states to cooperate with the Special Procedures in following up on their recommendations.** This requires states to provide information about their implementation of recommendations arising from Special Procedures' country missions or an explanation of impediments to implementation. It also calls for full and timely responses to Special Procedures' urgent appeals and communications.
- **the regular publication of summaries of communications in respect of individual cases throughout the year, including the responses of states to those communications, and the publication of mission reports as soon as they have been finalized.** This would further enhance the protection role of the Special Procedures, including by facilitating timely follow-up on these cases and recommendations arising from missions, both by the states themselves and by domestic constituencies.
- **an improved identification and selection process for mandate-holders.** States should be encouraged to embark on a process at the national level that is public and transparent and aimed at identifying and attracting the best candidates for these positions, taking into account the low representation of women among mandate-holders. Such a process would emphasize that those experts are independent and at the service of the Commission and the whole international community. The Office of the High Commissioner should support the Chairperson of the Commission by developing criteria to assess the qualifications of potential candidates by clarifying standards of independence, competence, skills and expertise, and by comparing nominations for Special Procedure mandates against the established criteria. In the long-term, the implications of maintaining a system of human rights protection which is dependent on individuals carrying out the work in a voluntary capacity should be examined.
- **an expanded interactive dialogue.** The interactive dialogue at the 61st session of the Commission was a substantial improvement on previous years, but time restrictions

precluded the possibility of a meaningful dialogue being fully realised. We recommend that more time be devoted to the interactive dialogue and that it be opened up to other actors, such as non-governmental organizations and independent national human rights institutions.

- **an enhanced capacity to encourage the active engagement of civil society**, which plays a key role in ensuring impact of the Special Procedures at the national level, thereby improving effectiveness of the system as a whole. This calls for an institutional approach which seeks to facilitate information-flow between the Special Procedures and civil society, including in respect of country missions and follow-up to recommendations.
  
- **a substantial increase in regular funding to meet the requirements of the Office of the High Commissioner to support the Special Procedures.** An amount which equates to less than US\$1.5 million has been approved from the regular budget for 2005 to pay for the activities of all the Special Procedures for this year. As a consequence, the Office has appealed for nearly US\$4 million in voluntary funds for 2005. A lack of adequate and permanent funding has serious implications for the Special Procedures' program, including ear-marking by donors and impediments to the Office's ability to recruit and retain staff of the highest calibre and expertise.

We recommend that these points be discussed further at the open-ended seminar to be held later this year and we look forward to the views of the Special Procedures themselves on that occasion.

The Special Procedures have been described by the UN Secretary-General as "front-line protection actors". We call on states to seize this opportunity to equip the Special Procedures to perform this role effectively.