

## Building the UN Human Rights Council and its Special Procedures: Notes for Sexual Rights and Reproductive Rights Advocates

The United Nations is undergoing wide-ranging reforms. One of the key reform efforts is the establishment of a Human Rights Council, replacing the Commission on Human Rights with a strengthened institution. To assist in its function of human rights monitoring, the Commission on Human Rights, over the last thirty years, established a wide variety of procedures and mechanisms to examine, monitor and report on the human rights situations in specific countries or upon certain human rights issues at a global level. These are referred to as the ‘Special Procedures’ of the Commission on Human Rights. Special Procedures are usually individual human rights experts, but are sometimes established as working groups, and they possess unique mandates as independent experts, unpaid by the UN system, with a wide variety of investigative and reporting powers.

June 2006 saw the handover of all powers and Special Procedures from the Commission to the Human Rights Council, and under the terms of the General Assembly resolution 60/251, the Council must “maintain a system of special procedures, expert advice and a complaint procedure”.<sup>1</sup> June 2006 also saw the first session of the Council, which established an intergovernmental working group 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>2</sup> They will report at the September and December 2006 sessions of the Human Rights Council, and the Council will decide on the composition of the Special Procedure system at its March 2007 session.

The system of Special Procedures has already established itself as an important tool to combat impunity for human rights abuses all over the world and to strengthen human rights protection in a wide range of areas. For sexual rights and reproductive rights advocates, the review of the Special Procedures this coming year represents a significant opportunity for the advancement of these rights globally. A stronger system of Special Procedures can provide:

- A basis and a tool for advocacy and for supporting the work of sexual rights and reproductive rights advocates at international and national levels;
- Greater monitoring and scrutiny by the international community of the implementation of sexual rights and reproductive rights in all countries;
- Greater accountability for sexual rights and reproductive rights violations;
- A strong basis for having sexual rights and reproductive rights incorporated more strongly into the work of the Council, including substantive resolutions, reports, panels, and so on;
- Greater integration of sexual rights and reproductive rights into the work of other parts of the UN system, including the General Assembly and the Secretary-General; and
- A more recognized contribution to international law.

<sup>1</sup> *Human Rights Council, GA Res. 60/251, UN GAOR, 60th Sess., Supp. No. 49, UN Doc. A/RES/60/251 (2006) at para. 6 [emphasis added].*

<sup>2</sup> *Implementation of paragraph 6 of General Assembly resolution 60/251, Human Rights Council Dec. 1/L.14, UN Human Rights Council, 1<sup>st</sup> Sess., UN Doc. A/HRC/1/L.14 (2006).*

The purpose of this paper is to make the case that sexual rights and reproductive rights advocates — even those that usually do not do work on the Commission — need to be engaged in the review of the system of Special Procedures. This paper looks briefly at some of the work Special Procedures have done with respect to sexual rights and reproductive rights. Mainly, it contains a detailed analysis of many reform issues that are currently being scrutinized while identifying the potential importance of these issues to sexual rights and reproductive rights advocates. Finally, the paper gives advocacy recommendations for using the reform opportunity to strengthen the system of Special Procedures and advance work on sexual rights and reproductive rights at national and international levels.

## **Introduction to the System of Special Procedures**

The term “Special Procedures” is the broad name given to the 41<sup>3</sup> mandates established by the Commission and which now come under the authority of the Council. Each Special Procedure is either an individual expert — working under the title of “Special Rapporteur”, “Special Representative”, or “Independent Expert”<sup>4</sup> — or a team of 5 experts, known as a “Working Group”. Although the mandates given to Special Procedures vary, they are usually to examine, monitor, advise and publicly report on human rights situations in specific countries or foreign-occupied territories (country mandates), or on major areas of human rights violations worldwide (thematic mandates). Of the 41 mandates that currently exist, 13 are country mandates and 28 are thematic mandates.<sup>5</sup> Since 4 thematic mandates operate as working groups, the mandates are filled by a total of 57 human rights experts.

Special Procedures regularly undertake a variety of activities, including:

- Receiving and analyzing information, and conducting studies, on the situation of human rights within their mandate;
- Making recommendations to States generally on steps they can take to implement human rights standards more fully;
- Intervening, often on an urgent basis, in individual cases of human rights violations coming within their mandate through seeking information from States, or requesting them to implement protection measures or to take specific actions to comply with human rights standards;
- Undertaking country visits to assess the human rights situation pertaining to their respective mandates and making recommendations to the Governments concerned with a view to improving the situation; and
- Recommending programmes of technical cooperation on issues coming within the scope of their mandate to OHCHR and States.<sup>6</sup>

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3 As of August 2006.

4 In reality, there is very little difference in the ways in which these different types of Special Procedure operate. One exception is that Special Representatives tend to be appointed by the Secretary-General, whereas the others are appointed by the Chairperson of the Commission (now the President of the Council).

5 In this paper, most of the discussion of Special Procedures is referring to thematic Procedures. Sexual rights and reproductive rights are issues that are global in nature notwithstanding that many country mandates holders have incorporated these issues into their work.

6 See Office of the High Commissioner for Human Rights, “Strengthening Special Procedures: The way forward”, online: OHCHR <<http://www.ohchr.org/english/bodies/docs/special-paper.doc>> at 1.

Special Procedures use a variety of means in discharging their duties, including:

- Receiving and sharing information from and with States, NGOs, UN and other international agencies;
- Raising awareness about specific human rights situations and phenomena, and attesting to threats to and violations of human rights through reports and country visits;
- Raising public concerns through media and other public statements when specific circumstances so warrant; and
- Reporting and making recommendations to the Commission, and when specified in their mandates to the General Assembly (in some cases to the Security Council) on the regular activities under the mandate, on field visits as well as on specific thematic trends and phenomena.<sup>7</sup>

Special Procedures, though they must operate within the scope of their mandates have a wide discretion in the activities and working methods for discharging their duties.

A further and crucial point to the effectiveness and strength of the system is that the Special Procedures are extra-conventional mechanisms, meaning that a State need not have signed nor ratified a single human rights convention to be subject to the scrutiny of a Procedure. This universal jurisdiction sets the Special Procedures apart from treaty bodies, which can only scrutinize States who have ratified the relevant treaty. It also reminds everyone, especially States, that human rights are universal and are a result of the human capacity and, thus, must be upheld regardless of what obligations a State has taken upon itself.

Finally, they are Special Procedures *of the Commission* (now the Council) and thus have a legitimacy in the eyes of States that other human rights monitors and analysts may not have. As human rights experts discharging their duties on a *pro bono* basis, this legitimacy, coupled with wide discretion in their activities and the public nature of their work, has afforded them an independence from States and the OHCHR that has made them highly effective.

## **Sexual Rights and Reproductive Rights: Areas Neglected by the Commission**

Two key reasons given by NGOs and States alike for the downfall of the Commission are that it had become an overly political forum and that it dealt only selectively with human rights situations and issues, utterly ignoring certain subjects. Sexual rights and reproductive rights are key areas that saw little action by the Commission.

Sexual orientation and gender identity is the example cited frequently by many different NGOs, including non-LGBT ones engaged in more general human rights work, as one key area where the Commission failed to act. This was despite a growing body of work by various Special Procedures detailing human rights violations on the basis of sexual orientation and gender identity, analyzing the incompatibility of these with international law, and making particular recommendations to address these.

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7 *Ibid.*

Furthermore, pressure on the Commission, and now the Council, from both NGOs and some States was never greater than in the last few years and continues strong today. In fact, the 61<sup>st</sup> session of the Commission — the last substantive session — saw dozens of interventions calling attention to human rights violations on the basis of sexual orientation and gender identity or calling on the Commission to take action on sexual orientation issues. These were delivered by both NGOs and States coming from the North and the South. One intervention in particular was made jointly by 32 States coming from 4 of the 5 regional groups and was direct and critical of the Commission's failure to address the "mounting evidence" of human rights violations on the basis of sexual orientation and gender identity.

Despite this pressure, opposition to recognizing the legitimacy of sexual orientation and gender identity and to taking action to address violations on these bases has remained strong among many States and right-wing NGOs. Such was responsible for the demise of a Brazilian resolution entitled "Sexual Orientation and Human Rights" — the first draft resolution dealing specifically with sexual orientation put forward by a State for consideration by a UN body.

Initially tabled at the Commission during its 59th session in 2003, the resolution's adoption should have been a non-issue. It was intentionally drafted to avoid thorny issues and was simply a reiteration of basic human rights principles already existing in international law: expressing deep concern over human rights violations on the basis of sexual orientation and calling on States to uphold the rights of all persons regardless of their sexual orientation.

However, fierce opposition by States on moral and religious grounds resulted in the use of many different procedural tactics to stall discussion on the issue until the last day of the session and then to postpone consideration of the draft resolution until the next session.

At the following session in 2004, despite a record turnout of LGBT rights advocates and LGBT-supportive NGOs, tremendous political pressure on Brazil caused them to withdraw the resolution and once again postpone its consideration until the following session. At the 2005 session, no resolution dealing with sexual orientation was tabled. In the end, the events surrounding the Brazilian resolution on sexual orientation form the quintessential example of the selectivity and politicization that were responsible for the Commission's ineffectiveness and eventual downfall.

Even more recent events reveal this continued desire on the part of States to shun discussion and consideration of certain sexual rights issues. In early 2006, the NGO Committee of ECOSOC rejected without valid reasons the applications for consultative status of 4 major LGBT organizations.<sup>8</sup> Barring access to these NGOs prevents them from working with States and from bringing LGBT matters to their attention, thus further confining the discussion of these human rights issues to the margins. That States have not taken much action on sexual orientation issues is disappointing enough, but actively trying to avoid listening to what these NGOs have to say takes this homophobia to a new level.

The first few years of the Council will be the testing ground for it to establish its legitimacy not as just the principal UN human rights body but as an effective, responsive and indispensable body for the international protection of human rights. Many NGOs take the view that a failure to respond to human rights violations on the basis of sexual orientation and gender identity will be a serious threat to the Council's legitimacy and a sign that many of the problems of the Commission have not been overcome.

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<sup>8</sup> *On appeal, ECOSOC rejected the application of one of these organizations, and after much political wrangling and avoidance, ECOSOC decided to postpone consideration of the other 3 applications until its October 2006 session.*

Beyond sexual orientation, the Commission deliberately avoided many other issues involving either sexual rights or reproductive rights. Voluntary and safe abortion, prime examples, have been examined by a number of Special Rapporteurs but have never been incorporated into a single resolution of the Commission.

Even in situations where sexual rights or reproductive rights language has been adopted into resolutions, these have often been very controversial and strongly opposed. Frequently, the end result is a watered-down version of the original draft language. This was the case, for instance, at the 61<sup>st</sup> session of the Commission where attempts to include a strong paragraph on the need for integration of women's sexual and reproductive rights into HIV/AIDS programmes and policies resulted in a far weaker paragraph.

A strengthened system of Special Procedures dealing more consistently with sexual rights and reproductive rights will undoubtedly be a major factor in helping to shift the balance towards the Council actually responding to these long-overlooked areas of human rights.

## **Sexual Rights and Reproductive Rights in the Work of the Special Procedures**

The reports of thematic Special Procedures are structured very similarly to one another. Usually the main report is a study of certain aspects of the rights with which the Procedure deals. Often this discussion is centred on a particular theme and can give the expert's opinions as to the requirements of international law with respect to that topic. This main report usually ends with general recommendations to all States for implementation of those rights. The first addendum to the report is often a list of individual cases where the Procedure has intervened and what response, if any, they have received from the Government concerned. The remaining addendums are reports of country visits that the Procedure has made, including analysis of the specific human rights issues in the country related to the mandate, and country-specific recommendations to address these issues.

In all parts of these reports, many sexual rights and reproductive rights issues have received a fair bit of attention by individual Special Procedures within the context of their mandate. With respect to individual cases, 64% of communications sent under the violence against women mandate in 2004 were regarding violations of sexual or reproductive rights. For the extrajudicial executions and sale of children mandates, these proportions are 13% and 51%, respectively.

Issues of sexual rights have also received significant attention in the substantive analysis of issues coming within specific mandates and in reports on country visits. As mentioned above, many of these issues are ones that the Commission did not touch, despite these significant comments and recommendations by Special Procedures. However, the majority of sexual rights and reproductive rights issues have either received insufficient, inconsistent, or no attention in the work of the Special Procedures. This can be partly explained by the fact that specific mandate holders have not significantly or consistently incorporated sexual rights, reproductive rights, or a gender perspective into the work under their mandate.

However, this lack of attention is largely due to the fact that many of the issues do not fit into an existing mandate, or fall as a peripheral issue within a mandate, and thus do not receive consistent or thorough attention. The full identification of gaps within these mandates is a large undertaking even just in the areas of sexual rights and reproductive rights. While it is important work that should happen soon, the thorough identification of gaps is beyond the scope of this paper.

The Special Rapporteurs on the right to health and on violence against women have both been very strong in incorporating sexual rights into the analysis of issues within their mandates. Both Procedures have sought to clearly and strongly articulate the basis in international law for the protection of sexual rights.

After some analysis of international legal principles, the Special Rapporteur on the right to health makes the following comment:

[T]he Special Rapporteur has no doubt that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights. Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference.<sup>9</sup>

This mandate holder has used a rights-based framework in his discussions of sexual health. More recently at a sexual rights conference in Sweden, the mandate holder stated the importance of naming and identifying all of those rights that are sexual rights. It is clear that further discussion of sexual rights will appear in his upcoming reports.

In addition, the Special Rapporteur on violence against women has made similar comments:

In recognizing women's sexual and reproductive autonomy rather than protecting women's sexual purity, one can tackle the roots of gender-based violence. The articulation of sexual rights constitutes the final frontier for the women's movement.<sup>10</sup>

Despite this overall need for a fuller and more complete articulation of sexual rights in international law and in the work of the Special Procedures, many mandate holders have examined violations of specific sexual rights, sometimes extensively. For example, the Special Rapporteur on violence against women has long tackled sexual violence issues, as well as harmful traditional practices including FGM, forced marriage, dowry, and so-called honour killings.

With respect to sexual orientation, different Special Procedures have raised and discussed the following issues:

- Killings of sexual minorities;
- Decriminalization of consensual adult sexual relationships;
- Violence against and harassment of lesbian, gay, bisexual, and transgender human rights defenders;
- Violence against lesbian women;
- Elimination of homophobia in schools; and
- Principles of non-discrimination on the grounds of sexual orientation and gender identity.

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<sup>9</sup> E/CN.4/2004/49 at para. 54.

<sup>10</sup> E/CN.4/2003/75 at para. 65.

Some clear gaps that remain include violence, other than killings, of gay, bisexual or transgender men who are not human rights defenders, and issues around respecting the rights of same-sex-headed families. These gaps exist as they are not squarely covered under the mandate of any existing Special Procedure. Similar gaps in mandates have resulted in under-examination of the rights of sex workers, for example.

Much like sexual rights, reproductive rights have received some attention from Special Procedures. For example, the Special Rapporteur on the right to health has recently developed a rights-based framework of indicators to measure the implementation of the WHO's 2004 reproductive health strategy. With respect to abortion, many Procedures have examined the consequences of unsafe abortion and have urged States to ensure access to safe abortion where legal. Some Procedures have gone even further calling for the decriminalization of abortion, thus setting the stage for arguments that a right to abortion exists in international law.

## **Reform of the Special Procedures**

The desire to reform the system of Special Procedures is not new. Practically since the birth of the system, many proposals have been made by NGOs and individual States, as well as alliances of States, to change one or more aspects of the system. These reform proposals have broadly related to the working methods of the Procedures, the number and scope of mandates and cooperation between them, the selection of mandate holders, State cooperation with Procedures, and resources for the Procedures.

The momentum for reform has been persistent in the last six years and has particularly intensified in the last year. By and large these historical issues for reform continue to be raised even though the Commission has been abolished and its powers transferred to the Council. In fact, only a small part of the reform agenda has come about as a consequence of new powers or modalities the Council possesses that the Commission did not. Since the General Assembly resolution specifically gives the Council *carte blanche* to reform the current system or to scrap and establish a new system of Special Procedures as it sees fit, many view this next year as a time when long-standing issues and problems with the Procedures will be resolved.

The International Service for Human Rights divides proposals for reform of the Special Procedures into two categories: those which comprise the "positive reform agenda" and those which comprise the "negative reform agenda".<sup>11</sup> This is a useful categorization for NGOs sorting through the various ideas for reform. The former category consists of those proposals which "improve the current system, strengthen the role of Special Procedures, and enhance their functioning and impact"<sup>12</sup> while the latter category are those which will weaken the effectiveness of the mechanisms by limiting their independence and working methods. Given the generally effective and strong nature of the current system, NGOs must oppose the "negative reform agenda" while at the same time "identifying the major challenges and limitations faced by the Special Procedures and steps that need to be taken to strengthen the system."<sup>13</sup>

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11 Meghna Abraham, *A New Chapter for Human Rights: a handbook on issues of transition from the Commission on Human Rights to the Human Rights Council* (Geneva: International Service for Human Rights and Friedrich-Ebert-Stiftung (FES), 2006), online: International Service for Human Rights <<http://www.ishr.ch/handbook/index.htm>> at 41.

12 *Ibid.*

13 *Ibid.*

There is plenty of NGO analysis of how the various reform proposals will likely impact the system's strength and needless repetition of these assessments is avoided in the discussion below. Quite obviously, reforms which strengthen the system advance the protection of all human rights. For sexual rights and reproductive rights advocates, however, it is still useful to examine the positive and negative impacts that some of the reform proposals might have in these areas. In some cases, due to the emerging nature of many sexual rights and reproductive rights within the work of the Commission, there are additional considerations to take into account when discussing Special Procedure reform.

## **Selection of Mandates and a Working Group on Emerging Issues**

Special Procedures are widely held to be one of the most effective tools for human rights protection that the Commission developed. Within the scope of their mandates, they have publicly commented on and have helped to focus international attention on human rights issues within a wide diversity of countries. Many States have found this scrutiny embarrassing and have made calls to drastically limit the working methods of the Procedures and the scope of their mandates and activities, under the guise of enhancing the effectiveness of the system and of ensuring procedural fairness for States.

This negative reform agenda has been led by Asian States with various allies from other regional groups over the last many years. The current attack on the Special Procedures system can be found in a recent non-paper<sup>14</sup> by the Asian Group,<sup>15</sup> which gives over 20 recommendations involving, among many others, limiting how mandate holders interact with the media, disallowing NGO members from being nominated for a mandate, and imposing minimum evidentiary standards for individual cases.

Alongside the success of Special Procedures in bringing greater attention to human rights situations has been a substantial increase in the number of mandates. This proliferation has occurred in an *ad hoc* manner — that is, mandates have been created as States have felt the need for greater exploration of a certain issue and not in a systematic manner. The increase in number of mandates has occurred despite the fact that the creation of almost every mandate has required strong NGO advocacy and protracted negotiations. The growth in number has been particularly pronounced in the last decade.

The situation has led to many calls for the reduction in duplication of the work of mandate holders and in overlap between mandates. Some of these calls have been legitimate desires to trim the system to make it more coherent and efficient, and therefore more effective. However, there have also been the calls of the Asian Group and its allies for the “rationalization” of the Special Procedure mandates.<sup>16</sup> This term was originally diplomatic speak for the reduction of the number of mandates along with associated ideas to limit the effectiveness of the Procedures, both aiming to reduce the attention being shed upon the rights abuses of certain States. However, it now seems to be regularly used by many different stakeholders. Nevertheless, the use of the term “rationalization” should be avoided and, instead, terms such as “strengthening” and “enhancing” should be used.

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14 *The term “non-paper” is widely used within the UN system to describe a paper that has no UN Document number and that is meant for discussion.*

15 *“Initial Discussion Paper on ‘Enhancing the Effectiveness of the Special Mechanisms of the Commission on Human Rights’ prepared by the Asian Group”, online: Office of the High Commissioner for Human Rights: <[http://portaltemp.ohchr.org/pls/portal/docs/PAGE/SP\\_MH/ASIA%20GROUP.DOC](http://portaltemp.ohchr.org/pls/portal/docs/PAGE/SP_MH/ASIA%20GROUP.DOC)>.*

16 *One could draw an easy parallel between Special Procedures and NGOs. The success of both groups in calling attention to human rights violations and holding States to account for them have led to similar calls to “rationalize” the system of Special Procedures and the participation of NGOs at the Commission. In both cases, it is similar groupings of States trying to rationalize their way to impunity.*



One worrying element in the mandate selection discussion is that Member States have tended to focus more on reducing overlap and duplication rather than on closing gaps in protection. The situation that exists whereby some human rights abuses receive the attention of two mandate holders because of an overlap in their mandates is far less troubling than the situation where certain human rights issues are altogether overlooked as they do not fall within the scope of any mandate.

Adding to this is the fact that a great deal of overlap between mandates can be attributed to the interrelatedness of human rights issues. It is because of this that, for example, cases of forced abortion regularly receive the attention of multiple mandate holders as they can be conceived of as violence against women, forms of torture, and as violations of the right to health. The fact that these mandates overlap in this and other areas does not alter the fact that these mandates are quite distinct from one another. Overlap, in fact, is an indication that mandate holders are applying an intersectional approach to issues within their respective mandates. Why should the Special Rapporteur on indigenous people not consider the higher rates of maternal mortality among indigenous women? And why should the Special Rapporteur on the right to health not consider the very same issue? They both should (and have). An intersectional approach to their work ensures that specific issues are not ghettoized within particular mandates and that Procedures are exploring the synergies and interrelationships between these issues and those at the centre of their mandate. It is hoped that all Special Procedures will continue or begin to integrate sexual rights and reproductive rights analyses into their work to the extent that their mandates permit.

Rather than focussing on overlap, NGOs should be shifting their focus to analyzing and identifying protection gaps in the current system of Special Procedures and they should encourage States to do the same. Protection gaps exist in two broad forms. First are those issues that do not fall within the scope of any existing mandate. The second are those issues that lie at the periphery of a current mandate.<sup>17</sup> Many specific issues in the areas of sexual rights and reproductive rights fall into one of these two types of protection gap. For example, incidents of violence against gay, bisexual and transgender men not involving death or active imprisonment do not currently fall within the mandate of any Special Procedure.

An example of the second type of protection gap is the right to abortion. Even though, much to her credit, the Special Rapporteur on violence against women has analyzed how reproductive health policy criminalizing abortion can constitute violence against women, this issue cannot be said to be at the core of her mandate. While legitimately fitting within her mandate, and thus being an entirely appropriate subject for analysis, such an issue is at the periphery of the broad range of issues fitting within her mandate and as such has not received the attention it would receive if it were part of the focus of a specific mandate. An issue at the periphery of a mandate may only possibly receive attention when an urgent situation arises or on a thematic basis once in many years.

Protection gaps must be identified within the system and closed. Decisions respecting the selection of mandates must have this as their main focus.

The overemphasis on overlap, despite there being good reason for overlap, underscores a persistent problem in the discussion over the selection of mandates: the lack of transparent and detailed criteria by

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17 *There is a third type of protection gap whereby, even though a specific issue falls squarely within the core of a mandate, the mandate holder refuses to deal with the issue thus effectively offering no protection to individuals confronting that issue. This is an important issue that can be addressed through having a larger pool of candidates from which to make appointments, allowing NGOs to have a major role in nominating candidates, and through direct dialogue between NGOs and the Special Procedure in question. This also points to an advantage of overlap between mandates: if one mandate holder does not give attention to an issue, others might. Further comment on this topic is beyond the scope of this paper.*

which to choose which mandates to create, amalgamate, or eliminate. Even decisions respecting the closing of gaps in protection must be made on the basis of transparent and detailed criteria. So far, the criteria that have been proposed are often quoted, short and date back to the 1999-2000 review of the Special Procedures. They are restated in a recent OHCHR background paper:

“The Working Group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights whose report<sup>18</sup> was endorsed in CHR Decision 2000/109 identified the need to rationalize mandates and signalled some general criteria to apply when creating, merging or terminating mandates. The criteria suggested by the Working Group were the following:

- Mandates should offer a clear prospect of an increased level of human rights protection and promotion;
- The balance of thematic mandates should broadly reflect accepted equal importance of civil and political and economic, social and cultural rights;
- Selection of mandates should avoid unnecessary duplication;
- There is a need to identify whether the structure of the mechanism is the most effective one;
- There is a need to have regard to the content and predominant functions of each mandate, as well as the workload of individual mandate-holders;
- Review of all mandates should be conducted periodically.

The Working Group stressed that these criteria provide useful points of reference and should not be applied automatically.”<sup>19</sup>

This set of criteria is a start and makes some useful points such as the fourth bulleted point which highlights that making a mandate overly broad will dilute a mandate holder’s ability to give appropriate attention to all of the issues coming under the mandate.

Other points, such as the third, are far too vague to be useful guides: By what means does one decide that something is an unnecessary duplication and not a natural overlap resulting from the fundamental intersected nature of human rights? Furthermore, with respect to the first point, would not all mandates grounded firmly in human rights “offer a clear prospect of an increased level of human rights protection and promotion”?

It is reasonable to speculate that part of the reason these criteria have never been detailed is that mandate creation has always been politicized, and so the development of selection criteria would similarly be political. It is important to recognize that many sexual rights and reproductive rights issues have been hotbeds of political wrangling. Thus, allowing States to develop the mandate selection criteria and to produce the ideas for new mandates may not bring about positive results in having increased attention focussed on these important issues.

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18 E/CN.4/2000/112

19 Office of the High Commissioner for Human Rights, “Enhancing and strengthening the effectiveness of the special procedures of the Commission on Human Rights: Background paper: Session 1”, online: OHCHR <[http://portaltemp.ohchr.org/pls/portal/docs/PAGE/SP\\_MH/SESSION-1-ROLE-AND-FUNCTION-OF-SPEC.PROC-FINAL%20E.DOC](http://portaltemp.ohchr.org/pls/portal/docs/PAGE/SP_MH/SESSION-1-ROLE-AND-FUNCTION-OF-SPEC.PROC-FINAL%20E.DOC)> at 4.

One alternative that would depoliticize, to some degree, the exploration of new potential mandates would be the development of a Special Procedure on emerging issues. The mandate of this Procedure would be to study and report on human rights issues that remain emerging in the work of the Special Procedures, or, in other words, are ones that are unexamined or under-examined.

Expressed another way, the mandate of the Procedure on emerging issues would be to study issues that either do not fall within an existing mandate or lie on the periphery of an existing mandate. The Procedure would then primarily be responsible for recommending to the Council to establish specific mandates. It could also have responsibility to make recommendations generally to States or to specific States after a country visit. The Procedure would have all the powers of any other Procedure and would adopt similar working methods, including being able to meet with a wide variety of stakeholders: States, OHCHR, NGOs, corporations, academics, and so on. The Procedure would also possess all of the important qualities of any Procedure: independence, objectivity and expertise. To ensure that there is sufficient expertise for the Procedure to study a wide of range of different issues, the structure of this mandate should be a 3-person working group.<sup>20</sup>

The advantage of creating a Working Group on emerging issues is that attention can be brought to issues previously neglected. At the same time, States would not feel that they were losing a measure of control as they would still retain the authority to decide whether to create a mandate recommended by the Working Group. As well, States would not be able to complain about the proliferation of mandates, since this proposal would necessitate the creation of only one new mandate in the next year, and then, after that, mandates would be established after detailed study. The establishment of such a Working Group would also meet the need for transparent and detailed criteria as the Working Group would make recommendations based on systematic, consultative and public study of issues. Lastly, this proposal has the benefit of focussing attention on protection gaps and not overlaps. For sexual rights and reproductive rights advocates, this may be a realistic way to start having the marginalized issues in these areas examined more consistently and centrally.

While a Working Group on emerging issues would remove a degree of politics from the mandate selection process, it may be that this idea will not come to fruition. Regardless, NGOs should be conducting mapping projects to identify protection gaps. It is likely that States that have supported the Procedures have already started conducting such mapping exercises to identify both areas of overlap and areas where gaps occur. At some point, this process will be public and NGOs must be in a position to feed into the process. By conducting their own independent inquiries, NGOs will be able to voice critical commentary on the results of any State-conducted mapping initiative. Additionally, if a Working Group on emerging issues were created, such a mapping project would allow the NGO to highlight important, overlooked issues to the Group.

## **Joint communications on individual cases**

Overlapping mandates have also brought about the very common situation where two or more mandate holders will jointly respond to an individual case of human rights abuse.<sup>21</sup> This arises where either different parts of an incident trigger different mandates, or where an entire incident can be

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<sup>20</sup> A 3-person working group is proposed here instead of a 5-person working group, which is the standard, because many States, particularly the Asian Group, have proposed that appointments of mandate holders be made by regional groups (see discussion below). If a 5-person working group were established, there would be a risk that these States would insist on each regional group selecting one member of the working group.

conceptualized in two or more different ways. For example, a case involving the arbitrary killing of lesbian women will trigger both the mandates of violence against women and extrajudicial, summary and arbitrary executions. Joint communications are a way of bringing extra pressure to bear on a State to investigate the incident and to take appropriate action to end the state of violation, to stop a violation from occurring, or to ensure the violators are brought to justice. The pressure can also be greater as joint communications can draw greater media attention towards the abuse and the State's perpetration of or complicity in it. Not surprisingly, this has provoked many States whose human rights records are particularly poor, and in particular the Asian Group has proposed the following:

Recommendation 11: The mandate holders should coordinate each other in order to avoid seeking same information at the same time under different mechanisms.

This is a proposal that will severely undermine the work of the Procedures, and the implications for sexual rights and reproductive rights advocates cannot be underestimated. In 2004, the Special Rapporteur on violence against women intervened in 73 cases involving violations of sexual or reproductive rights; in 90% of these cases, she acted with at least one other Special Procedure. Only in 10% of cases were communications sent under her mandate alone. For the Special Rapporteur on the right to health, the proportion of communications sent jointly with other Special Procedures was 88% for cases involving sexual or reproductive rights, and 94% for all cases. For other mandates the proportion is smaller, but still a majority. Under the extrajudicial, summary and arbitrary executions mandate, the proportion of joint communications is 68% for all cases and 84% for ones involving a violation of sexual or reproductive rights. Similarly, for the sale of children proportions of joint communications are 87% and 64% for sexual or reproductive rights-related cases and all cases, respectively. In fact, looking at the system of Special Procedures as a whole, the OHCHR reports that, in the last few years, joint communications have accounted for 50 – 60% of all the communications sent out.<sup>22</sup>

The Asian Group and its allies have consistently raised this recommendation, which stems from a time when coordination between mandate holders was lacking and mandate holders would send out separate communications respecting the same incident. Despite the historical relevance of this suggestion, this situation has been rectified making this recommendation no longer relevant. In 2003, the OHCHR, with the help of the Special Procedures, set up a Quick Response Desk. The Desk has eliminated the problem of duplicate and separate communications by acting as a central coordinating agency for all communications related to cases, from a source's initial contact to communications between Special Procedures and Government. The Desk has also achieved a turnaround time of 24 hours for urgent appeals between receipt of information from a source and having a communication jointly or solely sent to the relevant government.

Given this praiseworthy success at achieving coordination and efficiency, this recommendation of the Asian Group can only be interpreted as requiring that only one mandate deal with each case even if the incident deals with issues coming under multiple mandates. Since communications sent to and received from governments are now so well coordinated, the reason for the continued existence of this suggestion is, at best, unclear. In this context, the recommendation seems to be an attempt to undermine the strength of the Special Procedure system.

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21 *An individual case does not necessarily involve only one person, but can often involve more than one victim of a specific incident or highly similar incidents.*

22 *See e.g. "Special Procedures Bulletin: First Issue: January-April 2006", online: OHCHR <<http://www.ohchr.org/english/bodies/chr/special/BulletinJan-Apr2006.pdf>> at 2.*

## Working Methods and Selection of Mandate Holders

Given the complexities of the working methods of the Special Procedures and the recommendations surrounding this and the selection process for mandate holders, it is not possible to go into great detail on these topics within this paper. However, in this section a few comments are made about some of the Asian Group's proposals and a few central themes are raised. Proposals made in this area have profound implications for the strength of human rights protection that the system is able to offer and sexual rights and reproductive rights advocates are urged to consult the NGO papers listed in Annex A.

Many proposals that the Asian Group has made have an innocuous even beneficial feel to them.<sup>23</sup> Upon closer scrutiny many of these proposals undermine important features of the system that need strengthening: that mandate holders must be independent and objective experts in human rights, and that the system of Special Procedures must be allowed to exercise self-determination in setting its own working methods.

As a starting point, the Asian Group has suggested that paid members of NGOs or members of Governing bodies of advocacy groups operating in the mandate area should not be permitted to serve as mandate holders.<sup>24</sup> This proposal is unnecessary and will severely limit the selection pool of experts in the field. As one Southern NGO put it: "Finding a human rights expert in the South who is not 'a salaried member of an NGO or a member of the Governing Bodies of advocacy groups in the area of the mandate' is akin to finding the Rosetta stone."<sup>25</sup> The same NGO went on to speculate as follows: "Independent experts on human rights without any association with NGOs are an extinct community in the South. The Asian bloc which has a dubious distinction of not having any regional human rights mechanism [...] are likely to nominate security experts, defence analysts and police officers as experts on human rights."<sup>26</sup>

It is not clear why belonging to an NGO and acting as a mandate holder would create a conflict of interest and necessitate disqualifying prospective candidates for a mandate. Strong alliances with civil society will invariably assist the mandate holder in discharging her duties. After all, the mandate holder's responsibility is to scrutinize and put pressure on States, not NGOs. If this proposal is implemented, the candidate pool will either be severely narrowed or be filled with candidates of poorer quality.

Further with respect to selection, the Asian Group has proposed that regional groups appoint mandate holders on a rotational basis from the candidate pool. The current system allows the Chairperson of the Commission (now the President of the Council) or the Secretary-General — depending on the wording of the Commission resolution creating the mandate — to directly appoint the mandate holder. NGOs are permitted to informally nominate candidates either directly to the Chairperson of the Commission or through friendly governments. There are proposals being considered for an open and transparent roster of candidates, from which to make selections, and for NGOs being allowed to formally nominate candidates to this roster.

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23 *Calls for "rationalization", "minimum evidentiary standards", "appointments by regional groups on a rotational basis", and "codes of conduct" on the surface all have a ring of fairness, usefulness, and helpfulness to them. On closer analysis all of these proposals are meant to weaken and slow down the system, as well as to cast doubt on the integrity of the Special Procedures and their work.*

24 *See Asian Group non-paper, above note 15, at Recommendation 4.*

25 *Asian Centre for Human Rights, "Asian governments at the gate: The beginning of the end of the UN Special Procedures?" (2005), online: <<http://www.achrweb.org/Review/2005/94-05.htm>>.*

26 *Asian Centre for Human Rights, "61st session of the CHR: Time for substantive debate" (2005), online: <http://www.achrweb.org/Review/2005/63-05.htm>*

While the currently used formula is not the strongest appointment process imaginable, it is a much better option than the Asian Group's proposal. To have a regional group unilaterally appointing specific mandate holders even on a rotational basis would be a political nightmare. The rights-abusing States dominating these regional groups would be able to appoint mandate holders who would scrutinize political opponents carefully while avoiding criticism of their own country's or region's problems. This would politicize the selection process and threaten the independence of the system as a whole.

Moving to the working methods of the Special Procedures, the following was one seemingly innocuous recommendation of the Asian Group:

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.

On closer analysis the true nature of this recommendation becomes clear. Requiring a hand-written signature from the mandate holder would slow down the process of issuing urgent appeals and letters of allegation. Mandate holders perform their duties in their free time and are not based in Geneva. Electronic communications permit the remarkable turnaround time that the Quick Response Desk is able to deliver.

Having to have all appeals and allegations signed personally would require having to send each one to the mandate holder by courier and then having to wait for it to be couriered back. This would require an additional week, at least. By the time it did happen, the moment of highest media interest in the incident would be long past. But then, this is likely the real intention of the Asian Group: to prevent mandate holders from effectively using the media to draw attention to human rights abuses. If States were truly concerned about the authenticity of a communication, they would need only contact the mandate holder to confirm. The "legal infirmity" is a legal fiction. The Asian Group's real intention with this proposal is to introduce inefficiency into the system and to prevent their human rights violations from being shown to the media.

A further attempt of the Asian Group to try and dictate working methods goes as follows:

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.

Who is to enforce the Code of Conduct and still expect the Special Procedures to be independent? States cannot seek to police the Special Procedures and still expect them to remain independent and objective. This would heavily politicize their work.

This recommendation simply underscores the need to keep States out of trying to decide the methods by which they are scrutinized. If the system is supposed to be independent, then States must be prevented from telling mandate holders how best to discharge their duties. The Procedures have held annual meetings since the Vienna Conference on Human Rights in 1993 and have used these to generate ideas to improve the coordination, efficiency and integrity of their work. Many of the improvements in the system have been a direct result of their initiatives. They have recently completed work on a manual of operations, which provides guidance on working methods and will be released shortly for public comment. In 2005, they created a Coordinating Committee composed of 5 mandate holders. This innovation will further coordination and enable the Procedures to undertake more joint activities beyond individual cases. They must be allowed to continue to exercise self-determination over their working methods.

One final recommendation of the Asian Group requiring comment is the suggestion that allegations of human rights violations must “be based on minimum evidentiary standards, verification of facts and satisfaction over exhaustion of domestic remedies.” The Group continues, adding that “Ill founded complaints should be screened out by the mandate holder.”<sup>27</sup> First, requiring that domestic remedies be exhausted before an individual is able to have their case inquired into by a Procedure, defeats the purpose of the system. It is meant to be an urgent response system to request information on what States are doing to safeguard the rights of particular individuals. As such, it is not a quasi-judicial function, as mandate holders do not make any rulings on whether a State is violating a treaty. Instead Special Procedures offer some level of protection to individuals by having UN human rights experts request information on their particular cases from States.

With respect to requiring “minimum evidentiary standards” to be met, the Asian Group is insinuating that mandate holders do not currently apply their professional judgment and expertise to examine the source of the information and its content. This insinuation is not true; currently, mandate holders frequently screen out complaints that are not credible. They must be allowed to continue doing this without State interference in their working methods. This suggestion by the Asian Group is not useful and serves only to cast doubt unfairly on the professionalism and integrity of all mandate holders.

## **Follow-up to Recommendations of Special Procedures**

In the words of the OHCHR:

“The lack of systematic or effective follow-up to recommendations has severely hampered the effectiveness of the special procedures system to protect and promote human rights. In order to remedy to this weakness, there is a need for States as well as other partners to cooperate with special procedures mandate-holders in addressing their recommendations and conclusions, in particular, to provide information about the status of their implementation.”<sup>28</sup>

There is a real wealth of recommendations made by Procedures following country visits and, accordingly, a strong need for follow-up. Despite this, there has been little or no follow-up to these recommendations made to assist States to operationalize their human rights obligations. Mandate holders have recently attempted to include follow-up to recommendations from previous missions as an addendum to their annual report. But this has been a very recent phenomenon and largely confined to only a few mandate holders.

Follow-up is not just a way to ensure the accountability of a State. As one mandate holder describes it:

The system of country visits has a variety of potentially helpful impacts... One is to encourage all actors to see the issues in terms of human rights rather than only through alternative lenses such as the restoration of peace, the fight against crime, or the vindication of majoritarian political preferences. Another is to act as a catalyst to a domestic review of policy options. And another is to provide reassurance to

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<sup>27</sup> See Asian Group non-paper, above note 15, at Recommendation 9.

<sup>28</sup> Office of the High Commissioner for Human Rights, “Enhancing and strengthening the effectiveness of the special procedures of the Commission on Human Rights: Background paper: Session 3”, online: OHCHR <[http://portaltemp.ohchr.org/pls/portal/docs/PAGE/SP\\_MH/SESSION-3-FOLLOW-UP-FINAL-E.DOC](http://portaltemp.ohchr.org/pls/portal/docs/PAGE/SP_MH/SESSION-3-FOLLOW-UP-FINAL-E.DOC)>.

civil society groups and to the victims of human rights violations that their struggles are legitimate and that international monitoring mechanisms are focused on their concerns.<sup>29</sup>

The need for follow-up should be an issue of particular concern for sexual rights and reproductive rights advocates. In just a single two-year period (2004-2005), Special Procedures made approximately 90 country-specific recommendations related to sexual or reproductive rights and another 85 concerning women's rights generally. A recent report by the Special Rapporteur on the right to health after his visit to Peru provides a good example of a recommendation designed to address reproductive rights violations in the country:

The Special Rapporteur ... is deeply concerned by the extremely high rates of maternal mortality, the second main cause of which is unsafe abortion. He stresses the importance of ensuring access - in particular for poor populations - to a wide range of sexual and reproductive health services, including family planning, pre- and post-natal care, emergency obstetric services and access to information. In particular, women should have access to quality services for the management of complications, whether arising from pregnancy, childbirth or abortion. Punitive legal provisions against women who undergo abortions, as well as against the relevant service providers, should be removed.<sup>30</sup>

Consistent follow-up to this recommendation would be a significant step in addressing reproductive health problems in Peru.

There are two major options to ensure that recommendations are followed-up more consistently. The first would be to create a Special Rapporteur on follow-up to country visits. The mandate of such a Special Procedure would be simply to gather information from various sources on what countries have done to implement recommendations that Special Procedures have directed at them. This would be a similar option to the treaty bodies each of which has a Special Rapporteur that collects information on what States have done to implement concluding observations.

The second is the recent suggestion that the newly created Coordination Committee, composed of 5 mandate holders, could perform exactly this role. This too would be a good option and would likely achieve similar results as the first. However, this proposal has the added benefit of allowing the Special Procedures to follow up on their own recommendations to States. It is they who can decide whether recommendations are specific enough to be implementable. This also furthers the principle that Special Procedures must have autonomy in setting their own methods of operation.

## **Linking Special Procedures with the Universal Periodic Review**

One major new feature of the Council is its mandate to conduct a Universal Periodic Review (UPR) — that is, the Council must periodically review and assess the human rights records of all 192 Member States. This is an important new feature of the Council as it is one development that is meant to help avoid the

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29 *E/CN.4/2006/53/Add.2 at para. 8.*

30 *E/CN.4/2005/51/Add.3 at para. 72.*



same problems of selectivity that plagued the Commission. By reviewing the situation of human rights in all countries, no State can continue to avoid having its record scrutinized and commented upon by the international community.

While each human rights treaty body conducts periodic reviews of States, it can only review parties to its Convention, and then only on the rights contained within the treaty. It is not enough for the UPR to be based solely on checking whether a State has ratified all the human rights treaties and thus is subject to treaty body scrutiny. This would result in a *pro forma* process that examines information readily found on the Internet while failing to deal with substantive issues.

This UPR mechanism of the Council is extra-conventional and, so, does not depend on a State having ratified a treaty. As such it would be ideal for the UPR to draw on the work of another set of extra-conventional mechanisms — the Special Procedures.

Another open-ended working group is currently exploring the structure and content of the UPR mechanism. As an undefined process, it is an excellent opportunity for NGOs to help shape the mechanism.

With respect to Special Procedures, the UPR must at the very least scrutinize State cooperation with the system — that is, whether the State has extended a standing invitation to all of the Procedures, whether the State has any outstanding requests for visits, and whether the State has failed to respond to communications from any of the Procedures. The system works best when States cooperate with all the Procedures. This should be the very minimum that the UPR assesses.

NGOs however must advocate for more. One important criterion that should be included within the assessment of a State's human rights record is the steps it has taken to implement recommendations that Procedures have made to it. This level of scrutiny combined with regular and public follow-up would bring enormous pressure to bear on States to take steps to implement recommendations. Given the number of country-specific recommendations dealing with sexual rights and reproductive rights, this would be a highly useful way to ensure that these issues are not ignored by the State.

However, even the inclusion of this aspect of review is neither sufficient nor equitable. There are many countries that have very few or no recommendations made specifically for them. There are only so many mandates and each mandate holder can only visit a few countries every year. As a result, there are many countries that have never received a request from a Special Procedure for a visit. More significantly than this, many States have not responded to, even repeated, requests for invitations. These States likely want to avoid scrutiny due to poor human rights performance. If every State were scrutinized only on the basis of the recommendations that Special Procedures had made to it, then many States would be able to avoid scrutiny altogether and many others would only be scrutinized in certain areas. This would do nothing to promote the accountability of those States.

To counter this, the review must involve the recommendations that Special Procedures have made generally to all States. The relevance of this proposal for sexual rights and reproductive rights advocates is easily demonstrated. For example, the Special Rapporteur on violence against women has recently recommended to all States that they:

Enact and enforce gender-sensitive laws and human rights norms to address the root causes of the problem, including adoption of domestic violence laws, criminalization of marital rape, raising the legal age of marriage and outlawing forced

marriage practices, and enforcing laws on trafficking in persons and commercial sexual exploitation, with a view to protecting the victim and persecuting the perpetrators (i.e. users and abusers);<sup>31</sup>

As a further example, the Special Rapporteur on the right to health has identified a number of indicators to measure the implementation of the right to health in the area of reproductive health. He has constructed these indicators in such a way as to be easily implemented by States without significant additional expenses.<sup>32</sup> The incorporation of Special Procedure recommendations such as these ones into the UPR would be a significant step in promoting State responsibility for upholding sexual rights and reproductive rights.

The feasibility of this suggestion will depend highly on the format and procedures chosen to conduct the UPR. While there are many Special Procedures who make a number of general recommendations every year, the implementation of many of these, as with the examples above, is easily assessed.

As well, there are ways of making the assessment more manageable. For instance, the Council could decide to limit review to only those recommendations made by the Special Procedures since the previous time the State was reviewed. Moreover, involving a team of independent experts receiving information from NGOs and the concerned State would ease the workload on the Council considerably.

While these details are important, they can be worked out through the collaborative process that the Council has initiated. However, the general proposal should not be overlooked: the work and recommendations of Special Procedures must be incorporated into the UPR and States must be evaluated, to a significant extent, on their implementation of them. To do otherwise would enable the continued relegation of these recommendations to paper.

In the words of the Special Rapporteur on the question of torture:

Starting to take the recommendations of the Special Procedures seriously would have two very positive therapeutic effects. First, it would place an onus on mandate-holders to make their recommendations specific and implementable, with consideration given to issues such as the appropriate time frame and the resource implications. The present system almost encourages mandate-holders to ignore the practicalities relating to the implementation of their recommendations. Second, it would oblige those Governments who feel that recommendations are misconceived, inappropriate, or unrealistic to spell out those concerns rather than simply ignoring the reports. Most importantly, this approach would ensure that the Special Procedures system is taken seriously by all concerned and would provide the necessary raw material to enable the Council to become an effective force for the promotion of respect for human rights by all Governments.<sup>33</sup>

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31 *E/CN.4/2005/72, p. 21.*

32 *E/CN.4/2006/48, p. 21.*

33 *E/CN.4/2006/53/Add.2 at para. 10.*

## **Recommendations for Advocacy**

- Begin by underscoring, as often as possible, that sexual rights and reproductive rights are human rights and deserve protection throughout the world.
- Reaffirm continually that human rights are universal and apply even in the absence of treaty ratification. As such, the human rights situations in all countries should be effectively monitored and addressed by the international community.
- Highlight the failure of States to take action on sexual rights and reproductive rights issues, including by failing to incorporate many of these issues into Commission resolutions, despite their having been raised by the Special Procedures.
- Remind everyone that the success of the Human Rights Council will depend significantly on strengthening the system of Special Procedures and giving it a central place in the new structures of the Council.
- Avoid referring to the “rationalization” of the Special Procedures. Instead, speak of “enhancing” and “strengthening” them.
- NGO engagement in the process of review of the Special Procedures is critical. Urge governments:
  - To focus on the protection gaps that exist in the system — that is, those sexual rights and reproductive rights issues that do not fall within the core of an existing mandate. Discourage governments from over-focussing on overlaps between mandates, as this is principally due to the intersectional nature of human rights.
  - To support the establishment of a Working Group on emerging issues, or any other proposal that would help to close protection gaps existing within the system.
  - To oppose any proposal that will politicize the selection of mandate holders including the suggestion that regional groups make appointments on a rotational basis.
  - To support proposals which allow the Special Procedures to continue to exercise self-determination over their own working methods.
  - To oppose the imposition of evidentiary criteria on the acceptance of individual communications. Allow Special Procedures to use their professional judgement and expertise.
  - To support the establishment of a mechanism that will monitor the actions States have taken to implement country-specific recommendations of Special Procedures.
  - To support proposals which will use the recommendations of the Special Procedures as bases for the review of the human rights records of all States under the Universal Periodic Review.

- Encourage NGOs within your networks and alliances to advocate to their governments on these issues.
- Effective Procedures are ones that are used to their fullest:
  - Urge your government to extend a standing invitation to all of the Special Procedures.
  - Urge your government to implement all recommendations of the Special Procedures, particularly those directed specifically at your country.
  - Use the recommendations of Special Procedures whether general or specifically directed at your country as part of your advocacy work both nationally and internationally.
  - Distribute recommendations of Special Procedures to those human rights defenders and NGOs within your area who may not have access to these.
  - Familiarize yourself with the individual complaint process of the Special Procedures, seeking help from experienced Geneva-based NGOs where needed.
  - Encourage and assist NGOs in your networks to do the same, especially those engaged at a grassroots level.
  - Send communications to the Special Procedures about human rights violations that you have direct knowledge of.
  - Integrate the suggestions made by the Special Procedures on what NGOs can do to help them in the pursuit of their mandate (see Annex B).
  - Highlight instances where Special Procedures have missed opportunities in their work to take sexual rights, reproductive rights, or a gender perspective into greater account. Use these to work with mandate holders.

## **Annexes**

**Annex A** – Reports for further consultation

**Annex B** – Comments of Special Procedures on what NGOs can do to help

## Annex A

### Reports for further consultation

*A New Chapter for Human Rights: a handbook on issues of transition from the Commission on Human Rights to the Human Rights Council* (Geneva: International Service for Human Rights and Friedrich-Ebert-Stiftung (FES), 2006), online: International Service for Human Rights <<http://www.ishr.ch/handbook/index.htm>>.

“Review of the System of Special Procedures by the Human Rights Council: What Challenges For The Mandate On Human Rights Defenders?” (July 2006), online: International Service for Human Rights <<http://www.ishr.ch/about%20ISHR/HRDO/Publications/Lobbying%20package.pdf>>.

“United Nations Special Procedures: Building on a cornerstone of human rights protection” (1 October 2005), online: Amnesty International <<http://web.amnesty.org/library/Index/ENGIOR400172005?open&of=ENG-393>>.

“Enhancing and Strengthening the Effectiveness of the Special Procedures of the UN Commission on Human Rights (Geneva, 12-13 October 2005)”, online: Quaker United Nations Office <<http://www.quno.org/geneva/pdf/humanrights/Special-Procedures20051013.pdf>>.

Suki Beavers, “UN Reform and Advancing Human Rights: Notes for Sexual Rights and Reproductive Rights Advocates” (August 2005), online: Action Canada for Population and Development <<http://www.acpd.ca>>.

Katherine McDonald, “Special Procedures and Abortion” [forthcoming in October 2006], online: Action Canada for Population and Development <<http://www.acpd.ca>>.

## Annex B

### Comments of Special Procedures on what NGOs can do to help

The following excerpt is taken from the report of seventh annual meeting of Special Procedures in June 2000.<sup>34</sup>

“Participants stressed the importance of the role of the NGOs in the creation, as well as for the fulfilment of their mandates, particularly in terms of information sharing and awareness-raising. NGOs further played an important role in defending the special procedures system from attacks in a number of forums. NGOs were invited:

- To maintain a constant flow of information with special procedures mandate holders before, during and after country visits;
- To devote more attention to mandates concerned with economic, social and cultural rights, and to contribute more actively to the integration of economic, social and cultural rights into the human rights agenda;
- To submit their observations and critical comments on the rapporteurs’ mission reports, and generally to take into consideration the recommendations of the special rapporteurs in the preparation of NGO country profiles or reports;
- To provide information to rapporteurs on the follow-up at the domestic or local level, if any, of the recommendations contained in the annual or mission reports of special rapporteurs;
- To disseminate the reports of special rapporteurs, to the extent possible, in the vernacular languages of the country visited, to organize seminars on issues of relevance to the work of special rapporteurs, and to attract media attention so as to facilitate the dissemination of the results of such seminars;
- In respect of those mandates that transmit government responses to sources, to provide their observations on those responses;
- To publicize the recommendations, decisions and/or opinions adopted by the thematic mechanisms, as well as the work of mandates that are highly case-specific, and to inform those mechanisms of follow-up measures they may be aware of; and
- To provide more specific information on the situation of women’s and children’s rights in the context of some country mandates.”

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34 E/CN.4/2001/6 at para. 70.

**Building the UN Human Rights Council and its  
Special Procedures:  
Notes for Sexual Rights and Reproductive Rights  
Advocates**

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by Sandeep Prasad and Katherine McDonald

*Action Canada for Population and Development*

**September 2006**

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