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

**Inter-sessional 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**

Non-paper on the complaint procedure*

**Prepared under the authority of the facilitator,
H.E. Mr. Blaise Godet(Switzerland), 27 April 2007**

* The present document is circulated as received.

Introduction

After several months of consultations, the facilitator has endeavoured, to the greatest possible extent, to take into account positions expressed during these consultations and to make the following final proposal, which has been transmitted to the President of the Human Rights Council. This final proposal of the facilitator is intended to help draft a document on institutional building, which shall eventually be submitted for adoption by the Human Rights Council by June 2007.

A. Objective and scope

1. By GA Resolution 60/251 of 3 April 2006, the General Assembly decided that the Council 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 complaint procedure.
2. ECOSOC Resolution 1503 (XLVIII) of 27 May 1970 as revised by ECOSOC resolution 2000/3 of 19 June 2000 shall serve as a working basis and be improved where necessary, so as to ensure that the complaint procedure be impartial, objective, efficient, victim[s]-oriented and conducted in a timely manner.
3. A complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

B. Admissibility criteria for communications

4. A communication related to a violation of human rights and fundamental freedoms shall be admissible, unless:
 - (a) It has manifestly political motivations and its object is not consistent with the UN Charter, the Universal Declaration of Human Rights and other applicable instruments in the field of Human Rights Law *or*;
 - (b) It does not contain a factual description of the alleged violations, including the rights which are alleged to be violated, *or*;
 - (c) Its language is abusive. However, such communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language *or*;
 - (d) It is not submitted by a person or a group of persons claiming to be the victim of violations of human rights and fundamental freedoms or by any person or group of persons, including NGOs acting in good faith in accordance with principles of human rights, not resorting to politically motivated stands contrary to the provisions of the UN Charter and claiming to have direct and reliable knowledge of those violations. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided they are accompanied by clear evidence *or*;

(e) It is exclusively based on reports disseminated by mass media *or*;

(f) It refers to a situation that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a Special Procedure, a Treaty Body or other UN complaints procedure in the field of human rights *or*;

(g) The domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

C. Working Groups

5. Two distinct Working Groups (WG) shall be established with the mandate to examine the communications and to bring to the attention of the Human Rights Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.

6. Both WG shall to the greatest possible extent work on the basis of consensus. In the absence of consensus, decisions shall be taken by simple majority of the votes. Both WG shall work in a confidential manner, with a view to enhancing cooperation with the State concerned. They can establish their own rules of procedure.

First Working Group: composition, mandate and powers

7. Following consultations with the Regional Groups, *[the President of the Human Rights Council/the Expert Advice]* shall appoint five independent and highly-qualified experts *[from an expert roster established by the OHCHR? States? NGOs? NHRI?/from the Expert Advice of the Council]* to constitute a first WG, with due respect to geographical representation and gender balance.

8. In case of a vacancy, *[the President of the Human Rights Council/the Expert Advice]* shall, following consultations with the Regional Group, appoint an independent and highly-qualified expert of the same Regional Group *[from an expert roster established by the OHCHR? States? NGOs? NHRI?/from the Expert Advice of the Council]*.

9. Since there is a need for independent expertise and continuity with regard to the examination and assessment of the communications, the independent and highly qualified experts of the first WG shall be appointed for three years. Their mandate is renewable only once.

10. The Chairperson of the first WG is requested, together with the Secretariat, to undertake initial screening of the communications. Manifestly ill-founded or anonymous communications shall be screened out by the Chairperson and shall therefore not be transmitted to the State concerned. In a perspective of accountability and transparency, the Chairperson of the first WG shall provide all members of the first WG with a list of all communications rejected after initial screening. This list should indicate the grounds of all decisions having resulted in the rejection of a communication. All other communications, which have not been screened out shall be transmitted to the State concerned, so as to obtain the views of the latter on the allegations of violations.

11. The members of the first WG shall decide on the admissibility of a communication, assess the merits of the allegations of violations, including whether the communication alone or in combination with other communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The first WG shall provide the second WG with a file containing all admissible communications as well as recommendations thereon. When it requires further consideration or additional information, the first WG may keep a case under review until its next session and request such information from the State concerned and the author of the communication. All decisions of the first WG shall be based on a rigorous application of the admissibility criteria and shall be duly justified.

12. When the first WG examines a communication concerning a State of which one of the members is a national, the latter shall not take part in the decision-making process.

Second Working Group: composition, mandate and powers

13. Following consultations with the Regional Groups and with due respect to geographical representation, the President of the Human Rights Council shall appoint five representatives of member States of the Council to serve in their personal capacity and to constitute a second WG. They shall be appointed for one year. *[Their mandate shall not be renewable/Their mandate can be renewed once, if the State concerned is a member of the Council].*

14. In order to fill a vacancy, the President of the Human Rights Council shall, following consultations with the Regional Group, appoint a member from among all member States of the same Regional Group.

15. The second WG is requested, on the basis of the information and recommendations provided by the first WG, to present the Human Rights Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and to make recommendations to the Council on the course of action to take, normally in the form of a draft resolution or decision with respect to the situations referred to it. When it requires further consideration or additional information, members of the second WG may keep a situation under review until its next session and request such information from the State concerned and the author of the communication.

16. All decisions of the second WG shall be duly justified and indicate why the consideration of a situation has been discontinued or action recommended thereon. Decisions to discontinue should be taken by consensus; if not possible, by simple majority of the votes.

17. When the second WG examines a situation concerning a State of which one of the members is a national, the latter shall not take part in the decision-making process.

D. Working modalities and confidentiality

18. Since the complaint procedure is to be, *inter alia*, victim[s]-oriented and conducted in a timely manner, *[both Working Groups shall meet at least twice a year/the first WG shall meet twice a year and the second WG once a year]*, in order to promptly examine the communications, including replies of States thereon, as well as the situations which the Council is already seized of under the complaint procedure.

19. The State concerned shall cooperate with the complaint procedure and make every effort to provide substantive replies in one of the UN official languages to any of the requests of the WG or of the Human Rights Council. It shall as well make every effort to provide a reply not later than three months after the request has been made. If necessary, this deadline may however be extended at the request of the State concerned.

20. The Secretariat is requested to make the confidential files available to all members of the Council, at least two weeks in advance, so as to allow sufficient time for the consideration of the files.

21. The Human Rights Council shall consider consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms brought to its attention by the second WG as frequently as needed, but at least once a year.

22. All situations referred to the Human Rights Council shall be examined in a confidential manner:

- (i) Unless the second WG decides that a situation shall be examined by the Human Rights Council in a public procedure; *or*
- (ii) Unless the Human Rights Council decides otherwise; *or*
- (iii) Unless the Human Rights Council decides otherwise. When the second WG recommends to the Council to consider a situation in a public procedure, in particular in case of manifest and unequivocal lack of cooperation, the situation should be considered on a priority basis at the next session of the Council.

23. So as to ensure that the complaint procedure be victim[s]-oriented, efficient and conducted in a timely manner, the period of time between the transmission of the complaint to the State concerned and the consideration by the Human Rights Council shall not, in principle, exceed [18/24] months.

E. Involvement of the complainant and of the State concerned

24. The complaint procedure shall ensure that both the author of the communication and the State concerned are able to be involved in the complaint procedure by providing written complementary information requested by either of the WG. Similarly, both the complainant and the State concerned shall be informed of the proceedings at the following key stages:

(a) When the communication is deemed inadmissible by the first WG or when it is taken up for consideration by the second WG; or when his/her communication is kept pending by one of the WG or by the Human Rights Council;

(b) At the final outcome.

25. In addition, the complainant shall be informed when his/her communication is registered by the complaint procedure.

26. Should the complainant request that his/her identity be kept confidential, the latter will not be transmitted to the State concerned.

F. Measures

27. In accordance with the established practice under the procedure governed by ECOSOC Resolution 1503 (XLVIII) of 27 May 1970 as revised by ECOSOC resolution 2000/3 of 19 June 2000, the action taken in respect of a particular situation should be one of the following options:

- Discontinue considering the situation when further consideration or action is not warranted;
- Keep the situation under review and to request the State concerned to provide further information within a reasonable amount of time;
- Keep the situation under review and appoint an independent and highly-qualified expert to monitor the situation and report back to the Human Rights Council;
- Discontinue reviewing the matter under the confidential complaint procedure in order to take up consideration of the same matter under a public procedure similar to the one governed by ECOSOC resolution 1235 (XLII) of 6 June 1967;
- Recommend the OHCHR to provide technical, capacity building assistance and advisory services to the country concerned.
