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HUMAN RIGHTS COUNCIL  
Fourth session  
Item 2 of the provisional agenda

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

**Second session of the 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 EXPERT ADVICE PREPARED  
BY THE SECRETARIAT**

GE.07-11824

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## Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly (GA) 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, 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, 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 of the Working Group 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. 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.

4. The Working Group met in its first formal session from 13 to 24 November 2006. It held nine meetings on special procedures (review of mandates); three meetings on the complaint procedure and two meetings on expert advice and concluded its work in a meeting convened by the President of the Council on 24 November 2006.

5. On expert advice, the discussion was based on a non-paper circulated by the Facilitator, during the consultations held on 15 September 2006. The non-paper was composed of 14 items as follows:

1. Name of the future expert advice;

2. Structure;
3. Size;
4. Term of membership;
5. Candidacy of experts;
6. Election/selection;
7. Eligibility of the experts;
8. Composition;
9. Status;
10. Mandate;
11. Relationship with the Human Rights Council;
12. Relationship with other human rights mechanisms (Role);
13. Functions/Scope; and
14. Methods of work

6. Further to the Working Group's discussions on expert advice (summary prepared by the Secretariat contained in document A/HRC/3/CRP.4), preliminary conclusions highlighting areas of emerging agreement as well as areas requiring further discussion on the above-mentioned elements were prepared by the Facilitator (document A/HRC/3/6). The preliminary conclusions on expert advice were considered by the Council at its third session on 7 December 2006.

### **I. ORGANIZATION OF WORK**

7. The Working Group met in its second session at the United Nations Office at Geneva from 5 to 16 February 2007. It held four meetings during the session and proceeded in accordance with the suggestion of the Facilitator through a paragraph by paragraph approach in relation to the non-paper.

8. The session was attended by representatives of States members of the Council, observer States of the Council, observers for non-member States of the United Nations and other observers, as well as observers for United Nations entities, specialized agencies and related organizations, intergovernmental organizations and other entities, and non-governmental organizations (NGOs).

9. The Working Group had before it a non-paper prepared by the Facilitator on the basis of the preliminary conclusions and on the discussions held to date. In his opening remarks, the Facilitator explained that his non-paper or "concept paper" was not an attempt to make a summary of the various positions, but rather listed the priorities as he perceived them. He elaborated that the aim was to develop a common concept non-paper which would be inclusive, comprehensive, encompassing and reflect the positions of various groups.

### **II. GENERAL OBSERVATIONS ON THE NON-PAPER**

10. At the 1st meeting, on 8 February 2007 and at the 2nd and 3rd meetings, on 9 February 2007, general observations and comments on the non-paper were made by the representatives of Algeria (on behalf of the Group of African States), Argentina, Australia, Austria, Bangladesh, Brazil, Canada, China, Egypt, Germany (on behalf of the European Union), India, Indonesia,

Iran (Islamic Republic of), Japan, Malaysia, Mexico, the Netherlands, Pakistan (on behalf of the Organization of the Islamic Conference), Republic of Korea, the Russian Federation, Switzerland, Tunisia, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

11. At its 4<sup>th</sup> meeting held on 16 February 2007, the Working Group heard statements and general observations on the non-paper by representatives of Algeria, Argentina, Bangladesh, China, Colombia, Cuba, France, Germany, India, International Indigenous Council, Iran (Islamic Republic of), Japan, Malaysia, Mexico, Minority Rights Group International and International Movement against all forms of Discrimination and Racism, Pakistan, Russian Federation, Saudi Arabia, Switzerland, The Lutheran World Federation, United Kingdom of Great Britain and Northern Ireland, and the United States of America.

12. The non-paper was welcomed as a good basis for discussion and the Facilitator was complemented on it. The Facilitator thanked all the participants for their kind comments, and urged them to try to go beyond the non-paper and start discussing each issue by issue to build consensus and move the process forward.

### **III. STRUCTURE, SIZE AND COMPOSITION**

#### *Structure*

13. In the Facilitator's non-paper, the expert advice mechanism is called upon to be implementation oriented in nature with a single well-defined structure as a subsidiary body of the Council. During the discussion, there appeared to be general agreement that the expert advice mechanism would be subsidiary to the Council.

14. However, discussions related to whether the expert advice should be a permanent or standing body with a single well-defined structure, a roster or pool of independent experts called upon to undertake studies or carry out other tasks, as requested by the Council, or possibly a hybrid bringing together a pool of experts and a standing body.

15. Concerning the proposal for a permanent or standing body with a formal, single well-defined structure, it was stated that its structure should be similar to that of the former Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission). It was noted that as a standing body it could be better placed to interact with civil society and could also facilitate the establishment of Working Groups similar to those of the former Sub-Commission.

16. Regarding a roster or a pool of independent experts called upon to carry out specific tasks by the Council, transparency, flexibility, responsiveness, and cost effectiveness were highlighted as possible attributes of such a mechanism. In relation to a roster or pool of experts, there was further discussion including as to how this system would work and its functions, how it would ensure geographic representation, how to guarantee the transparency of the process, the size of the roster or pool of possible candidates, who would manage it, and the costs involved.

17. Other types of expert mechanisms were discussed including an ad hoc advisory body, which would not be permanent but would be convened at the express request of the Council to address issues the Council is interested with.

18. A hybrid approach was discussed which would potentially include a pool of experts from which a standing type body could be constituted. Further discussion was called for to clarify this possible approach.

19. Discussion also covered the various aspects of the Sub-Commission; in this respect there was some discussion relating to the involvement of civil society and in particular groups representing Indigenous Peoples and Minorities. It was noted that a possibility might be to have a flexible pool of experts but with a standing element to ensure civil society engagement. It was also noted that any new expert mechanism should ensure the collegiality, continuity and institutional memory associated with the Sub-Commission.

#### *Size*

20. While there was support expressed for the Facilitator's proposal, as stated in his non-paper, to have between 10-16 impartial, independent, specialized and highly qualified experts there was a difference of views on this issue. Those who did not support the Facilitator's proposal stated that it would not ensure equitable geographic representation and the representation of different legal systems and traditions.

21. It was noted that the size of the expert advice mechanism would depend on its mandate and was inter-related to the issue of appointment/selection of the experts. It was also stated that the numbers needed to be large enough to take into account the needs of the Working Group on Communications of the confidential complaint procedure and other Working Groups that may be established, similar to those of the Sub-Commission.

22. Where delegations supported a standing body similar to the Sub-Commission they maintained that it should have the same or similar size as the Sub-Commission, namely, 26 experts to ensure equitable geographic representation. There were other suggestions concerning numbers ranging from 5 to 28 experts.

23. It was stated that there should be a correlation between the respective sizes of the Council (47) and its subsidiary expert advice mechanism, as was the case with the Commission on Human Rights (Commission) (53) and the Sub-Commission (26). Therefore, by analogy, it was proposed that the expert advice mechanism should have 23 experts, approximately half the number of the members of the Council (47), with a suggestion that an odd number of experts be preferred. It was also suggested that there should be two additional experts from the Eastern European Group which was a regional group under-represented in the Sub-Commission.

#### *Composition*

24. The Facilitator's non-paper proposed that in relation to the composition of the expert advice mechanism the principle of equitable geographic representation in identical proportion observed in the composition of the Council should be taken into account.

25. It was noted that the composition of the expert advice mechanism should ensure equitable geographic representation, gender balance and pay due regard to the diversity of legal systems, cultures, religions, civilizations and traditions.

26. Delegations stated that “identical” geographic representation did not guarantee the independence and expertise of the experts. Others noted that equitable geographic representation and gender balance would ensure the required diversity of legal systems and would satisfy the objective that experts represent a variety of cultures and civilizations.

#### IV. MANDATE

27. In discussing the possible mandate of the expert advice mechanism, delegations reflected on various proposals contained in the Facilitator’s non-paper and proposed modifications to the language contained therein. It was also noted that defining and agreeing upon the mandate was key to determining the appropriate structure, size and composition of the new mechanism.

28. Different views were expressed on whether the mechanism should have a broad and general mandate or a more restricted and limited one. Further, while it was stated that the mandate should be clearly or well-defined (as proposed in the Facilitator’s non-paper) and that this could be done by the Council itself, others argued that this could lead to micro-management of the mechanism; they considered it unnecessary to be too specific or detailed in definition.

29. Views were put forward that the expert advice mechanism should not have any legislative or policy-making role. Different positions were held, however, with regard to standard-setting. It was argued, for example, that standard-setting had been an important feature of the former Sub-Commission and should be retained in the new mechanism. Alternatively, it was also argued that standard-setting was only within the mandate and purview of the Council (or of intergovernmental Working Groups) and thus should not be envisaged for the expert advice mechanism.

30. In relation to the above discussion, delegations expressed different views on the reference to the ‘implementation-oriented’ nature of the mechanism (paragraph 1 of the Facilitator’s non-paper).

31. While a question was raised as to whether this would explicitly exclude any standard-setting activities, it was also argued that there should be less focus on standard-setting and more on the implementation of standards and the clarification of concepts. Although standard-setting still took place in the context of the Council, with reference made to the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, as well as to the development of complementary standards on racism, it was not considered to be at the same level as it was at the Commission. It was specifically proposed that the mechanism could develop guidelines for the implementation of existing standards.

32. While it was generally agreed that the mechanism should provide advice on thematic issues, views differed as to whether it should also address country-specific situations or issues. Those in support noted that human rights issues occurred in countries and thus asserted that the

mechanism should not be prevented from addressing country-specific situations, particularly if so decided or requested by the Council. Others, however, pointed out that the former Commission, by its decision 2000/109 of 26 April 2000, had expressly requested the Sub-Commission not to address country-specific situations. In this regard, it was noted that the former Sub-Commission was prohibited from adopting country-specific resolutions, decisions or Chairperson's statements and from including references to specific countries when negotiating and adopting thematic resolutions or decisions. Further, it was argued that as the universal periodic review mechanism (UPR) was the means by which country situations would be reviewed and considered by the Council, the expert advice mechanism should not perform similar functions.

33. Differences in views were also expressed as to whether the mechanism should only address issues related to the promotion of human rights (as proposed in the Facilitator's non-paper) or should also address issues related to the protection of human rights. Noting that GA resolution 60/251 provided that the objectives and mandate of the Council included both the promotion and protection of human rights, it was argued that only the Council could and should address protection issues. Others, however, asserted that nothing in the resolution expressly confined protection to the work of the Council and that what applied to the Council should also apply to its subsidiary mechanism.

34. In response to requests for further clarification, the Facilitator elaborated on the proposal that the mechanism should provide advice on issues related to the structure, functioning, coordination and coherence of the mechanisms of the human rights system and noted that such advice could address the functioning of the Council and the Office of the High Commissioner for Human Rights (OHCHR). Although there was support expressed for this proposal, others were of the view that this was more the role and prerogative of the Council and thus was not appropriate for the expert advice mechanism. Alternatively, it was proposed that the mechanism should instead consider gaps in the special procedure system and make appropriate recommendations in this regard.

35. Finally, it was proposed that the expert advice mechanism should also be mandated to receive petitions and individual complaints and that a complaints committee be established for this purpose. Discussion was held as to whether the new expert advice mechanism would consist of Working Groups such as those relating to Indigenous Peoples, Minorities and the Social Forum, respectively. It was noted that these Working Groups provided an opportunity for civil society participation. No conclusion on this issue was drawn.

## V. FUNCTIONS

36. Closely linked to the above discussion on mandate, the Working Group considered the possible functions of the new mechanism and reflected on the proposals contained in the Facilitator's non-paper. General views were expressed that the functions of the expert advice mechanism should be similar to those of the former Sub-Commission. In this regard, it was considered that the mechanism should be tasked with the preparation of reports, studies and recommendations and that it should perform think-tank and advisory functions for the Council.



It was also emphasized that all such activities should only be provided or undertaken upon the Council's request.

37. As noted above, while it was generally held that the mechanism should provide advice on thematic issues, there was no agreement among delegations on whether it should also provide advice on country-specific issues. Suggestions were therefore made to avoid any qualification or definition of the advice to be provided and to leave it to the Council to decide on a case by case basis.

38. There was also discussion on whether its think-tank function implied that the mechanism should have some power of initiative (see also chapter VII – Relationship to the Human Rights Council). While it was argued that the mechanism should be able to suggest ideas or issues for consideration by the Council, concerns were expressed that the Council maintain control of determining priorities. It was therefore suggested that the mechanism should be conceived as 'service-oriented' in order to ensure that the Council only received requested or required advice.

## **VI. EXPERTS**

### **i. SELECTION**

39. Within the non-paper prepared by the Facilitator, he proposed a two-step process of selection. The first would include a nomination stage which would involve states and other stakeholders namely OHCHR, national institutions and non-governmental organisations in the respective countries. He proposed that some kind of pre-screening exercise be undertaken in which states, the President of the Council, other Bureau members, regional coordinators and OHCHR would be involved. The second step would be election by the Council for a three year renewable once term.

40. Considerable discussion revolved around the possible approaches to selection which could include a two-track approach with a nomination and election process or variation thereof. A roster/list approach from which potential candidates could be drawn was also discussed. This approach could either have the roster established by the High Commissioner for Human Rights, the President of the Council, or a panel comprising various stakeholders. This approach is elaborated in the section above under Structure, Size and Composition.

41. Election by the Council was discussed as a possible second-step. As a different approach to that of election there was also discussion about appointment by the High Commissioner for Human Rights or President. If this approach were chosen it was suggested it could be done in consultation with regional groups.

42. Following considerable discussion regarding a two-step approach it was suggested that further reflection on the selection process was required. Suggestions were made that if there was particular attention paid to qualifications and independence of the experts in the first stage that this could help open the way to further discussion concerning the second stage. It was further noted that if there was a pre-selection process that showed maximum independence, formal

appointment could be made much easier. It was noted that the selection process determined for the expert mechanism should take into account the discussions of the other institution-building open-ended informal working groups.

43. Concerning the submission of candidacies views were expressed that only states should be able to nominate candidacies whereas others supported nomination by a large group of stakeholders including states, civil society, OHCHR and self-nomination. Proposals were also put forward that nominations could come from the High Commissioner for Human Rights, the President of the Council or a combination of both.

## **ii. CRITERIA**

44. According to the Facilitator, the selection process should be transparent and non-political i.e. the candidates should be evaluated in relation to their integrity, professionalism, competence, expertise and reliability. The composition of the mechanism should also respect the principle of geographic representation in identical proportion observed in the composition of the Human Rights Council. Furthermore, he noted, that the major legal and civilization traditions as well as gender balance be observed in the nomination of the candidates.

45. In the discussions the importance of independence was noted which it was stated would help safeguard further quality. There was discussion as to whether state representatives should be able to be considered as experts. Those for such inclusion noted that they often did not have a large pool of expertise to draw from within civil society and that such representatives could also have relevant expertise. Those opposing their inclusion noted that as officials of the state, they could not be seen as independent. It was also noted that experts should not have previously served on the Sub-Commission or within the human rights treaty bodies.

## **VII. RELATIONSHIP TO THE HUMAN RIGHTS COUNCIL**

46. There was general agreement that the expert advice mechanism should be subsidiary to the Council. In this regard, suggestions were made to delete the reference that the mechanism should be supportive to the overall work of the Council (paragraph 2 of the Facilitator's non-paper) as this was seen as self-explanatory and unnecessary. Others were not opposed to its inclusion in view of the Facilitator's explanation that it was a caveat. Support was generally expressed for the language contained in the Facilitator's non-paper, namely that the mechanism should 'work at the direction of its parent body' and that the Council would retain 'ultimate oversight and guidance over its work.' Elaborating on this point, delegations asserted that the Council should identify the priority areas requiring expert advice, thus determining any initiatives to be taken up or issues to be considered by the mechanism. The view was also expressed that the mechanism should not address issues considered irrelevant to the work of its parent body as this would replicate one of the considered failings of the Sub-Commission.

47. Delegations also asserted that the expert advice mechanism should only undertake activities or tasks specifically requested or assigned to it by the Council. In this regard, it was

stated that new studies should only be undertaken with the approval of the Council and that clear timeframes should be established for their termination or conclusion. Additionally, it was suggested that the Council should provide oversight and guidance to the experts themselves.

48. Others emphasized that the mechanism should have some power of initiative and expressed support for the language contained in the Facilitator's non-paper, namely that the mechanism could propose subjects deemed pertinent to the Council's work or relevant to the effective discharge of its mandate. Delegations elaborated that the mechanism should be able to make proposals and recommendations to the Council, suggesting themes and issues for consideration. Also, it was proposed that the mechanism should conduct a preliminary examination of potential initiatives for recommendation to the Council. The power of initiative was considered to be an important means of identifying emerging human rights issues and of enlightening or guiding the discussions of the Council. Examples provided in this connection highlighted instances in which the former Sub-Commission identified gaps and proposed new issues for consideration by the Commission.

49. Further clarification was requested, however, on how the mechanism could be both under the Council's direction and yet able to propose subjects deemed pertinent to its work (as proposed in the Facilitator's non-paper). Concern was also expressed that the Council's priorities should not be lost or disregarded in this manner. In this respect, it was suggested that any initiative proposed or any action undertaken should remain subject to the Council's approval. It was also stated that the mechanism should take collective responsibility in requesting the Council to proceed with any initiative or proposal, and that the Council had primary responsibility for follow-up and implementation of any recommendations made in this manner.

50. In relation to the above discussion, delegations also expressed different views on the Facilitator's proposal that the mechanism should retain 'a considerable degree of flexibility and autonomy.' While support was expressed for the proposal, it was also stressed that such autonomy should only be limited to working methods, should not extend to financial or resource requirements, and should not exceed the scope of work or functions defined by the Council. Others cautioned against any notion of broad autonomy in working methods, emphasizing that the mechanism should not act as a mini-Council. In this regard, suggestions were made to delete the reference in its entirety.

51. Also in relation to the above discussion, delegations held different views or requested further clarification on the proposed 'implementation-oriented' nature of the mechanism (paragraph 1 of the Facilitator's non-paper). Delegations argued for the retention of the reference on the understanding that it implied that the mechanism should only carry out tasks or implement recommendations approved or made by the Council. Others asserted that this would restrict the mechanism's power of initiative and thus proposed its deletion.

52. Finally, it was stated that the expert advice mechanism should interact with all components of the human rights system in general, but only upon the request of the Council.

Views were expressed that the mechanism should not duplicate the work of other human rights mechanisms. Views were also expressed that the mechanism should have no involvement or links with the UPR.

## **VIII. WORKING METHODS**

53. According to the Facilitator the mechanism should fulfil certain requirements paramount of which include efficiency, responsiveness, continuity, predictability, accountability, and diversity of specialities within the human rights discipline. The Facilitator in his non-paper proposed that the expert mechanism meet not more than two weeks every calendar year. He noted that should the need arise the mechanism could seek additional time with the prior approval of the Council. This should only be on the basis of urgent circumstances and on an exceptional basis.

54. Discussion was not conclusive on the time frame which the expert mechanism would meet. This was tied to the overall structure of the mechanism. Discussion was held as to whether experts could meet collectively or on an individual basis. Where collectively a two-week meeting period, for some this was noted as the maximum, was raised as a possibility. Other options included meeting on an ad-hoc basis or having individual experts undertake work at the request of the Council.

55. Concerning engagement by civil society some discussion was held with it noted that further reflection on civil society engagement with a future expert mechanism required. This included the current working groups. Civil society organisations voiced the positive role they believed they played within the working groups of the Sub-Commission and called for structures which would permit their engagement with a future expert advice mechanism.

## **IX. FINAL REMARKS**

56. Participants to the discussions generally agreed that further discussion within their regional groups should continue to find areas of convergence. In particular the two-step selection process was seen as meriting further discussion. The Facilitator reiterated his willingness to meet with the groups or bilaterally as required.

57. Similarly structural issues relating to the working groups of the Sub-Commission and their eventual continuation or transformation were also noted as requiring further discussion. It was also noted that the relationship of the expert mechanism to a future complaints receiving mechanism required further consideration.

58. The possibility of a revised non-paper to be presented to the fourth session of the Human Rights Council was raised.

**Annex I**

**Timetable for the Working Groups of the Council  
5 to 16 February 2007**

	<b>Morning</b>	<b>Afternoon</b>
<b>Monday, 5 February</b>	Complaint Procedure	Complaint Procedure
<b>Tuesday, 6 February</b>	Review of Mandates	Review of Mandates
<b>Wednesday, 7 February</b>	Review of Mandates	Review of Mandates
<b>Thursday, 8 February</b>	Complaint Procedure	Expert Advice
<b>Friday, 9 February</b>	Expert Advice	Expert Advice

	<b>Morning</b>	<b>Afternoon</b>
<b>Monday, 12 February</b>	Universal Periodic Review	Universal Periodic Review
<b>Tuesday, 13 February</b>	Universal Periodic Review	Review of Mandates
<b>Wednesday, 14 February</b>	Universal Periodic Review	Complaint Procedure
<b>Thursday, 15 February</b>	Universal Periodic Review	Review of Mandates
<b>Friday, 16 February</b>	Expert Advice	-----

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