

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL WORKING GROUP ON REVIEW OF MECHANISMS COMPLAINT PROCEDURE HIGHLIGHTS WEDNESDAY 25 APRIL 2007 MORNING

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The Working Group continued its deliberations on the review of the complaints procedure, previously known as the 1503 Procedure, of the former Commission on Human Rights.¹ The facilitator, Ambassador Blaise Godet of Switzerland, invited discussion on the last part, mechanisms of the Human Rights Council, of his revised non-paper of 4 April 2007. This was the last of the four main areas still under debate. He indicated that he would invite more general comments on aspects of the paper as a whole after discussion of the section on mechanisms. At the end of the session there was no consensus on a small number of issues but the Facilitator and the Working Group had clearly identified the remaining issues under debate and the alternative approaches to them.

Mechanisms

The Facilitator's non-paper took an inclusive approach to mechanisms of the Council in relation to complaints. It provided that the Council "may take any action as it deems appropriate" and then gave five examples of actions that could be taken. There was some discussion in relation to the wording of the five examples but most debate focused on whether the section on measures should be "exhaustive" as to measures, that is, list the only measures the Council could take under the complaints procedure, or "non-exhaustive".

A few States took surprising positions in view of their traditional associations in the Working Group. Russia, for example, supported a non-exhaustive approach in the section, along with Germany (on behalf of the European Union), Argentina, Australia, Canada and the USA. The International Service for Human Rights also supported a non-exhaustive approach to measures. The basic argument was that the Council should be able to tailor each decision to the particular circumstances being addressed and that it required considerable scope to be able to do that.

Argentina argued that the Council needed to be more innovative. The International Service for Human Rights agreed, saying that the Council was far more a master of its own destiny than the former Commission on

¹ The procedure was established by Resolution 1503 of the Economic and Social Council, giving it its name.

Human Rights had been, and that it should take the opportunity provided and not tie itself down to limited options. It said that, if there is to be an exhaustive list, there would need to be many other possible measures listed in addition to the five currently there. There would need to be considerably more debate in the Working Group to develop that longer list.

Mexico noted that the former Commission on Human Rights had more options in relation to complaints than the five listed in the non-paper. It indicated that it would propose alternative wording to the Facilitator.

The States arguing that the list of five measures should be exhaustive included Algeria for the African Group, Bangladesh, China, Cuba, Egypt, India, Iran and Thailand. Their view was that there needed to be certainty, that the Council should not be able to devise new measures or approaches. However, India also argued that the exhaustive list should only apply to the confidential complaint handling procedure. It said that the Council was free to terminate any complaint under that procedure and refer the complaint to the Council's public processes where the Council could take whatever action it determined. India's position was supported by Algeria for the African Group, Bangladesh, China and Egypt.

Algeria for the African Group responded to the comments by the International Service for Human Rights in relation to the Council's ability to be innovative. It said that, in reviewing the mechanisms of the former Commission on Human Rights under Operative Paragraph 6 of General Assembly *Resolution 60/251* establishing the Human Rights Council, the Council was required to take account of the past and only depart from the past on the basis of consensus. The International Service for Human Rights noted the comment and responded that it assumed that Algeria's view applied to all three streams of the Working Group on the review of mandates and mechanisms - this one and those dealing with Special Procedures and expert advice.

During the discussion on measures, States resumed a debate from an earlier meeting on the ability of the Council to consider a complaint publicly. States were overwhelmingly of the view that the Council alone should be able to decide on a public discussion. Only Germany (on behalf of the European Union) and Belgium supported the option that the second working group have this power. All other States that addressed this issue said that the Council alone should be able to make this decision: Algeria for the African Group, Australia, Bangladesh, China, Cuba, Egypt, India, Iran, Morocco, Russia, Thailand and the USA. Two non-government organisations also supported this position: the Indigenous Commission Capac and the International Service for Human Rights.

Other comments

The Facilitator invited comments on other issues in his non-paper. Many States took this opportunity to speak again, most reiterating points they had made at earlier sessions of the Working Group. This was the last Working Group discussion of the complaints procedure and it seemed that States wanted to use the opportunity to make a final statement of their positions. Most referred briefly to parts of the non-paper. Several issues were raised a number of times and some debated, including:

- the meaning of the phrase "victim-oriented" and its application to the complaints procedure;
- the need for vigorous application of the admissibility criteria;
- the process of appointment of members of the first and second working groups;
- whether complaints should be discontinued by the second working group on the basis of a consensus decision or a simple majority;
- whether national human rights institutions could provide an effective domestic remedy.

The question of the frequency of meetings of the two working groups and of the Council's consideration of their reports had been debated during earlier meetings on the complaint procedure and was taken up again in this meeting. India, in response to earlier comments by the International Service for Human Rights, proposed a new approach with two meetings of each working group each year and consideration at two meetings of the

Council. This would considerably reduce the time in handling any complaint without reducing the time allowed for a State to respond fully and adequately. India was requested by the Facilitator to prepare a draft for this approach.

This meeting concluded the deliberations of this stream of the Working Group on the review of mechanisms inherited from the former Commission on Human Rights. The Facilitator will now report to the President on Friday 27 April 2007.

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