
A/HRC/3/CRP.3
30 November 2006

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Third session
Agenda item 2

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15
MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Intersessional open-ended intergovernmental working group on the
implementation of operative paragraph 6 of General Assembly resolution 60/251
established pursuant to Human Rights Council decision 1/104**

**SUMMARY OF THE DISCUSSION ON THE COMPLAINT PROCEDURE
PREPARED BY THE SECRETARIAT**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction.....	1-6	3
I.ORGANIZATION OF THE SESSION.....	7-8	4
II.OPENING REMARKS BY THE FACILITATOR.....	9	4
III. OBJECTIVES.....	10-13	4
IV. SCOPE.....	14-15	5
V. ADMISSIBILITY CRITERIA.....	16-28	5
VI. NUMBER OF STAGES.....	29-34	8
VII. CONFIDENTIALITY AND PARTICIPATION OF THE AUTHORS OF COMMUNICATIONS.....	35-37	9
VIII. COMPOSITION, SIZE, MEMBERS OF THE WORKING GROUPS EXAMINING COMMUNICATIONS/SITUATIONS (ASSUMING THAT TWO WORKING GROUPS WOULD BE MAINTAINED).....	38-43	9
IX. FREQUENCY OF MEETINGS AND DURATION OF THE PROCESS.....	44-47	10
X. POSSIBLE MEASURES TO BE TAKEN BY THE COUNCIL UPON PROPOSALS MADE BY THE SECOND WORKING GROUP.....	48-52	11
XI. CLOSURE OF THE SESSION.....	53-54	12

Annexes

1. Timetable for the Working Groups of the Council.....	13
2. Proposed framework for discussions on the complaint procedure	14

Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly established the Human Rights Council (Council) and decided that it “shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session” (paragraph 6).
2. At its first session held from 19 to 30 June 2006, the Council, by its decision 1/104 of 30 June 2006, decided “to establish an open-ended intergovernmental working group to formulate concrete recommendations on the issue of reviewing and, when 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, in conformity with General Assembly resolution 60/251, through open-ended, inter-sessional, transparent, well-scheduled and inclusive consultations, with the participation of all stakeholders”, called Working Group on the Implementation of operative paragraph 6 of General Assembly resolution 60/251 (Working Group). The Council decided that the Working Group shall have at its disposal twenty days (or forty 3-hour meetings) of fully serviced meetings. The Council also decided that informal consultations could begin immediately through an open-ended consultative process in order to compile proposals and relevant information and experiences, and to facilitate open-ended discussions appropriately scheduled by the Chairperson with the involvement of all stakeholders.
3. Pursuant to this decision, the President of the Council appointed three Facilitators: H.E. Mr. Tomas Husak, Permanent Representative of the Czech Republic to facilitate the component on special procedures; H.E. Mr. Mousa Burayzat, Permanent Representative of the Hashemite Kingdom of Jordan, to facilitate the component on expert advice and H.E. Mr. Blaise Godet, Permanent Representative of Switzerland to facilitate the component on the complaint procedure. Also pursuant to this decision, four rounds of open-ended intersessional consultations were held respectively on 21 July, 7, 8 and 15 September 2006.
4. At the first part of its second session held from 18 September to 6 October 2006, the Council held a general debate on the review of mandates following the Facilitators’ oral reports on progress made since the convening of the above-mentioned informal consultations.
5. The present report summarizes the discussion on the complaint procedure of the first session of the Working Group (13-24 November 2006).
6. In accordance with Council decision 1/104, the Secretariat has posted on the Extranet page of the Council all contributions received, before, during or after the session of the Working Group, by States members of the United Nations, non-member States and observers as well as non-governmental organizations (NGOs). While detailed opinions are posted on the Extranet, this report is limited to the main points expressed by participants.

I. ORGANIZATION OF THE SESSION

7. The Working Group held its first session at the United Nations Office at Geneva from 13 November to 24 November 2006. There were a total of nine meetings on the special procedures (review of mandates); three meetings on the complaint procedure and two meetings on the Expert Advice. For the timetable for the Working Group, see annex I to the present report.

8. The meetings were attended by representatives of States members of the Council, observer States of the Council, observers of non-member States of the United Nations and other observers, as well as observers of United Nations entities, specialized agencies and related organizations, intergovernmental organizations and other entities as well as NGOs.

II. OPENING REMARKS BY THE FACILITATOR

9. In his opening remarks, the Facilitator reflected on the discussions and views expressed during various rounds of open-ended inter-sessional consultations on the complaint procedure since the first session of the Council in June 2006 and the progress made to date. The Facilitator also outlined the proposed framework for discussions on the complaint procedure (see annex II), prepared on the basis of the elements discussed during the informal consultations and written and oral contributions that had been submitted:

- i. Objectives of the procedure
- ii. Scope of the procedure
- iii. Admissibility criteria
- iv. Number of stages
- v. Confidentiality
- vi. Participation of the authors of communications
- vii. Composition and size of working groups examining the communications/situations (assuming that two working groups would be maintained)
- viii. Experts of the first working group to be chosen from ...
- ix. Appointment/election of working group members
- x. Duration of mandate for working group members and rotation
- xi. Human Rights Council to deal with situations ...
- xii. Duration of the process
- xiii. Possible measures to be taken by the Council upon proposals made by the second working group

III. OBJECTIVES

10. At the meeting, on 16 November 2006, the Working Group discussed the objectives of the future complaint procedure and considered the formulation proposed by the Facilitator in item 1 of the framework for discussions on the complaint procedure (see annex II).

11. General views were expressed that the complaint procedure should be based on the principles of efficiency, impartiality and objectivity. Elaborating further, one delegation stated that the procedure should have universal application and should not

target any particular States or regions. Additionally, it was proposed that the procedure should lead to a constructive dialogue in order to promote international cooperation.

12. Some delegations were of the view that the future complaint procedure should have a role in the prevention of human rights violations and should serve as a mechanism for early warning. Other delegations, however, questioned the feasibility and practical application of such functions. One delegation underlined that all human rights mechanisms had an implicit early warning and preventive function and thus, asserted that these elements should not be explicitly included in the objectives of the future complaint procedure.

13. There was general acknowledgment that the language contained in ECOSOC resolution 1503 (XLVIII) of 27 May 1970 provided a good basis for discussion, although the need for some modifications and improvements was noted. A number of delegations therefore expressed broad support for the language on objectives proposed by the Facilitator, while some questioned the inclusion, in his suggestion, of the term 'systematic' with regard to violations, as this would further elevate the existing threshold. One delegation noted that ECOSOC resolution 1503 of 27 May 1970 did not contain such a reference. Another delegation pointed to inconsistencies in the different language versions of the resolution, noting that, in the English language version, reference was made to 'consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms', which had been translated into 'systematic' in the French language version. Several delegations also questioned the inclusion of the term 'allegations', highlighting the perceived contradiction with the notion of 'reliably attested violations'. It was further noted that while allegations of violations may be brought to the attention of the Council, it should only address reliably attested violations.

IV. SCOPE

14. At its meetings on 16 and 17 November 2006, the Working Group held a discussion on the scope of the complaint procedure.

15. Most delegations expressed their overall support for option (2 a) contained in the framework (see annex II), according to which the procedure would be mandated to deal with all human rights of the Universal Declaration of Human Rights on the basis of a high threshold of alleged violations. Several delegations however specified that the complaint procedure should cover all human rights and fundamental freedoms, including the right to development, rather than being limited to those rights enshrined in the Universal Declaration.

V. ADMISSIBILITY CRITERIA

16. Also at its meeting on 17 November 2006, the Working Group discussed the admissibility criteria for the complaint procedure.

17. At the outset, one delegate proposed that the structure of the framework be re-examined so as to ensure clarity from a legal standpoint, particularly with regard to the proposed admissibility criteria. Another delegation also requested that all elements contained in the admissibility criteria as proposed by the Facilitator be clarified.

18. Many delegations stressed the need for clear and well defined admissibility criteria. In this regard, some delegations noted that the problem with the current 1503 procedure was not its admissibility criteria, but the screening procedure of communications and the lack of compliance with the admissibility criteria in this respect. The importance of strict observation of and adherence to the admissibility criteria was underlined. In this connection, one delegation proposed that all complaints, including those sent to the special procedures, be channelled through a streamlined complaint procedure of the Council in order to ensure the application of uniform criteria in determining the existence of a consistent patterns of human rights violations.

19. There was general acknowledgment that the language contained in resolution 1 (XXIV) of the Sub-Commission of 13 August 1971, remained appropriate and could be retained with some specific modifications. In this regard, while some delegations supported the formulation presented by the Facilitator in option 3 a) of the framework, as many of the proposed elements reflected existing criteria, others preferred using the exact language in resolution 1 (XXIV) and, more specifically, suggested the deletion of some of the new elements introduced by the Facilitator.

20. Overall, many delegations insisted on the need to avoid duplication, whereby some delegations pointed out that such efforts should not raise additional obstacles for a timely consideration of communications. Elaborating further on the proposal in the framework that communications dealt with by a special procedure or treaty body should not be considered under the complaint procedure, the differences in the objectives and functioning of these different human rights mechanisms were highlighted by some delegations. One delegate also cautioned to add such further criteria, as the current threshold for admissibility was already very high, while others preferred to maintain this criterion to exclude simultaneous discussion of the same situation by different mechanisms, and avoid placing additional burden on States to respond, particularly on developing and small countries. One delegate alternatively proposed that complaints already being dealt with by treaty-bodies or special procedures should not be automatically dismissed, but that their consideration be simply suspended until such time the Council is informed of the outcome of the deliberations by these mechanisms.

21. The need for more effective coordination at the level of the Secretariat with a view to avoiding duplication and overlap was underlined. In this regard, a representative from the Secretariat stated that the creation and use of electronic databases had substantially reduced duplication in recent years. It was also explained that, while the 1503 Secretariat had access to other complaint databases, due to the confidentiality of the procedure and thus its database, other parts of the Office dealing with complaints under treaty-bodies or special procedures, could not consult the 1503 database. This was the source for some residual duplication, which at present, amounted to less than 5% with special procedures, whilst no case of duplication with the treaty-body complaint mechanisms had been recorded. It was furthermore underlined, that OHCHR remained sensitive to these matters and was seeking to enhance coordination and interaction with a view to further reducing the remaining duplication rate. In this connection, the establishment of a unified database for all complaints irrespective of the human rights mechanism was suggested, but some delegations favoured that the complaint procedure database remain confidential.

22. Reference was made to the need that communications contain a clear factual description of the alleged violations, supporting evidence and specific details, and that

communications should not exclusively be based on media reports, or be anonymous. One delegation stated that the source of complaints should be verified and that there should be interaction with the author, and put the question on what sources of information should be considered reliable. Another delegation suggested that the concept of *rationae personae* be included in the admissibility criteria. This deals with who can submit complaints and more generally addresses many elements contained in the proposed admissibility criteria.

23. On the criterion of inadmissibility of politically motivated communications, some delegations preferred its deletion, while others were in favour of maintaining the present criterion as formulated in resolution 1 (XXIV). Some delegates pointed out that the meaning of “politically motivated” remained unclear. One delegate stated that a distinction should be made between political and politicized communications, and that consideration should be given to the concept of ‘abuse of the right to submit complaints’ – with the consequent exclusion of frivolous, vexatious or otherwise abusive complaints, as well as recurrent complaints that are dismissed or dealt with by other procedures - in accordance with the established practice in the treaty-body system.

24. With regard to the proposed formulation stating that communications should use decent language, some delegations preferred to revert to the established terminology in resolution 1 (XXIV), namely “not using essentially abusive language”, noting that it would be difficult to qualify or determine what constituted decent language, particularly in descriptions of human rights violations that by their nature addressed difficult or sensitive topics.

25. Two delegates suggested the deletion of the criterion that communications should not be contrary to the provisions in the UN Charter; others preferred its maintenance as stated in the resolution 1 (XXIV).

26. It was also suggested that consideration should not be given to countries being already dealt with under a public procedure (following the current working methods of the 1503 procedure) so as to avoid duplication or dual monitoring.

27. Most delegations were in favour of option 3 b) i) in the framework, highlighting the importance of exhausting domestic remedies, unless it appears that such remedies would be ineffective or unreasonably prolonged. One delegation however considered that it would not be reasonable in situations of human rights to insist on the exhaustion of domestic remedies and thus expressed its preference for option 3 b) ii). Some questions were moreover raised as to how the working group would determine what constitutes unreasonably prolonged and ineffective remedies and whether instead the concept of ‘denial of justice’ under the International Law of Claims should be considered. Overall, there was general acknowledgment of the need to have clear language when defining this criterion.

28. Also raised was the issue of scope of domestic remedies and whether regional mechanisms and national human rights institutions (NHRIs) should be included within its meaning. With regard to the latter, it was stated that not all NHRIs have the mandate to conduct investigations or to bring cases to court and that those therefore could not be considered effective remedies. One delegation proposed to insert a reference to the Paris Principles in order to address some of the concerns on the

independence of these institutions. Other delegations asserted that the various recourse mechanisms, including NHRIs, should not be listed, but that this would have to be decided on a case by case basis taking into account the specific national context.

VI. NUMBER OF STAGES

29. The Working Group moreover, at its meeting on 17 November 2006, held a discussion on the number of stages of consideration of communications.

30. There was general agreement that the current two stage procedure (Option 4 b) in the framework (see annex II) should be maintained: the first stage under the responsibility of a working group, which would focus on the admissibility of communications and the merits of the allegations of human rights violations, and a second working group responsible for recommendations to the Council in relation with the situations of human rights violations. The first working group would be composed of independent experts, and the second of State representatives, members of the Council, serving in their personal capacity.

31. Some delegations proposed that if there was no cooperation from the country concerned, the second working group should be able to refer the situation to the Council for consideration in a public meeting. By contrast, if an agreement on cooperation could be reached, the recommendations of the working group would be considered in closed meetings. Some delegations opposed this proposal as, in their view, it is for the Council to decide, after consideration of specific situations, whether the matter should be discussed publicly.

32. Two delegations preferred a one stage procedure. One was in favour of having only one expert working group in order to enhance the independence of the process; while the other preferred that the actual functions of the current Working Group on Communications (e.g. the screening of communications based on clear criteria and the strict application of the admissibility criteria) be in future performed by the Secretariat. As such, only one working group composed of State representatives would consider communications, make final screening judgements and bring situations to the attention of the Council. Another delegate expressed preference for a single expert body, working in an objective and independent manner, and with a legal approach to complaints; however, if there was agreement on two stages, it was suggested that the relevant bodies be of mixed composition (both State representatives and independent experts) – taking the Permanent Forum on Indigenous Issues as an example.

33. Some delegations suggested the inclusion of a sub-item in section 4 of the Facilitator's framework on the role of the Secretariat, in particular in the pre-screening of communications. A representative from the Secretariat provided clarifications on the role of the Secretariat as set out in ECOSOC resolution 2000/3, which is limited to the screening of communications that are manifestly ill-founded and always with the approval of the Chairperson of the Working Group on Communications. In this regard, while many delegations were in favour of retaining the current role of the Secretariat, different views were expressed on the issue of whose approval should be sought in the screening out of communications. One delegation suggested that the screening should not be done with the approval of the Chairperson alone, but with the approval of the Bureau of the Working Group. Also mentioned was the composition of the Secretariat, with some delegations noting the importance that substantive and technical support for

the complaint procedure be provided by regular and permanent staff members, with due respect to equitable geographic distribution. One delegation furthermore suggested that working principles and guidelines be developed to guide the Secretariat in its work.

34. Some delegations stressed the importance that decisions on the admissibility of communications should be taken by the working group as a whole and not only by its Chairperson. Three speakers were of the view that the admissibility criteria could be examined also at the level of the working group of State representatives.

VII. CONFIDENTIALITY AND PARTICIPATION OF THE AUTHORS OF COMMUNICATIONS

35. At the same meeting on 17 November 2006, the Working Group discussed the issue of confidentiality and the participation of the authors of communications.

36. Most delegations were of the opinion that the confidential nature of the procedure should be preserved. At the same time, some kind of information should be provided to the authors of the communications on the outcome of its consideration. Regarding the type of information to be provided to the authors, apart from the acknowledgement receipt that the Secretariat already sends to authors in accordance with the existing 1503 procedure, some delegations were in favour of informing the authors about the final outcome of the consideration of their respective communications, while others supported informing the authors at every stage of the procedure.

37. Two delegations referred to possible linkages with the Universal Periodic Review (UPR) since, in their views, it would be necessary that the complaint procedure provide some input to the UPR (e.g. reflecting problematic areas identified in the complaint procedure while at the same time respecting confidentiality). Other delegations expressed different opinions in the sense that information from the complaint procedure could not be considered publicly before the procedure has concluded its work on a particular case. It would therefore be difficult to harmonize the confidential procedure with the public UPR. Another delegation proposed that if there was a lack of cooperation by the State such as not respecting certain timelines, confidentiality should no longer apply.

VIII. COMPOSITION, SIZE, MEMBERS OF THE WORKING GROUPS EXAMINING COMMUNICATIONS/SITUATIONS (ASSUMING THAT TWO WORKING GROUPS WOULD BE MAINTAINED)

38. At its meeting on 23 November 2006, the Working Group held a discussion on the composition and size of the Working Groups examining communications/situations on the assumption that a two stage procedure, involving two Working Groups, be maintained.

39. As previously mentioned, with regard to the composition and size of the working groups examining the communications/situations, most delegations were in favour of two working groups, the first one composed of independent experts and the second one of State representatives, serving in their personal capacity (see also paragraphs 30 and 32, on the number of stages).

40. With regard to the size of the two groups, the majority favoured the current 1503 procedure modalities (5 members per working group) with due respect to “equitable” (not “fair” as formulated in the Facilitator’s framework) geographic distribution. Some delegations proposed to increase the size to ten members, instead of five, per working group, two from each regional group.

41. One delegation stated that both working groups should work on the basis of consensus to the best possible extent, and should proceed to a vote, only if consensus cannot be reached. In its opinion, the Chairperson should not vote. Another delegation suggested that the Chairperson of the second working group could be an additional independent, non-voting member.

42. On the selection of members, many delegations were of the opinion that independent experts should be selected from the Council’s expert advise, and that State representatives should be appointed by the President of the Council in consultation with regional groups (which would nominate the candidates). One delegation stated that if there were no agreement in the regional groups, members could be elected by the Council. Some delegations proposed that the experts be appointed by the High Commissioner or by the President of the Council, some specifying that this should be done on the basis of a roster of suitable candidates to be maintained by the OHCHR. One delegation suggested that members of the first working group could be selected from a roster of qualified experts, but with the election of experts by the Council. Another delegation proposed that experts be appointed from a roster held by the OHCHR, based on nominations from States, NGOs and other interested parties, by the President of the Council in consultation with the Bureau.

43. On the duration of mandates and number of terms of mandate-holders, different views were expressed. Some delegations expressed their preference for a three-year term, renewable once for experts, and for a one-year term, renewable once for State representatives. One delegation proposed a two-year term non-renewable for State representatives. Another delegation preferred either five or three year terms and opposed a one-year term since, in its view it would hamper the effectiveness of the process since certain expertise is required. One delegation, while indicating that it did not have a set preference, was against a five-year term. Another one, while flexible and ready to accept a three-year term, preferred 4 years.

IX. FREQUENCY OF MEETINGS AND DURATION OF THE PROCESS

44. The Working Group moreover, at its meeting, on 23 November 2006, held a discussion on the frequency of meetings and the duration of the process.

45. Many delegations were of the opinion that, while the procedure needed to be improved, it would be difficult to establish strict specific deadlines for the duration of the whole procedure. In the view of many delegations, the duration of the procedure should not be limited to an artificial time limit but rather be flexible.

46. Some delegations highlighted that the time between the receipt of communications and their consideration should not be unreasonably long as this was not acceptable when dealing with human rights violations.

47. It was also stated that the duration of the process was directly linked to the frequency of meetings, which could be increased, taking into account the new schedule of meetings of the Council. In this regard, other delegations preferred to maintain annual meetings of the implementing bodies in order to ensure effectiveness in the screening and consideration of communications and to avoid increased burden on the work of the Secretariat.

X. POSSIBLE MEASURES TO BE TAKEN BY THE COUNCIL UPON PROPOSALS MADE BY THE SECOND WORKING GROUP

48. At its meeting on 23 November 2006, the Working Group also discussed the possible measures to be taken by the Council upon proposals made by the second working group of the complaint procedure.

49. Most delegations expressed their preference to maintain the four options available to the Council as set out in ECOSOC resolution 2000/3, namely: to discontinue consideration of the situation, to keep the matter pending until further information is received by the Council, to keep the matter pending and appoint an independent expert, and to take up the consideration of the matter under the public 1235 procedure.

50. In this connection, one delegation stated that depending on the merits of a case, prudence should be exercised when appointing an independent expert or referring to a public procedure. Another delegation insisted on the importance of avoiding political manipulation when appointing independent experts. One delegation proposed to slightly modify sub-item 1 in the Facilitator's framework as to request further information from the State; and sub-item 2 in the Facilitator's framework to add a component of monitoring and dialogue with the State concerned, including country visits if necessary. Some delegations were of the view that the first four elements were sufficient.

51. With regard to the additional options included in the Facilitator's framework, different opinions were expressed. On the proposed relationship with UPR, some delegations preferred a linkage with UPR while safeguarding the confidentiality of the procedure, while others were opposed to any organic relationship between these two mechanisms. On the sub-item 6 (recommendation to the GA for suspension of rights of membership), some delegations supported the inclusion of this option but others questioned and opposed to it. Some delegations stated that this would require further deliberations and careful study. With regard to the suggestions that the Council could recommend the OHCHR to provide technical assistance and capacity-building, some delegations supported this option, but others indicated that no conditionality should be imposed on the provision of technical assistance and that it should be subject to the consent of the State concerned. One delegation stated that OHCHR should strengthen its activities in all categories of rights and thus, the provision of technical cooperation should not be linked to specific measures under the complaint procedure.

52. Other possible measures were proposed by some delegations. One delegation stated that in case of non-cooperation of the State concerned, the second working group should refer the case to the Council for public consideration. When situations are before the Council, there should be options with regard to measures such as to establish a special procedure mandate to follow-up the situation, establish a fact-finding or a Council's mission to report back to the Council at its next session – or in urgent

situations, to convene a special session. Follow-up of cases was also proposed by some delegations.

XI. CLOSURE OF THE SESSION

53. At a joint meeting convened by the President of the Council on Friday, 24 November 2006, the two Working Groups heard oral presentations by the respective Facilitators outlining their preliminary reflections on the discussions held during the session. It was announced that preliminary conclusions highlighting areas of convergence and areas requiring further reflection and discussion would be prepared under the responsibility of the Facilitators and circulated to all delegations on Wednesday, 29 November 2006. It was also announced that a summary of the discussion would be prepared by OHCHR and also circulated to delegations.

54. The Working Group thus concluded its first session.

ANNEX I

Timetable for the Working Groups of the Council (13 to 24 November 2006)

	Morning	Afternoon
Monday 13 November	Review of mandates	Review of mandates
Tuesday 14 November	Review of mandates	Review of mandates
Wednesday 15 November	-----	-----
Thursday 16 November	Complaint procedure	Review of mandates
Friday 17 November	Complaint procedure	Review of mandates

Monday 20 November	Universal Periodic Review		Universal Periodic Review
Tuesday 21 November	Expert advice		Expert advice
Wednesday 22 November	Review of mandates		Universal Periodic Review
Thursday 23 November	Universal Periodic Review	Review of mandates	Complaint procedure
Friday 24 November	Review of mandates		Wrap-up session on the 3 processes

ANNEX II

Proposed framework for discussions on the complaint procedure

1. Objectives

Through the complaint procedure, the allegations of a consistent pattern of gross, systematic and reliably attested violations of human rights and fundamental freedoms shall be brought to the attention of and addressed by the Human Rights Council (HRC).

2. Scope

- a) All human rights under UDHR with high threshold of violations (*see objectives stated above*)

or

- b) Limited scope of HR violations with lower threshold of violations

3. Admissibility criteria

- a) - Containing a factual description of the alleged violations

- Using decent language

- Fully observing the UN Charter provisions

- Not exclusively based on mass media reports or information and communications technology

- Not being manifestly politically motivated

- Author not to be anonymous

- Not already being dealt with by a Special Procedure or a Treaty Body

- b) Exhaustion of domestic remedies

i. Exhaustion of domestic remedies, [including recourse to national institutions], unless it appears that such remedies would be ineffective or unreasonably prolonged

or

ii. No need to exhaust domestic remedies for the communication to be considered under the complaint mechanism

4. Number of stages

All communications are transmitted to the Secretariat, which acts as a coordinating mechanism in order to avoid duplication between different HR protection mechanisms. No decisions on a case to be taken by the Secretariat, without referring to the Chair of the first WG.

- a) 1 stage: - Merits of the alleged violations and proposed measures to be dealt by one WG only

or

- b) 2 stages:
- First WG, mainly focused on the merits of the allegations of violations, with a mandate to report to a second WG.
 - Second WG to propose measures to be taken by the HRC, with regard to situations of HR violations.

5. Confidentiality

- a) Whole mechanism to be kept confidential, unless HRC decides otherwise

or

- b) Mechanism to become public once the admissibility criteria have been met

or

- c) Mechanism to become public once a consistent pattern of gross, systematic and reliably attested violations of HR and fundamental freedoms has been revealed.

or

- d) The second WG can, for reasons of non-cooperation, including insufficient and/or delayed information, on the part of the State, recommend the HRC to consider the situation in the country concerned in public. The HRC can then decide to consider the situation in a public session.

6. Participation of the authors of communications

The authors of communications should be notified, within reasonable time constraints, at the following key stages of the process:

- A) *i.* At receipt of the complaint by the Secretariat

and/or

- ii.* When the complaint is deemed inadmissible

and/or

- iii.* When the complaint is taken up by the first WG on the merits of the communication (at this point, the authors should be informed that they are welcome to provide any additional information, in line with the admissibility criteria)

or

- B) At the final outcome

7. Composition and size of WGs examining the communications/situations¹

- a) Independent and qualified experts (with fair geographic representation?)

or

- b) Both independent experts and State representatives (with fair geographic representation?)

or

- c) State representatives; if so, in personal capacity? (with fair geographic representation)

The Chair to be an independent and non-voting member of the WG, who would supervise the process ?

8. Experts of first WG to be chosen from:

- a) The new expert advice system of the HRC

or

- b) A roster of independent and qualified experts

9. Appointment / Election of WGs members

- a) Appointment by the President of the HRC

or

- b) Appointment by the President of the HRC, after consultation with the Bureau

or

- c) Appointment by the President of the HRC, after consultation with the regional groups

or

- d) Appointment by the High Commissioner for Human Rights (after consultation with?)

or

- e) Election by the HRC (should all members of the UN be able to participate, since the mechanism concerns all members of the UN, not only members of the HRC ?)

10. Duration of mandate for WGs members and rotation

- a) Five-year term, non renewable

¹ Assuming that two WGs would be maintained

or

- b) Three-year term, renewable once

or

- c) One-year term (renewable? if so, how many times?)

It is considered that more expertise is needed in the first WG, which would focus on the merits of the alleged violations: should its mandate therefore be longer (and renewable) in order to ensure continuity? Should the mandate of the second WG, dealing with measures to be taken against situations of HR violations be shorter?

11. Human Rights Council to deal with situations:

- a) At each session of the HRC

or

- b) At least twice a year or more, if deemed necessary and recommended by the second WG

or

- c) Once a year

12. Duration of the process

- a) Should there be a time limit for the duration of the whole process?

or

- b) If so, how long should it be?: *i.* 18 months

or

- ii.* 24 months

13. Possible measures to be taken by the HRC upon proposals made by second WG

- To keep the situation under consideration and wait for further information from the State concerned
- To keep the situation under consideration and appoint an expert to monitor the situation and report back to the HRC
- To discontinue considering the situation
- To refer the matter to the 1235 public procedure
- To recommend that the country be urgently reviewed through the UPR
- To give a follow-up to the process, if the State fails to comply with HRC decisions or refuses to cooperate (e.g. by referring to a Special Procedure? by recommending to the GA, suspension of the Council membership of the State)
- To recommend the OHCHR to provide technical and capacity building assistance to the country concerned
