

Asian Group for the 61st CHR: Non-Paper on Enhancing the Effectiveness of the Special Mechanisms of the Commission on Human Rights

PART A: Introduction

The special mechanisms of the Commission on Human Rights (special rapporteurs, independent experts and special representatives of the Secretary General) represent an important element of the United Nations system and play an important role in the promotion and protection of internationally recognized human rights. Special mechanisms thus shoulder a heavy responsibility to ensure that at all times they fulfill their mandates with the highest standards of impartiality, objectivity, independence and expertise in their respective areas of work. The Asian Group endorses the need of a review of the special mechanisms of the Commission on Human Rights to enhance their effectiveness.

In 1999 an open ended inter-sessional working group, which reviewed CHR mechanisms, made useful recommendations for enhancing the effectiveness of its special mechanisms in its report E/CNA/2000/112 adopted by the 56th CHR in 2000 by consensus. These recommendations brought improvement in the coherence and working of the special mechanisms. In the last four years the network of special mechanisms of the CHR has undergone an unprecedented growth affecting the capacity of the OHCHR as well as the states to attend to these mandates in a meaningful manner. Since 1997 while the regular budget of the OHCHR has been shrinking, the number of mandates has more than tripled from 11 to 40 in addition to three expert working groups (15 experts). The need to enhance the effectiveness of the special mechanisms and improve the support provided to them has been recognized in Action 4 of the Secretary General's report A/57/387 of 2002 entitled "Agenda for Further Change".

To further fine-tune the aforementioned work, the need is felt for a more focused review limited specifically to standardization and codification, both in terms of appointment procedures and working methods, and devising a comprehensive manual as a framework for their operations containing a stipulated code of conduct, criteria of admissibility of allegations of human rights violations, reporting procedures and schedules and terms of reference/guidelines for their visits as well as laying down the procedure/guidelines which should be observed by the OHCHR support system. It would also be pertinent to emphasize that the cooperation and partnership of states are extremely important for the work of the special mechanisms. With this view, the following recommendations are made:

PART B: Recommendations

1. Selection of mandates and appointment of mandate-holders

Recommendation 1:

(a) The present appointment procedure of the mandate holders needs to be reviewed to make it more transparent, predictable and to ensure the principle of geographical rotation. For thematic mandates, the nominations of the mandate holders may be made by the regional groups. To use this procedure all the mandates should be rotated among the regional groups. The Chairperson, in consultation with

the Expanded Bureau and taking geographical balance into consideration, can set the rotation order. When it is one region's turn for a specific mandate, it is the right and responsibility of that regional group to nominate its candidate for the post. In case this regional group has no candidate, the next regional group in the rotation order may be asked to nominate its candidate to fill in the vacant post. The post would fall to the next group following the order of rotation after two terms. (b) The possibility of direct election by CHR could be one of the options and the difficulties/complications involved in that option should be considered in detail.

Recommendation 2:

The criteria for nominating individuals for appointments on mandates should be based on the professional and personal qualities of the individual, expertise and experience in the area of the mandate, integrity, independence and impartiality.

Recommendation.3:

The nominations of individuals to the regional group should be made by i) States and ii) NGOs with ECOSOC consultative status. If a candidate is a dual citizenship holder, in case of his nomination by one of the states of his nationality, the name of the nominating state should be clearly indicated.

Recommendation 4:

There should be no conflict of interest between an individual's responsibility as a mandate holder and his other professional commitments. Specifically, the individual to be considered for appointment as a mandate holder should neither be holding a government post nor be a salaried member of an NGO or a member of the Governing Bodies of advocacy groups in the area of the mandate.

Recommendation 5:

An individual who has served for six years on one mandate will be eligible for reassignment to other mandates only after a lapse of at least three years.

Recommendation 6:

The roster of candidates should be posted by OHCHR on its website and regularly updated.

2. Manual of Operations

Recommendation 7:

A manual of operations should be prepared for the special mechanisms of the CHR containing a code of conduct, criteria for admissibility of allegations of human rights violations and their working methods and guidelines for performing their functions.

Code of Conduct

Recommendation 8:

The code of conduct should, *inter alia*, address the following aspects:

- a) Following a standardized procedure for processing and addressing allegations of human rights violations within their mandates;

- b) Respecting confidentiality of information of allegations ensuring that such information should not be sent to media or other organizations,
- c) Guideline for media interaction such as press releases, press conferences and statements. In case of extraordinary incidents involving gross human rights violations, effort should be made to obtain the response of the concerned state or government before holding a media interaction.
- d) Laid down procedure and standardised guidelines for the country missions by thematic mandates on invitation. A thorough study of the country before embarking on a visit to help ensure that the findings and recommendations are grounded on that country's actual situation and capabilities. Need to closely coordinate with the receiving states for itinerary and activities of the visit; interviews with the media; and having a good balance of interlocutors for meetings.
- e) Reporting schedules, guidelines and procedures.

Criteria of admissibility of Allegations of Human Rights Violations and Urgent Appeals

Recommendation 9:

A suitable criteria for admissibility of allegations of human rights violations and a credible and a standardized system of addressing them to governments should be evolved. This criteria should be based on minimum evidentiary standards, verification of facts and satisfaction over exhaustion of domestic remedies. III founded complaints should be screened out by the mandate holder. All available details of the alleged violations such as the names/title of the alleged perpetrators, the exact place of the incident should be provided to the concerned government.

Recommendation 10:

Letters containing human rights allegations from special mechanisms to member states under stamped signatures is a legal infirmity. Letters transmitting such allegations should be personally signed by the mandate holders.

Recommendation 11:

The mandate holders should coordinate each other in order to avoid seeking same information at the same time under different mechanisms.

Reports of Special Procedures and Visits

Recommendation 12:

The annual report to the CHR should conform to the agreed specifications of length and format including its annexures. The special mechanism should provide concise, comprehensive and focused reports within their respective mandates based on credible and reliable information. The contents of the report should be made available to the concerned states before making them public. The 90 days time for governments' comments/responses should be respected. A reporting schedule specifying the deadlines for collection of government comments and dissemination of reports should be tabulated and sent to the concerned states. For any subsequent developments, reports may be orally updated during the interactive dialogue or in exceptional cases by issuing addenda.

Recommendation 13:

Reports to the General Assembly should be submitted only if explicitly mentioned in the resolution. The report presented at the CHR should be submitted to the General Assembly session and may be updated orally by the mandate holder or in exceptional cases by issuing addenda.

Recommendation 14:

The steps taken by the Governments should be appropriately highlighted in the reports. The comments, views and responses of the Governments should be duly included in the reports or attached as annexures. The cases in which satisfactory information has already been provided by Governments concerned should not be included in the reports.

Recommendation 15:

The idea of a system of peer review during the one week annual meeting of the mandate holders may be explored. There should be more efficient and coordinated processing of individual complaints by the special mechanisms and treaty bodies, where appropriate. Specific proposals in this regard should be developed.

Recommendation 16:

The annual meetings of the mandate holders should focus only on the working methods and evaluate the steps taken so far by the special procedures themselves particularly regarding the manual of operations and code of conduct etc. They should not issue statements on specific situations or themes.

Recommendation 17:

An informal session should be organized, in order to enable a dialogue with the States, during the Annual Meeting of the Special Mechanisms.

3. Support to mandate holders

Relationship with the OHCHR

Recommendation 18:

The distribution of available resources in the Office should be balanced; that best United Nations practices should be followed in the recruitment of staff; and that the professionalism and impartiality of the staff should be of the highest standard if the Office is to achieve its full potential in strengthening human rights protection worldwide. Allocation of resources to different mandates should be done on a transparent basis with a view to ensuring balance between all sets of rights.

Recommendation 19:

The professionally trained staff preferably on long term contracts should be deputed for support services to the mandate holders as well as on the Quick Response Desk. The practice of untrained staff on short term contracts should be avoided. The staff should be provided regular training to continuously improve their work skills to provide efficient service to the mandate holders. A guideline should also be developed for the OHCHR staff providing support to the mandate holders. The Special Procedures Branch should have a regular interaction with the representatives of states in Geneva for better understanding of the working of mandate holders.

Recommendation 20:

When a mandate holder is appointed, the OHCHR should arrange an induction or orientation programme with a view to familiarize the new mandate holder with the working methods and

guidelines for performing his functions. Names, telephone, fax and email contacts of the staff assigned to the mandate holder should also be placed on the website.

Recommendation 21:

The OHCHR should ensure that the allegations of human rights violations are processed as per laid down procedure and that the information should not be shared with media or other organizations. The reports by mandate holders should be circulated in time.