

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COUNCIL WORKING GROUP ON REVIEW OF MECHANISMS AND MANDATES, 3<sup>RD</sup> SESSION, 10-27 APRIL 2007

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#### Overview

This report is part of ISHR's Council Monitor series. It is an update to previous ISHR reports and focuses on the 3<sup>rd</sup> session of the Working Group on the review of mandates that took place from 10 to 27 April at the Palais des Nations in Geneva. It should be read in conjunction with the reports on the 1<sup>st</sup> and 2<sup>nd</sup> session of the Working Group.<sup>1</sup> The segment on the review of special procedures is facilitated by Ambassador Tomas Husak, the Permanent Representative of the Czech Republic.<sup>2</sup>

<sup>1</sup> Available at <http://www.ishr.ch/hrm/council> in the section on the Working Groups.

<sup>2</sup> The "Working Group on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure" is divided in three segments or streams, each treated in separate meetings of the Working Group with separate Facilitators: the review of special procedures mandates, the future complaint procedure and a third segment on expert advice.

The Working Group did not achieve any substantial progress. Apart from the discussions on substantial points of the review, the Working Group used a considerable part of its time during this three-day session for a procedural discussion about which document should be used as the basis for discussions. The debate on the code of conduct, even though not substantial enough to lead to progress, centred on the question of whether the Working Group should include the conduct of States in its recommendations to the Council, or whether it should focus on the special procedures mandate holders only. The relationship of the future code of conduct with other, existing, documents including the *Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission* (the GA Regulations) adopted by the General Assembly in 2002 and a note by the Coordination Committee of Special Procedures commenting on the draft code of conduct proposed by the African Group were also discussed. The African Group declared its intention to table a draft resolution containing its proposal for a code of conduct because the Working Group did not accept it as the sole basis for discussion. At the end of the session, the Facilitator circulated his own draft for a code of conduct, largely based on the African draft.

Related to the review and rationalisation of individual mandate, the Working Group discussed different options for how to proceed. India suggested that all delegations submit concrete proposals on how to rationalise mandates within a two-week timeframe, based on a revised version of the ‘matrix’<sup>3</sup> produced by the Secretariat. The Working Group also briefly heard views on where gaps in the system of special procedures had to be filled. Most of the debate, however, focused on the future of country specific mandates, with many States again calling for the abolition of that had been established without the consent of the State concerned.

## Background

General Assembly *Resolution 60/251*, which created the Human Rights Council (the Council) provided that the Council would “assume [...] all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures [...]” The Council was, under the same resolution, authorised to “review and, where necessary, improve and rationalize all mandates” with the requirement that this review be completed within one year of the Council holding its first session (by June 2007).<sup>4</sup> The Council adopted a Decision at its 1<sup>st</sup> session to establish an intersessional open-ended Working Group mandated to “formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure”.<sup>5</sup> Ambassador Tomas Husak, the Permanent Representative of the Czech Republic, was appointed as the Facilitator for the discussions of the review of mandates. The Working Group on review of mechanisms and mandates (the Working Group) met three times (13-24 November 2006, 5-16 February 2007 and 10-27 April 2007). During its last session from

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<sup>3</sup> The ‘matrix’ is a document entitled “*Basic Information on Special Procedures*” from 23 November 2006, prepared by the secretariat, which contains a table with information on all thematic and country specific mandates. States intended to use that document as a basis for the review of individual mandates. The document is available on the OHCHR extranet. See fn 5 for access details.

<sup>4</sup> Paragraph 6 of General Assembly *Resolution 60/251*. The full-text of this resolution is available on the OHCHR website <http://www.ohchr.org/english/bodies/hrcouncil/>. *Resolution 60/251* allows for the institution building work to continue until 30 June 2007, since that is one year after the conclusion of the first session of the Council. However, because some members and the President will be replaced on 19 June 2007 it is agreed that the institution building must be completed by 18 June 2007. For an overview of the main issues around the review of special procedures, see M. Abraham, *A New Chapter for Human Rights: A Handbook on Issues of Transition from the Commission of Human Rights to the Human Rights Council*, (ISHR and the Friedrich Ebert Stiftung, 2006), pp 32 - 50 available at <http://www.ishr.ch/hrm> (download or browse Chapter 3). For an overview of the debate in the first two sessions of the Working Group on the review of mechanisms and mandates that took place in November and February respectively, please see ISHR reports, available at <http://www.ishr.ch/hrm/council> in the Working Group section.

<sup>5</sup> Council *Decision 2006/104*. The full text of this decision is available on the OHCHR extranet, accessible at <http://portal.ohchr.org> after subscription at <http://www.ohchr.org/english/bodies/hrcouncil/form.htm> (fill out the form on the page to receive the user name and password).

10 to 27 April it held three meetings. All institution building Working Groups then met for a common ‘wrap-up session’ under the leadership of the President on 27 April 2007. With that, the Working Group has exhausted the 20 working days it was provided with to fulfil its mandate, and the process for the completion of the institution building work is now in the hands of the President of the Council.

### Summary of previous discussions<sup>6</sup>

On the two previous occasions when the Working Group met (in November 2006 and February 2007) it discussed a wide range of issues. These included:

1. Selection and appointment of mandate holders
2. Review, rationalisation and harmonisation of mandates
3. Regulating the work of special procedures
4. Working methods
5. Cooperation by and with governments
6. Relationship with the Council
7. Relationship with other human rights mechanisms and actors
8. Support from OHCHR and funding

Given this broad range of issues, it soon became clear that it would be difficult to find consensus on all points. In particular, the process of selection of mandate holders, how to carry out a review of individual mandates as well as possible ways to regulate the work of special procedures, including through a code of conduct, gave rise to extended debates and controversy.

On the issue of the **process of selection of mandate holders**, States put forward two opposing views. Some wished to retain the current system of appointment of mandate holders by the President of the Council, with some corrections to improve the transparency of the process. These would include a roster of candidates, with inputs from various stakeholders, from which the President (or in a variation of the proposal, the High Commissioner for Human Rights) would choose the mandate holders.<sup>7</sup> Others wanted to depart from the current practice, and move to a process of direct election of mandate holders by the Council. They argued that this would increase the accountability of mandate holders towards the Council and reflect basic democratic principles.<sup>8</sup> The opponents of such a process feared that it might lead to a politicisation of the selection process and to suboptimal results in terms of the expertise and independence of mandate holders. A possible compromise on the process of selection could lie in the various proposals made for ‘hybrid’ models, combining elements of election and elements of appointment.

A number of calls were made in the November and February sessions of the Working Group to immediately start a **review of individual mandates**. States in favour of such an undertaking argued that it was required by General Assembly *Resolution 60/251* and wanted it to be commenced as soon as possible. Some States pushed for an individual review of country specific mandates, or even the abolition of country mandates altogether.<sup>9</sup> Others cautioned that any process of individual review needed to be guided by clear criteria, since *Resolution 60/251* also called for the maintenance of a “system of special procedures”. In this perspective, an individual review without criteria would inevitably undermine the coherence of the system. At the informal

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<sup>6</sup> This is a summary of the key points. For a detailed discussion of the various proposals, please refer to ISHR’s previous reports. See fn 4.

<sup>7</sup> Argentina, Australia, Canada, Germany (on behalf of the European Union (EU)), Israel, Japan, Switzerland, United States of America (USA).

<sup>8</sup> Algeria on behalf of the African Group, Azerbaijan, Bangladesh, China, Colombia, Cuba, Democratic People’s Republic of Korea (DPRK), Islamic Republic of Iran (Iran), Malaysia, Morocco, Pakistan (on behalf of the OIC), Philippines, Saudi Arabia on behalf of the Arab Group, South Africa, Tunisia.

<sup>9</sup> Algeria (on behalf of the African Group), Belarus, China, Cuba, Democratic People’s Republic of Korea, Iran, Russia and the Indian Movement Tupac Amaru (an NGO).

consultations held by the Facilitator during the 4<sup>th</sup> session of the Council, proposals were repeated to abolish country specific mandates, and in particular those established without the consent of the concerned State.<sup>10</sup>

In the discussion revolving around possible ways to **regulate the work of special procedures**, States were divided on who should assume responsibility for such regulation. Some argued that special procedures should regulate their own work, as they had done via the *Manual of the United Nations Human Rights Special Procedures* (the Manual). They feared that any attempt to regulate their work beyond the self-regulation through the Manual would undermine the independence of special procedures and hinder mandate holders from effectively carrying out their work. Others called on the Council to regulate the work of special procedures through the establishment of a code of conduct. The Council itself had, in a controversial decision, mandated the Working Group to draft such a code of conduct.<sup>11</sup> They also argued that the Manual had limited value and no legal force and therefore should be endorsed by the Council.

### Topics for discussion

This report is an update to previous ISHR reports and focuses on the 3<sup>rd</sup> session of the Working Group that took place from 10 to 27 April at the Palais des Nations in Geneva. It should be read in conjunction with the reports on the 1<sup>st</sup> and 2<sup>nd</sup> session of the Working Group.<sup>12</sup>

At the two previous sessions of the Working Group, States had discussed a wide range of complex topics. This had the effect that relatively little time was spent on each individual item, and in particular on the key outstanding issues. Accordingly, little headway was made. During informal consultations convened by Ambassador Husak during the 4<sup>th</sup> session of the Council, most States had agreed on the need for the Working Group to set priorities in its work to be able to move ahead on the key issues.<sup>13</sup> Ambassador Husak circulated a revised version of his non-paper, which contained several innovations from previous versions.<sup>14</sup> Notably, the revised version presented a choice regarding the process of selection of mandate holders;<sup>15</sup> it clarified issues of accountability of States and mandate holders;<sup>16</sup> it outlined how to deal with the renewal of mandates, including the continued periodic review of mandates;<sup>17</sup> and it also contained an extended section on a code of conduct.<sup>18</sup> Despite these changes in the non-paper, and unlike in the other Working Groups, Ambassador Husak's revised non-paper was not used as a basis for discussion. Instead, the Working Group followed a rather unpredictable course. The discussions included:

- A discussion on the code of conduct in general and on the African Group's draft code of conduct in particular
- Already existing regulations

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<sup>10</sup> These so-called "Item 9 mandates" (because they were established under Item 9 of the former Commission on Human Rights' agenda) are often distinguished from "Item 19 mandates", which were established with the consent of the State concerned.

<sup>11</sup> During the resumed 2<sup>nd</sup> session of the Council in November, States had adopted a resolution mandating the Working Group to draft a code of conduct. A/HRC/2/1, 16 November 2006, adopted 27 November 2006. The States voting in favour were Algeria, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, India, Indonesia, Japan, Jordan, Malaysia, Mali, Mauritius, Morocco, Nigeria, Pakistan, Philippines, Russia, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Zambia. There were 2 abstentions (Argentina, Uruguay) and 15 votes against (Canada, Finland, France, Germany, Guatemala, Mexico, Netherlands, Peru, Poland, Republic of Korea, Romania, Switzerland, Ukraine, United Kingdom).

<sup>12</sup> Available at <http://www.ishr.ch/hrm/council> in the section on the Working Groups.

<sup>13</sup> For an overview of the discussions during the informal consultations, please check the ISHR *Daily Updates* of 22 and 28 March 2007, available at [http://www.ishr.ch/hrm/council/daily\\_updates](http://www.ishr.ch/hrm/council/daily_updates).

<sup>14</sup> All the Facilitator's non-papers are available on the OHCHR extranet. See fn 5 for access details.

<sup>15</sup> Paragraphs I. A. 6 to I. A. 9.

<sup>16</sup> Paragraph 64.

<sup>17</sup> Paragraph 66.

<sup>18</sup> Section III.

- A revised version of the ‘matrix’<sup>19</sup>
- A brief attempt at a review of individual mandates
- A debate on gaps in the existing system of special procedures.

Other important issues outlined in the Facilitator’s non-paper were not discussed at this session of the Working Group. In particular, the Working Group did not enter into renewed discussions of the process of selection of mandate holders. The discussion on this issue has been stalled since the last session of the Working Group, and the same entrenched positions were visible in the informal consultations during the Council. This session of the Working Group did not move delegations closer on this point.

## **Participants**

The Working Group was open to members of the Council, other States and observers, NGOs with Economic and Social Council (ECOSOC) accreditation, and national human rights institutions (NHRIs) with accreditation. The level of participation in the discussions on the review of special procedures was relatively high, especially in comparison to the discussions on the two other segments of the Working Group’s mandate on expert advice and the complaint procedure. Though some NGOs participated in the meetings, only a small number of NGOs made statements at the Working Group. No representatives of NHRIs spoke at the Working Group. Representatives of the Coordination Committee of special procedures and three special procedure mandate holders participated in the discussions.<sup>20</sup>

## **Code of conduct**

Overall, the discussion on the code of conduct did not progress in any substantial way during the 3<sup>rd</sup> session of the Working Group. A lot of time was spent on procedural wrangling, because States disagreed whether they should use the African Group’s proposal for a draft code of conduct, a note on that draft prepared by the Coordination Committee of Special Procedures (the Coordination Committee) or the Facilitator’s non-paper dealing with the code of conduct as a basis for discussion.<sup>21</sup> The Facilitator introduced his own version of the code of conduct towards the end of the session. It was largely based on the African draft. However, even though some delegations commented on the Facilitator’s version, there was not much time left to enter into a detailed consideration of the text.

## **The African draft**

The confusion about which document to use as the basis for discussion has its roots partly in the controversial decision taken by the Council to elaborate a code of conduct. During the resumed 2<sup>nd</sup> session of the Council, a resolution was adopted mandating the Working Group to draft a code of conduct regulating the work of special procedures.<sup>22</sup> Algeria (speaking on behalf of the African Group) had then also announced that it would draft such a code of conduct for consideration in the Working Group. Even though that announcement was made as early as November 2006, the African Group’s proposal for a draft code of conduct (the African draft)

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<sup>19</sup> The ‘matrix’ is a document entitled “*Basic Information on Special Procedures*” from 23 November 2006, prepared by the secretariat, which contains a table with information on all thematic and country specific mandates. States intended to use that document as a basis for the review of individual mandates. The document is available on the OHCHR extranet. See fn 5 for access details.

<sup>20</sup> Ms Leila Zerrougui, Chairperson-Rapporteur of the Working Group on arbitrary detention; Mr Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Ms Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences.

<sup>21</sup> Some States clearly favoured to continue on the basis of the African draft (Algeria (on behalf of the African Group), China, India, Indonesia, Iran, Pakistan (on behalf of the OIC), South Africa)

<sup>22</sup> See fn 11.

was only introduced on 13 March 2007.<sup>23</sup> At the informal consultations held by Ambassador Husak during the 4<sup>th</sup> session of the Council, he had announced that the Working Group would be discussing the issue of a draft code of conduct at its 3<sup>rd</sup> session in April. However, when he invited the Ambassador of Algeria to introduce the African draft, the Algerian Ambassador was not ready to do so (having expected a debate on the Facilitator's non-paper).<sup>24</sup> He introduced the African draft later in the session, after having taken due time to prepare his statement. He underlined that the aim of the code of conduct was to increase the credibility of and confidence in the mandate holders, and countered claims that the African draft would undermine the independence of special procedures. While acknowledging that several documents already exist in relation to the conduct of special procedures mandate holders, he said that those were not specific enough to be usefully applied to mandate holders. Responding to a point by the Coordination Committee, the Ambassador of Algeria declared that in principle, the application of the code of conduct could be extended to all experts of the Council.<sup>25</sup>

After two days of discussion about the status of the African draft, Algeria circulated a letter containing the African draft in the form of a draft resolution. The African Group intended to formally table that resolution at the 5<sup>th</sup> session of the Council. Algeria explained that the African Group felt their hard work had not been acknowledged, since some States preferred to proceed on the basis of the Facilitator's non-paper rather than on the basis of the African draft. Brazil highlighted the need for the Working Group to arrive at a consensual outcome.<sup>26</sup>

A number of States supported the African draft, and wanted to use it as the basis for discussion.<sup>27</sup> Others wanted the Facilitator to draft a code of conduct, based on all written and oral inputs received.<sup>28</sup> His own version of the code of conduct that he introduced towards the end of the session was largely based on the African draft. It contained some additional language on government cooperation, but also introduced language that would considerably raise the threshold for the admissibility of urgent communications. The introduction of the Facilitator's version led some delegations to finally start discussing the substance of the code of conduct, but unfortunately there was not much time left to enter into a detailed consideration of the text. Algeria (on behalf of the African Group) said it would convene consultations on its proposed draft resolution.

### **The Coordination Committee's note**

Along with the African draft, a number of other documents were used as inputs for the discussion of the code of conduct. The Coordination Committee had circulated a note on the African draft, with an annex of possible elements for a code of conduct. While generally critical towards the need for a code of conduct, the Coordination Committee's note and annex sought to engage constructively with the African draft. Since the Algerian Ambassador was not ready to present the African draft initially, the Working Group discussed the Coordination Committee's note first after it was presented by Mr Louis Joinet, Independent Expert on the Human Rights situation in Haiti. It differed from the African draft in two very significant respects. First, it

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<sup>23</sup> The draft code of conduct is available as a "Contribution by States or Groups of States" on the OHCHR extranet, in the section on the Working Group on the review of mandates. See fn 5 for access details.

<sup>24</sup> On the occasion of the informal consultations held during the 4<sup>th</sup> session of the Council, the Algerian delegation complained that there was no interpretation provided. They accordingly did not accept the informal consultation as a valid channel of communication between the Facilitator and delegations, and therefore did not prepare for the presentation of the African draft. On the first day of the 3<sup>rd</sup> session of the Working Group, Algeria did not take part in the discussion of the code of conduct, because they had not yet presented their paper.

<sup>25</sup> This would mean that the code of conduct would apply to the experts of the first Working Group of the complaint procedure as well as the members of the future expert advice body, and any experts in the UPR or appointed by the Council to undertake specific missions. The International Service for Human Rights (ISHR) also raised this point.

<sup>26</sup> Supported by United Kingdom.

<sup>27</sup> Algeria (on behalf of the African Group), China, Ghana, India, Indonesia, Iran, Morocco, Pakistan (on behalf of the OIC), South Africa, Sri Lanka, Syria, Tunisia, Uganda.

<sup>28</sup> Australia, Germany (on behalf of the EU), Mexico,

elaborated “basic principles of cooperation between Special Procedures mandate-holders and (of) States”,<sup>29</sup> whereas the African draft sought to “define the standards of professional behaviour that mandate-holders under the special procedures (...) are called upon to observe whilst discharging their mandates.”<sup>30</sup> Secondly, the Coordination Committee’s note included States’ obligations to cooperate with special procedures mandate holders, while the African draft was directed solely at the mandate holders.

In the debate around the Coordination Committee’s note, the issue of cooperation by States with mandate holders was predominant. A number of States and NGOs placed particular importance on the need to assure that a future code of conduct addressed the conduct of States just as it addressed the conduct of special procedures mandate holders.<sup>31</sup> Many judged that the Coordination Committee’s note was in that regard preferable to the African draft. Others, however, opposed the inclusion of States in a code of conduct, and preferred the African draft’s version putting the emphasis on mandate holders.<sup>32</sup> China argued that the conduct of States was regulated directly through the Council, as manifested by the universal periodic review (UPR) mechanism, and by treaty bodies. Accordingly, they argued, the Working Group could only discuss the conduct of governments when mandated explicitly by the Council.<sup>33</sup> Cuba felt that the *United Nations Charter* (the UN Charter) was sufficient as a code of conduct for States.<sup>34</sup> The United Kingdom pointed out that the UN Charter was not detailed enough to serve that purpose. Norway suggested that the code of conduct could reiterate existing State obligations with regard to cooperation with special procedures.<sup>35</sup> This would include the UN Charter, General Assembly *Resolution 60/251* (in particular its operative paragraphs six and nine), as well as consensual resolutions dealing with cooperation adopted by the Commission on Human Rights (the Commission).

### The General Assembly Regulations

The third document discussed was the *Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission* (the GA Regulations) adopted by the General Assembly in 2002. Ms Soussan Raadi-Azarakhchi, Chief of the OHCHR Special Procedures Branch, introduced the document, which was met with mixed support. Ms Raadi pointed out that the GA Regulations are applicable to the special procedures mandate holders.<sup>36</sup> The GA Regulations address some issues related to the conduct of special procedures mandate holders, and specify that mandate holders are accountable to the Secretary General or the appointing body. South Africa asked if the Commission had formally endorsed the GA Regulations, which was negated by Ms Raadi. Germany (on behalf of the EU) pointed out that such endorsement was not necessary, since the General Assembly is the Council’s parent body. Mexico expressed its concern that any future code of conduct had to be compatible with existing regulations, in particular the GA Regulations.<sup>37</sup> Ms Raadi was also asked whether the Council, as a subsidiary body of the General Assembly, did have the authority to change the GA Regulations or adopt contradicting provisions. She explained that any code of conduct adopted by the Council would be a part of the report to the General

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<sup>29</sup> Coordination Committee of Special Procedures, *Possible Elements of a Code of Conduct*, Art. 1.1

<sup>30</sup> African draft, Art. 1.1.

<sup>31</sup> Belgium, Canada, France, Germany (on behalf of the EU), International Federation of Human Rights (FIDH), ISHR, Japan, Liechtenstein, Louis Joinet (Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti), Mexico, New Zealand, Norway, Sweden, Switzerland, United Kingdom.

<sup>32</sup> Bangladesh, China, Cuba, Pakistan, Philippines, South Africa.

<sup>33</sup> However, as pointed out by ISHR, *Resolution A/HRC/2/1* in its paragraph 9 mandates the Working Group to “draft a code of conduct regulating the work of the special procedures.” Arguably, the phrase “the work of special procedures” includes cooperation by States. Without cooperation by States, special procedures cannot work effectively.

<sup>34</sup> Venezuela added the *Vienna Declaration And Programme Of Action*.

<sup>35</sup> Supported by United States of America (USA), United Kingdom.

<sup>36</sup> Both herself and Mr Louis Joinet referred to the Advisory Opinion of the International Court of Justice of 29 April 1999, “Difference Relating To Immunity From Legal Process Of A Special Rapporteur Of The Commission On Human Rights”, in which the Court held that special rapporteurs have to be regarded as “experts on mission”. Accordingly, the GA Regulations apply to the special procedures.

<sup>37</sup> Canada urged the Working Group to not renegotiate existing documents.

Assembly, which would have to decide in the case of any conflicting provisions. A number of States pointed out that the GA Regulations only address the obligations of mandate holders, but not the obligation of States to cooperate with special procedures.<sup>38</sup> Accordingly, they argued that a code of conduct should address that gap, rather than adding to the obligations of special procedures mandate holders. A number of States, NGOs and representatives of the Coordination Committee stressed that they see the GA Regulations, the code of conduct and the Manual to be complementary.<sup>39</sup> Belgium welcomed that the African draft acknowledges the complementary nature of the text.<sup>40</sup> Canada cautioned against renegotiating existing instruments. Germany (on behalf of the EU) said that it was necessary to ensure that existing regulations are implemented, with a view of improving the system of special procedures.

Other points raised during the debate on the code of conduct included the question of how the Coordination Committee currently addresses complaints by States about misbehaviour of special procedures mandate holders. Egypt asked Mr Vitit Muntarbhorn, Chairperson of the Coordination Committee, if the Coordination Committee had considered the conduct of mandate holders in the past, and whether it had taken any action. The International Service for Human Rights suggested that a mechanism for handling complaints should be included in the Manual.

## Review, rationalisation and harmonisation

The Working Group continued its discussion of the review, rationalisation and harmonisation of all mandates, a point where limited progress had been achieved in the first two meetings. India suggested a three-stage approach to the review of individual mandates. As a first step, India asked the Secretariat to revise the matrix<sup>41</sup> to cluster the existing mandates in several categories. Once these clusters were created, it would, in India's view, be easier to identify "possibilities for rationalisation". The second step would be fixing a timeframe, within which, as the third step, formal proposals could be made as to how to rationalise the system. The proposal to ask the Secretariat for a clustered matrix was broadly accepted.<sup>42</sup> However, some cautioned that the OHCHR could get embroiled in the political dimensions of that task.<sup>43</sup>

Regardless of these comments, the Working Group was provided with a revised version of the matrix by the third day of the session. It presented two options for clustering existing mandates, but the options did not differ in any significant way.<sup>44</sup> Despite the urgent request to receive a revised matrix that had been made at the first meeting, no specific comments were made on the revised version. Mexico pointed out that they had previously circulated their own version of a clustered matrix, building on the *Universal Declaration of Human Rights* (the UDHR). ISHR stressed that the systematic aspect of the review was often neglected, and

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<sup>38</sup> France, Germany (on behalf of the EU).

<sup>39</sup> Belgium, ISHR, New Zealand, Vitit Muntarbhorn (Chairperson of the Coordination Committee of Special Procedures).

<sup>40</sup> African draft code of conduct, Article 2 – Complementary nature of the provisions of the Code of Conduct

(a) This Code complements the Regulations Governing the Status, Basic Rights and Duties of Officials Other than Secretariat Officials and Experts on Mission, (hereinafter referred to as "UN Regulations Governing the Status of Experts on Mission");

(b) The provisions of the Manual of Special Procedures on Human Rights complement those of the present Code.

<sup>41</sup> See fn 19.

<sup>42</sup> Algeria (on behalf of the African Group), Cuba, India, Indonesia, Iran, Russia,

<sup>43</sup> Mexico.

<sup>44</sup> Both options are available on the OHCHR extranet, in the section 'Working Group on the review of mechanisms and mandates' and then 'Background'. See fn 5 for access details.

The first option had the clusters civil and political rights; economic, social and cultural rights; Specific Groups; Country mandates established under Item 19; Country mandates established under Item 9; Other country mandates; and Other mandates. The second option was based on the clusters The right to life, the right to liberty and security of the person, administration of justice; fundamental freedoms; economic, social and cultural rights; The right to development and international cooperation; Specific groups or situations (e.g. racism); Country mandates established under Item 19; Country mandates established under Item 9; Other country mandates; and Other mandates.

that any clustering would be artificial. Drawing on the experience in the Working Group UPR, ISHR also suggested using the UDHR as the common standard for assessing gaps and overlaps.

In line with the next step of their proposal, India suggested a two-week timeframe to submit concrete proposals.<sup>45</sup> Russia suggested to establish several sub-groups, made up of one representative per regional group, who would then develop recommendations based on the proposals received.<sup>46</sup> Others cautioned that establishing sub-groups would exclude most States and NGOs and so be contrary to the inclusive approach of the Working Groups.<sup>47</sup>

Algeria (on behalf of the African Group) said the aim of the rationalisation process was to have a substantially smaller number of mandate holders. At the same time, they envisaged working groups instead of individual mandate holders to deal with each mandate. India also preferred this working group option. Russia was of the view that a working group option would facilitate equitable geographic distribution of mandate holders.

On the last day of the session of the Working Group, it became increasingly clear that States would not be able to fulfil their task of reviewing all mandates before 18 June 2007. Sri Lanka (on behalf of the Asian Group) expressed concern at the lack of progress the Working Group had achieved. Russia suggested that, in view of the failure to review all mandates, thematic mandates as well as country mandates enjoy cooperation of States should be extended until the end of the review. The review should take place through the regular consideration of the mandates when they come up for renewal.

### **Country mandates**

During previous meetings of the Working Group, country specific mandates had been aggressively attacked. A number of States had called for the abolition of such mandates.<sup>48</sup> This opposition to country mandates was again observed at the April session of the Working Group. Russia called for the abolition of all country mandates, including the mandate on the situation in the occupied Palestinian territories (OPT), with the option of re-establishing some mandates with the agreement of the State concerned. The Democratic Peoples Republic of Korea (DPRK) repeated its strong opposition to the continuation of county mandates. Algeria (on behalf of the African Group) demanded that country mandates established with the consent of the State concerned should be reconsidered in consultation with the concerned State, while those established without consent should be terminated.

At the 1<sup>st</sup> session of the Working Group in November 2006, China had proposed that new country mandates could only be established if the respective resolution was sponsored by at least one third of the membership of the Council, and adopted by two thirds.<sup>49</sup> This time, Sri Lanka went even further by suggesting that country mandates could only be established by consensus.<sup>50</sup> Germany (on behalf of the EU), however, strongly opposed the introduction of a two-thirds majority requirement for the establishment of country mandates, saying that special majorities for some decisions of the Council were unacceptable. They supported the continued use of country mandates as a tool, recalling their previously stated position.<sup>51</sup> Germany and Canada pointed out that an effective use of this tool sometimes required establishing country mandates, even without the consent of the State concerned.

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<sup>45</sup> Supported by Sri Lanka (on behalf of the Asian Group).

<sup>46</sup> Supported by Argentina.

<sup>47</sup> Iran.

<sup>48</sup> Algeria (on behalf of the African Group), Belarus, China, Cuba, Democratic People's Republic of Korea, Iran, Russia and the Indian Movement Tupac Amaru (an NGO).

<sup>49</sup> Several States supported this proposal, including Algeria, Cuba.

<sup>50</sup> This had been suggested by the Philippines at the first meeting of the Working Group in November 2006.

<sup>51</sup> Supported by USA.

Algeria (on behalf of the African Group) said that if country mandates were to be retained, they should apply to all countries. South Africa repeated an earlier proposal to have one country mandate per country.<sup>52</sup> In these discussions, many States arguing against country mandates distinguished the mandate on the OPT, which was said not to be a country mandate but a mandate relating to territory under foreign military occupation.<sup>53</sup> Israel disagreed, describing the mandate as limited, selective, unbalanced and one-sided.<sup>54</sup>

## Gaps

On the first day of this session, the Working Group held a ‘brainstorming’ discussion on gaps in the human rights protection offered by the current system of special procedures. A number of concrete proposals were made, but with no ensuing debate on their merits or how they could be addressed or implemented. Canada suggested an annual consideration of gaps and overlaps. The Facilitator referred to his non-paper’s inclusion of areas requiring “improved focus” in the current system of special procedures. These included “the right to education; poverty; protection against discrimination, torture and racism; the right to food, to vote, to assemble and to associate.” Since his non-paper was not discussed in detail, these suggestions were not followed-up upon either.

Other suggestions by States and non-government organisations included: cultural rights,<sup>55</sup> effective access to justice,<sup>56</sup> contemporary forms of slavery,<sup>57</sup> general issues of non-discrimination,<sup>58</sup> right to fair trial,<sup>59</sup> right to take part in government,<sup>60</sup> humane treatment in detention,<sup>61</sup> privacy,<sup>62</sup> impact of economic sanctions on human rights,<sup>63</sup> peaceful assembly and association<sup>64</sup> environmental rights as well as human rights issues relating to violence.<sup>65</sup>

## Conclusion and next steps

Of the three sessions of the Working Group on the review of special procedures, the last session was the least productive. There was virtually no substantial progress achieved, since most time was spent on discussing procedural issues. All of the key issues are therefore still unresolved.

At the end of the Working Group session, the President of the Council received reports by all Facilitators from all Working Groups, and the Facilitators formally concluded their mandates. During that ‘wrap-up session’, the President announced that he would suspend formal negotiations on the basis of documents, and proceed with a list of pending issues. He announced that the negotiations would continue on two tracks. The first of these tracks will be a series of informal, private, bilateral and multilateral meetings in which the President will consult all delegations, regional groups and observers to identify and resolve pending issues.

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<sup>52</sup> ISHR recalled that South Africa had taken a different stance when faced with a proposal in the Working Group on the UPR to have a country rapporteur for each State under review.

<sup>53</sup> Algeria (on behalf of the African Group).

<sup>54</sup> Canada and the USA agreed with many of Israel’s views.

<sup>55</sup> Iran, Russia.

<sup>56</sup> Argentina.

<sup>57</sup> Iran, United Kingdom.

<sup>58</sup> Action Canada for Population and Development, Canada.

<sup>59</sup> Canada, Switzerland.

<sup>60</sup> Canada.

<sup>61</sup> ISHR.

<sup>62</sup> Action Canada for Population and Development, ISHR, Switzerland.

<sup>63</sup> DPRK.

<sup>64</sup> Action Canada for Population and Development, Switzerland.

<sup>65</sup> Action Canada for Population and Development.

Parallel to this on a second track, public consultations will be conducted at least once a week to inform stakeholders of the progress of negotiations and provide opportunities to raise substantive issues in a more open forum. The first of these open meetings was held on 10 May 2007 and dedicated to the UPR. On the afternoon of Thursday, 10 May 2007 the President began consultations on the pending issues related to the review of special procedures.<sup>66</sup> He will report on the state of negotiations at the second open meeting on Friday, 18 May 2007.

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<sup>66</sup> See ISHR's report on the open meeting, available at <http://www.ishr.ch/hrm/council> in the Working Group section.

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The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at [www.ishr.ch/hrm/council](http://www.ishr.ch/hrm/council)

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