

# United Nations: Terms of Reference for the review of the Special Procedures by the Human Rights Council

## 1. Introduction

Resolution 60/251, adopted by the General Assembly on 15 March 2006<sup>1</sup>, established a new Human Rights Council (the Council) to replace the Commission on Human Rights (the Commission). In operative paragraph 6 of that resolution, the General Assembly

*“Decides also that the Council will assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session<sup>2</sup>”.*

Amnesty International (AI) has a particular interest in the review of the Special Procedures.

The review of the Special Procedures provides an important opportunity to strengthen the system of Special Procedures in order that these mechanisms are able to support the new Council. AI stresses the importance of ensuring that all Special Procedures mandates – both thematic and country – that existed on 15 March 2006, and which have been assumed by the Council, are active pending completion of the review.

In addition, AI calls for the following elements to be reflected in the terms of reference of the review of the Special Procedures:

## 2. Objectives of the review

The review should aim to develop a comprehensive, coherent and improved *system* of Special Procedures. It should focus on strengthening the system of Special Procedures. The review should, *inter alia*, ensure better integration of Special Procedures’ information and analysis throughout the Council’s country and thematic debates and decision-making, and greater cooperation of governments with the Special Procedures. It should result in better and more timely follow-up of Special Procedures’ reports and recommendations.

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<sup>1</sup> UN Doc. A/RES/60/251

<sup>2</sup> The first session of the Human Rights Council is scheduled to run from 19 to 30 June 2006 in Geneva.

### **3. Scope of the review**

The review should focus on the relationship between the Council and its Special Procedures, the practical implications of the obligations of Council members and other states to cooperate with the Special Procedures, and the support required by the Special Procedures, both individually and as a system. The scope of the review should be defined to lead to enhanced cooperation of UN member states with the Special Procedures and better protection of rights-holders, including victims of human rights violations.

### **4. Stakeholders**

The review should actively seek the involvement and participation of the following stakeholders and contributors throughout the process<sup>3</sup>:

- All member states of the UN;
- Special Procedure mandate-holders;
- Civil society actors promoting and protecting human rights, human rights non-governmental organizations (NGOs) and independent national human rights institutions;
- Relevant specialized agencies and bodies of the UN;
- Other experts, including past Special Procedure mandate-holders;
- UN field presences.

### **5. Roles and responsibilities**

All stakeholders have an important contribution to make to the review. Therefore, steps should be taken to ensure that their participation is facilitated, particularly during informal consultations and at times of the year when they are unlikely to be physically present in Geneva.

The Office of the High Commissioner for Human Rights (OHCHR) has an important role to play in supporting the review by providing information about the history of the Special Procedures, including past reviews and their outcomes, providing current information about activities of the Special Procedures and facilitating informal consultations.

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<sup>3</sup> The October 2005 seminar on “Strengthening and enhancing the effectiveness of the Special Procedures” convened by the Office of the High Commissioner for Human Rights in October 2005 in response to Commission decision 2005/113 ensured involvement of member states, mandate-holders, NGOs and UN specialized agencies and provided a useful model for exchange of ideas between stakeholders.

## **6. Implementation plans**

Past reviews of the Special Procedures have failed to ensure that there has been agreement on recommendations arising from those processes, or that the recommendations have been fully implemented. This has resulted in repeated discussions around strengthening the Special Procedures. Apart from consuming time and resources, the unfinished reviews have contributed to a loss of confidence in the Commission. It will be important for the Council to ensure that it conceives the terms of reference for the review with a view to ensuring implementation of the resulting decisions.

## **7. Process**

This review should be carried out by a consultation mechanism, which should be open-ended (i.e. open to all stakeholders, including NGOs) and should be conceived in a manner that avoids trade-offs between Special Procedures and the results of the related reviews of the Sub-Commission or the complaints procedures (e.g. 1503). AI's preferred option is for a flexible procedure that combines the formality and transparency of an open-ended working group with the flexibility and responsiveness of informal consultations. The procedure must be sufficiently open, transparent and predictable to allow meaningful participation by NGOs (and other stakeholders).

## **Background**

The Special Procedures, which cover both thematic and country mandates, have evolved over time and without any overall institutional framework (see Annex for a complete list of mandates). As the Special Procedures were never conceived as a "system", there are recurring difficulties associated with co-ordination, consistency and overlap. In the last decade, three reviews have attempted to tackle some of these deficiencies, between 1998 and 2000, and following the "Action 4" initiative of the UN Secretary-General in 2002.<sup>4</sup> Most recently, and in response to decision 2005/113 of the Commission, the OHCHR organized a seminar in October 2005 on "Strengthening and enhancing the effectiveness of the Special Procedures".<sup>5</sup>

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<sup>4</sup> See UN Doc. E/CN.4/1999/104, Report of the Bureau of the 54th 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. In 2002, the UN Secretary-General considered reform of the Special Procedures in his report *Strengthening of the United Nations: an agenda for further change*, UN Doc. A/57/387, 9 September 2002.

<sup>5</sup> AI's contribution to that debate included a document entitled "Special Procedures: Building a cornerstone of human rights protection", AI Index: IOR 40/017/2005. The report of that meeting is contained in *Enhancing and strengthening the effectiveness of the Special Procedures of the Commission on Human Rights*, UN. Doc E/CN.4/2006/116, 8 December 2005.

**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)**