

**ENGAGEMENT OF NATIONAL  
HUMAN RIGHTS INSTITUTIONS  
WITH SPECIAL PROCEDURES**



**THE ASIA PACIFIC FORUM  
OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

...a partnership for human rights in our region

**APF POSITION PAPER**

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## **BACKGROUND**

1. General Assembly resolution 60/251 establishing 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...” and mandated the Council to “review and, where necessary, improve and rationalize all mandates”. The review should be concluded within one year of the Council’s first session in June 2006.
2. Special Procedures have been established to monitor, analyse and report on human rights issues and the situation in particular countries. They have been set up in response to particular situations in countries or specific themes that the Commission on Human Rights deemed required specific expert consideration and analysis. The review of the system of Special Procedures by the Council offers important opportunities to strengthen their effectiveness, coherence and coordination.
3. In this paper, the Asia Pacific Forum of National Human Rights Institutions (APF) sets out its views on the review of the Special Procedures and suggests modalities for the collaboration between Special Procedures and national human rights institutions (NHRIs).
4. The APF is a regional organisation of NHRIs in the Asia and Pacific region. It currently has seventeen (17) member NHRIs from Afghanistan, Australia, Fiji, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestinian Territories, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor Leste.
5. The APF and its member institutions are committed to contributing to the institution-building of the Council and its mechanisms and procedures, including the system of Special Procedures. NHRIs have a long-standing relationship of collaboration with the Special Procedures system.
6. It is against this background that the APF has developed this paper to contribute towards the review of the system of Special Procedures. The APF recommendations are based on the practical, constructive and consultative approach of NHRIs to human rights promotion and protection. The APF paper

addresses the main topics discussed by the open-ended intergovernmental working group responsible for reviewing the system of Special Procedures. The APF paper is structured around the following topics:

- (a) Scope and objectives of Special Procedures;
- (b) Enhancing coherence and coordination;
- (c) Selection of mandate holders;
- (d) Relationship with the Human Rights Council; and
- (e) Cooperation.

7. The APF regrets that the role of NHRIs in relation to Special Procedures has not, as yet, received much attention during the discussions of the working group. The APF therefore looks forward to contributing to further discussions on the cooperation between Special Procedures and NHRIs.

## **ROLE OF NATIONAL INSTITUTIONS IN THE COUNCIL**

8. The UN has, on many occasions, recognised the important role that NHRIs can play in promoting and protecting human rights at the national level. General Assembly resolution 60/251 recognised that the Council will work in close collaboration with NHRIs.<sup>1</sup> It also provided that the participation of NHRIs shall be based on the arrangements and practices observed by the Commission on Human Rights.<sup>2</sup> These practices should allow (i) individual NHRIs that are fully compliant with the Principles Relating to the Status of NHRIs (the Paris Principles)<sup>3</sup>, (ii) the International Coordination Committee of NHRIs (ICC) and (iii) regional coordinating bodies of NHRIs such as the APF, to make oral statements and submit written documentation during the meetings of the Council.<sup>4</sup> The role of NHRIs in the Council is further discussed in the ICC Position Paper Volume I: National Human Rights Institutions and the UN Human Rights Council (27 June 2006).<sup>5</sup>

9. NHRIs are independent bodies established by law devoted to the promotion of international human rights instruments at the national level and to the protection of the rights enshrined in them within their countries through

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<sup>1</sup> GA res 60/251, OP 5(g).

<sup>2</sup> GA res 60/251, OP 11.

<sup>3</sup> The *Paris Principles* defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

<sup>4</sup> See CHR res 2005/74.

<sup>5</sup> The paper is available on [www.nhri.net](http://www.nhri.net)

effective human rights implementation. They are required by the “Paris Principles”, adopted by the General Assembly, to have a specific mandate to provide advice to the government on the scope and implementation of its human rights obligations; monitor and report on the human rights situation; review national legislation; receive complaints; contribute to education and to capacity-building; contribute to reports to treaty monitoring bodies and cooperate with UN bodies.<sup>6</sup>

10. NHRIs therefore have specialised human rights expertise in how to address the challenges and circumstances of local conditions in the implementation of international human rights obligations. Given this expertise, NHRIs believe that the institution-building processes of the Council, including the review of the system of Special Procedures, can benefit from the contribution of NHRIs.

## **SCOPE AND OBJECTIVES OF THE REVIEW**

11. The APF would recommend that the review of Special procedures should, in the first instance, be of a general nature to identify the needs of the Council for comprehensive, independent and objective information, advice, analysis and monitoring. Once this assessment has been completed the Council could then proceed to identify gaps and overlaps in the current system and undertake a more detailed review of the scope and functioning of individual mandates.

12. The review should seek to improve and strengthen the system of Special Procedures, taking into account their contribution to the development of international human rights law and the protection and promotion of human rights.

### **RECOMMENDATIONS:**

- The review should, in the first instance, be of a general nature to examine and identify the needs of the Council for independent monitoring, information and analysis.
- The review should seek to improve and strengthen the system of Special Procedures.

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<sup>6</sup> GA res 48/134.

## ENHANCING COHERENCE AND COORDINATION

13. The system of Special Procedures has been established on an individual and ad-hoc basis without much consideration to their overall coherence and coordination. While the Special Procedures mandate holders and the Office of the High Commissioner for Human Rights (OHCHR) have taken steps to better coordinate their work and enhance collaboration, particularly in cases where mandates overlap, these efforts can undoubtedly be further enhanced. The review process should therefore explore how greater coherence can be brought to the system of Special Procedures. This examination could focus on criteria or guidelines for the establishment of new mandates and the need for a procedure to evaluate the need for new mandates against these guidelines.

14. The future establishment of new mandates should take account of the following factors:

- the need for independent and expert information and analysis on a particular topic, group or country situation;
- the potential contribution by the mandate to increased human rights protection and promotion; and
- the balancing of civil, cultural, economic, political and social rights and the interrelatedness and interdependence of all human rights.

15. The APF welcomes the establishment in June 2005 of the Coordination Committee of the Special Procedures. The Committee has an important role to play in further developing and reviewing the effectiveness of the working methods of the Special Procedures and for enhancing coordination among them.

16. The existing working methods of mandate holders are reflected in the Manual of the United Nations Human Rights Special Procedures, which is subject to periodic review by the Special Procedures themselves.<sup>7</sup> The working methods of the Special Procedures have evolved over time in response to developments within the system of Special Procedures and as a result of particular circumstances and situations. The APF believes that the Special Procedures should continue to develop and refine effective working methods both within their individual mandates and collectively, and welcomes the

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<sup>7</sup> The *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* was originally adopted at the 6<sup>th</sup> Annual Meeting of the Special Procedures in 1999.

initiative taken by the Special Procedures to seek comments on the current revised Manual.<sup>8</sup>

**RECOMMENDATIONS:**

- The review process should seek to improve the coherence and coordination of the system of Special Procedures.
- The Coordination Committee of Special Procedures should play a key role in enhancing collaboration among mandate holders and in reviewing and refining the working methods of the Special Procedures.

## **SELECTION OF MANDATE HOLDERS**

17. The APF recommends that the nomination and appointment process of the Special Procedures be undertaken by the President of the Council or alternatively the High Commissioner for Human Rights. It should be a transparent process that considers the qualifications of each candidate, recognising the need for balance between gender, geographic regions and legal systems.

18. The characteristics of the system of Special Procedures require that mandate holders fulfil high standards of independence, impartiality and expertise. Candidates should not occupy other posts that could cause a serious conflict of interest in the execution of their mandate.

19. Mandate holders should be selected from a broad pool of candidates. The APF would welcome opportunities for NHRIs to propose candidates for a roster of experts to be maintained by OHCHR from which new mandate holders could be appointed.

**RECOMMENDATIONS:**

- The nomination and appointment process should be undertaken by the President of the Council or the High Commissioner for Human Rights. The process should be transparent and allow stakeholders, including NHRIs, to present candidates for appointment.
- Mandate holders must fulfil the highest standards of independence, impartiality and expertise. They should not occupy posts that may cause a serious conflict of interest in the execution of their mandate.

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<sup>8</sup> All stakeholders have been invited to submit comments on the current version of the Manual by 10 April 2007.

## RELATIONSHIP WITH THE HUMAN RIGHTS COUNCIL

20. The review process offers an opportunity to ensure that the information, analysis and recommendations of the Special Procedures are fully integrated into the debates and decision-making of the Council. This should translate into regular interaction between the Special Procedures and the Council through the presentation of reports, interactive dialogue and follow up.

21. The analysis and recommendations of the Special Procedures are also an important source of information for the Universal Periodic Review mechanism to ensure that the dialogue with the State under review is based on well-founded information and advice.

### RECOMMENDATIONS:

- The analysis and recommendations of Special procedures should be integrated into the discussions and decisions of the Council through regular interaction and dialogue between Special Procedures and the Council.
- The reports and recommendations from Special Procedures should be included in the information considered in the UPR.

## COOPERATION

### *Cooperation with Governments*

22. The effectiveness of the Special Procedures relies on the cooperation extended to them by States. All members of the UN have an obligation to cooperate with the UN system and the members of the Council are required to cooperate with the Council and all its procedures.<sup>9</sup> Cooperation with Special Procedures is particularly important in relation to invitations for country visits, responses to communications and follow up. The Council should therefore regular monitor cooperation between States and the Special Procedures.

### *Cooperation with NHRIs*

23. Both the APF and its individual member NHRIs have had a long history of cooperation with the system of Special Procedures and are recognised as key

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<sup>9</sup> GA res 60/251, OP9.

partners of the system. NHRIs have provided the Special Procedures with information relevant to their individual mandates, have met with mandate holders in the context of their official visits to countries in the Asia Pacific region and have collaborated on the implementation of practical projects to protect and promote human rights.

24. The APF believes that a deepening of this cooperation would be beneficial to the effective promotion and protection of human rights at the national level. NHRIs should therefore be informed in a timely manner of country visits by Special Procedures. Furthermore, Special Procedures should seek to meet with representatives of NHRIs during their country visits. Special Procedures should also consider the role of NHRIs in adopting specific thematic or country-based recommendations or recommending the establishment of NHRIs in full compliance with the Paris Principles where they do not exist.

**RECOMMENDATIONS:**

- State cooperation with the Special Procedures should be enhanced through the review process and monitored by the Council.
- NHRIs are important local partners for Special Procedures. Special Procedures should therefore liaise with NHRIs in a timely manner for country visits.
- Special procedures should consider the role of NHRIs in adopting specific recommendations.