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# Special Procedures of the UN Human Rights Council and Protection and Promotion of the Human Rights: Fact or Myth

Bineet Kedia<sup>1</sup>

*The article deals with the special procedure of UN human rights council in the first part where it discusses the origin and development of the special procedure and its nexus with UN Commission on Human Rights. Similarly, the article outlays the special procedure in Human Rights Council discusses its origin and development as well. The article also deals with the work and status of the special procedures experts and also discusses institution building process and review mandate. Then the article investigated the code of conduct that is to be followed by the special procedures mandate holder. After this the article looks into the merit and limitation of the special procedure. The article concludes with the analysis of the special procedure and its impact.*

## Introduction

The special procedures of the United Nation Human Rights council are experts who examine human rights issue globally, or focus on specific issues.<sup>2</sup> These experts' works independently in their personal capacity and are empowered to monitor and respond to allegation of violations accruing around the globe. They play a critical and unique role in promoting and protecting human rights. They are among the most innovative, responsive and flexible tools of the human rights machinery.<sup>3</sup>

This paper starts with the origin and the development of special procedures. In this portion, the special procedures of the UN Commission on Human Rights will be dealt to tackle questions such as what are the difficulties which the

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<sup>2</sup> 'United Nations Special Procedures: Key Features' <<http://www.amnesty.org/en/united-nations/special-procedures>> accessed 10 February 2013.

<sup>3</sup> Ibid.

Commission faced while creating mandate, which are the area which the mandate covered and also the area which the Special Procedure failed to give adequate attention to, and how this special procedure developed with the passage of time. Thereafter in the succeeding portion, the author will discuss the establishment of the Human Rights Council and its special Procedures. This portion will be the most important part of the paper as it is directly related with the issue of special procedures of the Human Rights Council. This portion will deal with the reason behind establishment of the Human Rights Council, i.e., the origin and the development of the Human Rights Council, its powers and functions and the most important part, i.e., special procedures of the Human Rights Council. This part will discuss about the different category of the special procedures, work and the status of the special procedures experts, institution building process and the code of conduct of the special procedures mandate holders.

Further to conclude the discussion after examining the various aspects pertaining to the special procedures, a comparative study of the concept of the special procedures will be undertaken, i.e., the merit and limitation of the special procedures. In this portion various merits and the limitation of the special procedures will be enunciated with the basis of analysis as the outcome of the various international scholars and the present international humanitarian law.

### **Origin and Development of Special Procedure**

Special Procedure is a mechanism for monitoring the rights enshrined in the human rights document and for the promotion and the protection of the human rights.<sup>4</sup>

The United Nation Special Procedures is a mechanism established by the Commission on Human Rights, which was later on assumed by the Human Rights Council. The Special Procedures mandates entitle experts of the United Nations Commission on Human Rights to exchange information, receive individual complaints, visit countries and submit reports on a particular human right or on human rights in a particular context for the promotion and protection of human rights across the world.<sup>5</sup>

The special procedure addresses either specific country situations or thematic issues in all parts of the world. Through special procedure mechanism the

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<sup>4</sup> 'Human Rights Council and Special Provision Division'  
<[http://www2.ohchr.org/english/ohchrreport2011/web\\_version/ohchr\\_report2011\\_web/allegati/30\\_Human\\_Rights\\_Council\\_and\\_Special\\_Procedures.pdf](http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/30_Human_Rights_Council_and_Special_Procedures.pdf)> accessed 1 May 2013.

<sup>5</sup> Ibid.

mandate holder can examine, monitor advice and publically report on human rights situation in any specific countries or any systematic violation of human rights globally.<sup>6</sup>

Article 1(2), 55 and 56 of the United Nation Charter provides that protection and promotion of human rights is one of the main purposes of the organization and act as a legal foundation for discussing human rights in particular countries. Despite of this clear mandate, United Nation state parties are not interested with the intervention of Commission on Human Rights, taking the defense of Article 2(7) of the United Nation Charter and shows it's reluctant to authorize to debate the human rights situation in particular countries.<sup>7</sup>

The picture began to change in the year of 1965, when the General Assembly's Special Committee on Decolonization requested the Commission on Human Rights to take action in response to petitions from individuals with regard to apartheid policy in South Africa.<sup>8</sup> After two years of deliberations the Commission on Human Rights, in the year of 1967, adopted a procedure to discuss the violation of human rights in all countries, especially with regard to situations involving racism, apartheid and colonialism. However the discussion was limited to these three areas. With regard to the apartheid policy and the gross violation of the human rights in South Africa, the Commission on Human Rights, for the first time, set up ad hoc Working Group. This ad hoc Working Group was later transformed to investigate violation in the Palestinian Occupied Territories. This twin situation of the late 1960's opened the path for the Commission on Human Rights to mandate individuals and to examine the human rights situations in any particular country.<sup>9</sup>

In the early 1990's Resolution 1503 and 1235 was adopted. With the adaptation of these two resolutions, it was hoped that the Commission on Human Rights will be in the position to promote and protect the human rights throughout the world. However what is thought is not always true. With regard to the specific country situation it was argued that the Commission on Human Rights plays a double standard game and it can only be cured by the political will of the member of the Commission.<sup>10</sup> The absence of a new mandate on the

<sup>6</sup> UNGA Res. 60/251 GOAR 56<sup>th</sup> Session (3 April 2006), UN Doc. A/RES/60/25.

<sup>7</sup> N. Rodley, 'United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarily or Competition?' (2003) 25 Human Rights Quarterly 882, 82-908.

<sup>8</sup> P. Alston, *The United Nations and human rights: a critical appraisal* (Oxford University Press 1992)126-210.

<sup>9</sup> UNGA, Special Committee on Policies of the Apartheid of the Government of Republic of South Africa, Communication of 3 February 1967 in Commission on Human Rights, Res 2(XXII) (1967).

<sup>10</sup> Alston (n 8) 164.

human rights situation prevailing in the Iraq at the 2004 session of the Commission on Human Rights, can be seen as an example of ‘perplexing and troubling omission’ by the Commission.<sup>11</sup> Though there was double standard in the selection of the countries, it can also be noted that in case of all those countries where mandates were set up, they often achieved notable result.

In the year of 1980, the dispute between the Argentina and Chile and the case of involuntary disappearance led to the establishment of first thematic mandate of the Special Procedure system. It was followed by the creation of the mandates of the Special Rapporteur on summary or Arbitrary Executions and the Special Rapporteur on Torture.<sup>12</sup>

For many years, there was not a single not a single mandate related to the rights generated from the International Covenant on Economic, Social and Cultural Rights. Preference was given to the civil and political rights over the economic and cultural rights. However, in the year of 1994, there was creation of mandate foreign debt and later on education, poverty and structural adjustment policies, which led to the beginning of balance between the two and gave the expression that economic and social rights deserve to be treated with the same attention and at the same level as civil and political rights.

There was an imbalance in the mandate as there was no mandate dealing with the particular vulnerability of women as victims of the human rights violations. The establishment of a special procedure on violence against women in the context of the Vienna World Conference on Human Rights in the year of 1993 brought an end to this matter. This mandate gained importance, as it was relating to a problem which was not been explicitly dealt in either of the two human rights document and concern both set of human rights (i.e., International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights). The mandate concerning the topic of violence against women were covered from different angles, such as domestic violence, trafficking, cultural practices, sexual slavery, rape and violence in prisons, and also included recommendations on model legislation and response mechanisms. As a result of the work of the Commission on Human Rights, many other United Nation body subsequently started taking up the matter of violence against women. According to the Special Rapporteur

<sup>11</sup> United Nations, Address at the Closing of the 60th CHR by the Acting High Commissioner for Human Rights, (Press Release, 23 April 2004).

<sup>12</sup> Commission on Human Rights, Res 20 (XXXVI) (29 February 1980).

there now exists a comprehensive international monitoring system on the issue of violence against women.<sup>13</sup>

The mandate on the issue of violence against women led to the establishment of several other issues which were neglected earlier, such as Internally Displaced Persons and human rights defenders. These thematic mandates did not create any obligation on the relevant government, as it was intended only to raise awareness and sensitize governments, NGOs and civil society to a topic which failed to find sufficient place in treaties, declarations and other instruments.

The Human Rights Council was established by the United Nations General Assembly for the protection of the human rights and fundamental freedoms of all.<sup>14</sup> While protecting and promoting human rights, it shall not make any distinction and shall do its mandates in a fair and equal manner. It was established in the place of Commission on Human Rights. While replacing from the Commission, it assumed all the power and the function of the Commission including the power of special procedures.<sup>15</sup>

### **Origin and Development of the Human Rights Council**

The Human Rights Council (HRC) has been established by the General Assembly of the United Nations to replace the Commission on Human Rights.<sup>16</sup> The Human Rights Council (HRC) consists of 47 member States, which are elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership is based on equitable geographical distribution and seats are distributed as follows among regional groups: African Group (13), Asian Group (13), Eastern European Group (6), Latin American and Caribbean Group (8); and Western European and Others Group (7); the members of the Council will serve for a period of three years are not eligible for immediate re-election after two consecutive terms.<sup>17</sup>

The membership in the Council is open to all Member States of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the

<sup>13</sup> R. Coomaraswamy, 'Special Rapporteurs must be made part of mainstream' Human Rights Features (14 – 20 April 2003).

<sup>14</sup> UNGA Res GA/10449 ((15 March 2006), UN Doc A/RES/60/251.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid res 7. See also 'Membership of the UN Council' < <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx> > accessed 1 May 2013.

General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights.<sup>18</sup>

The members elected to the Council are required to uphold the highest standards in the promotion and protection of human rights fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership.<sup>19</sup>

The Council is ordained to meet regularly throughout the year and schedule not fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one-third of the membership of the Council.<sup>20</sup>

The Council applies the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.<sup>21</sup>

The methods of work of the Council is required to be transparent, fair and impartial and enable genuine dialogue, be result-oriented, allow subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms.<sup>22</sup>

### **Special procedure of the Human Rights Council**

There are generally two types of procedure followed by the Human Rights Council for the purpose of promotion and protection of human rights.

- a) *Complaint procedure*: The Commission on Human Rights' main complaint procedure was the 1503 procedure, under which it could receive communications (complaints) from victims or others acting on behalf of the

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<sup>18</sup> Ibid res 8.

<sup>19</sup> Ibid res 9.

<sup>20</sup> Ibid res10.

<sup>21</sup> Ibid res11.

<sup>22</sup> Ibid res 12.

victims regarding situations which ‘reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms’<sup>23</sup> in any country in the world. Under this procedure the Commission would not address violations of an individual’s human rights. The procedure was intended to bring situations of massive human rights violations to its attention.<sup>24</sup> Later on with the establishment of the Human Rights Council, the role was assumed by the Council.

- b) *Special procedure*: this is also a mechanism established by the Commission on Human Rights and assumed by the Human Rights Council which entitles its experts to exchange information, receive individual complaints, visit countries and submit reports on a particular human right or on human rights in a particular context.<sup>25</sup> It empowers the Council to examine global human rights issues and monitor human rights violation in specific countries<sup>26</sup>. The Special Procedures are of two categories:
- i. *Thematic mandates*: Thematic mandates allow the study of a topic from a holistic point of view and can be an entry point to the discussion of human rights in countries that have not ratified some of the relevant human rights treaties.<sup>27</sup> It is related to the systematic violation of human rights globally. It deals with the violation of human rights on any particular issue rather than of any particular country. In short it can be said that it is related with the issue and not with the country. As of 24 May 2010, there are total 31 thematic mandates issued by the council.<sup>28</sup>
  - ii. *Country specific mandates*: This mandates allow the expert of the Human Rights Council to examine the human rights situation in a specific country or region. This may increase the visibility of the issue at hand as well as the expert’s authority to visit the area and receive information from governmental and non-governmental sources in the country. When a country cooperates with the expert and improves its human rights

<sup>23</sup> A.F. Bayefsky, ‘How to Complain about Human Rights Treaty Violations: Choosing a Forum’ <[www.bayefsky.com/complain/44\\_forum.php](http://www.bayefsky.com/complain/44_forum.php)> accessed 28 April 2013

<sup>24</sup> M.F. Ize-Charrin, ‘1503: A Serious Procedure’ in G. Alfredsson and others (eds), *International Human Rights Monitoring Mechanisms* (Martinus Nijhoff Publishers 2001) 297.

<sup>25</sup> For example UN Human Rights Council resolution on human rights defenders calls for an end to impunity and the protection of dissent, which obligated the states to proactively disclose information on human rights abuses pertaining to human rights defenders. See Human Rights Council, Res 7/8 (2008); Res 16/5 (2001).

<sup>26</sup> Icelandic Human Rights Center, ‘International Supervisory Mechanism for Human Rights’ <<http://www.humanrights.is/the-human-rights-project>> accessed 1 May 2013.

<sup>27</sup> Oliver Hoehne, ‘Special Procedures and the New Human Rights Council - A Need for Strategic Positioning’, (2007) 4 (1) Essex Human Rights Review 1, 4.

<sup>28</sup> ‘Special Procedures of the Human Rights Council’ <<http://www2.ohchr.org/english/bodies/chr/special/index.htm>> accessed 28 April 2013

record, the expert may report publicly on the progress. Thus it imposes an implied obligation on countries to cooperate with the mandates holder of the special procedure and that they are able to gather required information and analyse the situation of human rights in that country. As of 24 May 2010, there are total 8 country specific mandates issued by the council.<sup>29</sup>

The office of the United Nation High Commissioner for Human Rights provides staffing and logistical support to this mechanism for the discharge of their functions. There are various activities which are carried out within special procedures, such as<sup>30</sup>:

- i. responding to individual complaints,
- ii. conducting studies,
- iii. providing advice on technical cooperation at the country level,
- iv. engaging in general promotional activities.

### **Work and Status of the Special Procedures Expert**

Special procedures can either be individual, called special rapporteurs, Special Representative of the Secretary-General or Independent Expert (who can be said as leading experts in a particular field of human rights) or a working group generally composed of five members (one from each region). The mandate holders are appointed by the chairperson of the Council, after consultation with the Bureau of the Council and do not receive any salary or any other financial reward for carrying out their tasks. However the final decision regarding the appointment of the special procedures experts lies with the chairperson.<sup>31</sup>

The special procedures experts receive information on specific allegation of violation of human rights that have accrued, is ongoing, or which has a high risk of occurring or which has high risk of occurring and send a letter to the concerned government requesting information and comments on the allegation and, where necessary, asking that government to take preventive or investigatory investigation.<sup>32</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> See (for detailed discussion on the activities of the Council as regards its special procedures) 'Seminar Report' (Seminar on Addressing the economic, social and cultural root causes of violence through the UN Special Procedures System, Geneva, 29 June- July 2009).

<sup>31</sup> Membership of the UN Council (n 17).

<sup>32</sup> OHCHR, 'Urgent Appeals and Letters of Allegation on Human Rights Violation' (Leaflet Communications on HR Bodies) UN Doc CHR/NONE/2004/310

The decision to intervene is at the discretion of the special procedure mandate holder and will depend on the various criteria established by him or her, as well as the criteria laid out in the Code of Conduct. The criteria will generally relate to<sup>33</sup>:

- 1) The reliability of the source and the credibility of information received;
- 2) The details provided; and
- 3) The scope of the mandate.

However, it must be emphasized that the criteria and the procedure involved in responding to an individual complaint vary, so it is necessary to submit a communication in accordance with the specific requirements established by each special procedure.<sup>34</sup>

### **Institution Building Process and Review of Mandates**

Despite an entire year of discussion, the working group of the Human Rights Council was unable to develop any criteria for the review of special procedures mandates. It was argued by many states that the rule of country mandates should be ended and suggested that the situation prevailing in any country should only be addressed through the Universal Periodic Review (UPR). It was only after holding its first meeting on 18 June 2007 that the Council by resolution 5/1 adopted institution building process known as the “Institution-building of the Human Rights Council”, providing elements to guide in its future work, such as provisions for the selection of mandate holders and the review of all special procedures mandates. The institution building process states that the ‘review, rationalization and improvement of each mandate would take place in the context of the negotiations of the relevant resolution.’<sup>35</sup> An assessment can also take place during the interactive dialogue with special procedures in a separate segment. The process does not provide criteria for

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<[http://www.ohchr.org/Documents/HRBodies/SP/LeafletCommunications\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/SP/LeafletCommunications_en.pdf)> accessed 28 April 2013.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> It also identifies a set of broad guidelines including that mandates should offer a clear prospect of an increased level of human rights protection and coherence within the system; equal attention should be given to all rights; unnecessary duplication should be avoided; thematic gaps will be identified and addressed including by means other than the creation of special procedure mandates; any consideration of merging mandates should have regard to the content and predominant functions of each mandate and the mandate holders’ workloads; efforts should be made to identify which structure (expert, rapporteur or working group) is the most effective in terms of increasing human rights protection; and new mandates should be as clear and specific as possible to avoid ambiguity. See Human Rights Council, Institution-building of the United Nations Human Rights Council, Res 5/1 (16 March 2006) UN Doc A/HRC/5/21 para 60-62.

such an assessment but says that states that it should focus on ‘the relevance, scope and content of the mandate’.<sup>36</sup> Thus it is clear that any decision to streamline merge or eventually discontinue mandates should always be guided by the need for improvement of the enjoyment and protection of human rights.

Regarding country mandates, decisions to create, review or discontinue country mandates are expected to take into account the principle of cooperation and genuine dialogue aimed at the strengthening the capacity of Member States to comply with their human rights obligations.<sup>37</sup>

### **Code of conduct for the special procedures mandate holder**

At the second session of the Human Rights Council, Algeria placed a resolution before the table of Council related to the review of the special procedures and the draft of code of conduct. The resolution was supported by all the member of the Council belonging to the African Groups, almost all Asian States, and also by Brazil and Ecuador. However, there were some members of the Human Rights Council,<sup>38</sup> who voted against the resolution on the view that this resolution is not necessary and will affect the independent working of the special procedures. Later, the Algerian Ambassador held a consultation and circulated the final revised versions, which was adopted by almost all the member states along with the president’s text as part of the final institution building process.<sup>39</sup>

Article 1<sup>40</sup> and 2<sup>41</sup> of the Draft Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council deals with the purpose and the status of the special procedures mandate holders.

Mandate-holders are independent United Nations experts. The mandate holders are required to act in an independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts based on internationally recognized human rights standards, and free from any kind of extraneous influence, incitement, pressure, threat or interference.<sup>42</sup> They cannot seek and accept instructions from any Government, individual,

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<sup>36</sup> Ibid.

<sup>37</sup> On an exceptional basis, current mandate holders who have served more than six years may have their terms of office renewed till the review of their mandate and the selection process for the new mandate holders are completed. Ibid para 62.

<sup>38</sup> Canada, Czech Republic, Finland, France, Germany, Guatemala, Mexico, Netherlands, Peru, Poland, Republic of Korea, Romania, Switzerland, Ukraine and United Kingdom.

<sup>39</sup> International Service for Human Rights (ISHR) ‘Determined Efforts to Undermine Special Procedures’ <[http:// www.ishr.ch](http://www.ishr.ch)> accessed 1 May 2013.

<sup>40</sup> Human Rights Council Draft Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council (2007), 1.

<sup>41</sup> Ibid art 2(1).

<sup>42</sup> Ibid art 3(a).

governmental or non-governmental organization.<sup>43</sup> They are required to adopt a conduct that is consistent with their status at all times.<sup>44</sup> They cannot use their office for private gains.<sup>45</sup> They cannot accept any honor, decoration, favor, gift or remuneration from any governmental or non-governmental source for activities carried out in pursuit of his/her mandate.<sup>46</sup>

Article 4 of the Code of Conduct deals with the status of the mandate holders. Mandate holders exercise their function in their personal capacity having international responsibility.<sup>47</sup> The mandate-holders are entitled to privileges and immunities as provided for under relevant international instruments, including section 22 of article VI of the Convention on the Privileges and Immunities of the United Nations.<sup>48</sup> However this privileges and immunities are available only for the exercise of their function. The mandate-holders are required to carry out their mandate while fully respecting the national legislation and regulations of the country wherein they are exercising their mission.<sup>49</sup>

It is incumbent on the mandate-holders to exercise their functions in strict observance of their mandate and in particular to ensure that their recommendations do not exceed their mandate or the mandate of the Council itself.<sup>50</sup> The mandate holder shall take into account in a comprehensive and timely manner, in particular information provided by the State concerned on situations relevant to their mandate;<sup>51</sup> In their information gathering activities the mandate holders are required to Preserve the confidentiality of sources of testimonies if their divulgation could cause harm to individuals involved<sup>52</sup> and rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up.<sup>53</sup>

Regrettably, the present code requires all communications from special procedures to governments to be sent through diplomatic channels unless agreed otherwise between individual Governments and the Office of the High Commissioner for Human Rights.<sup>54</sup> The early draft suggested creating an ethics

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<sup>43</sup> Ibid art 3(f).

<sup>44</sup> Ibid art 3(g).

<sup>45</sup> Ibid art 3(i).

<sup>46</sup> Ibid art 3(j).

<sup>47</sup> Ibid art 4(1).

<sup>48</sup> Ibid art 4(2).

<sup>49</sup> Ibid art 4(3).

<sup>50</sup> Ibid art 7.

<sup>51</sup> Ibid art 6(b).

<sup>52</sup> Ibid art 8(b).

<sup>53</sup> Ibid art 8(c).

<sup>54</sup> Ibid art 14.

committee to watch and direct compliance with the code. Thanks to the restriction imposed by certain states, as due to their restriction such provision is not present in the present code.

The coordination committee had suggested that the issue of the cooperation of states with special should also be mentioned in the present code. This suggestion was rejected and therefore they as one way street and deals with only the responsibility and conduct of special procedures of Human Rights Committee and not with the member states. However, the preamble of the present code argues that all States to cooperate with, and assist, the special procedures including by providing all information in a timely manner and responding to communications without undue delay.

### **Merits and Limitations of Special Procedures**

It has been already discussed in the previous portions that the impact of special procedure is such that it leads towards the trends of observing human rights by various entities. But it is also true that after having such a strong mechanism still there are gross violation of human rights whole across the world. For this purpose it is necessary to have a discussion regarding the merit and the limitation of the present special procedure. This portion deals with these two topics keeping in mind the present situation of human rights found throughout the world.

#### *Merit of the Special Procedures*

There is no dispute that the special procedures has moved us one step forwards towards the dream which our forefathers had dreamed long-long year ago. For the detail knowledge of special procedure it is necessary to look into the area of merits and demerits of this procedure. Some of the merits of special procedures are:

- a) It has been discovered that the presence of special procedures has become an element which every state should have in their notice while making any national policy. This could be seen in the context of fairly large growth of human rights, directing all national policy in the area of peace and security.<sup>55</sup> Governments are highly obliged to take the area of human rights seriously and the special procedure benefit through this, as the cost of non-cooperation maybe heavier than the cooperation.

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<sup>55</sup> A. Clapham, 'Peace, the Security Council and Human Rights' in Y. Danieli (ed) *The Universal Declaration of Human Rights fifty years and beyond* (Amityville 1999) 382.

- b) The special procedures in the process of protecting and promoting the human rights have examined those areas which were never discussed before in international arena. There are many instances where they are able to advocate for those who were never heard, not given any platform to speak and express the grievance experienced by him or her. The experts have provided extra protection to this procedure, so that human rights can become 'the cry for the oppressed, the exploited, the dispossessed', designed to protect those 'who have nothing else to fall back on'.<sup>56</sup> In this process, the special procedures expert have also exposed all those violations of human rights whose existence was known to the international society but were never acknowledged by any of them.
- c) The special procedures have tried to bring the human rights closer to the victim. The member states are required to submit a periodic report before the Human Rights Council. Thus, these states cannot escape from their duty to implement the basic principles of human rights within their territory and jurisdiction. The special procedures mandate holders also have a country to analyse the situation of human rights prevailing in that country.

#### *Limitation of Special Procedures*

As it has already been discussed that the present trend has leaned towards more cooperation and coherence with the special procedures, there is also some imbalance in the present system. Some of the limitations of special procedures are:

- a) One of the most essential elements for the progress of project is the sufficient availability of finance and resources. This lack of finance and resources<sup>57</sup> is one of the biggest limitation which the special procedures are facing, as they are unable to have regular visit and carry out in-depth studies. The problem is becoming worse as the numbers of mandates are increasing and there is no corresponding funding.
- b) Another inherent limitation is the presence of politics in Human Rights Council and thus in Special Procedures. The special procedures mandate holders may be nominated by the government.<sup>58</sup> Thus there is a scope of

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<sup>56</sup> C. Douzinas, *The end of human rights: critical legal thought at the turn of the century* (Oxford 2000) 145.

<sup>57</sup> OHCHR, 17 Special Bulletin (April-June 2010)  
< <http://www.ohchr.org/Documents/HRBodies/SP/Bulletin17.pdf>> accessed 1 May 2013.

<sup>58</sup> Draft Code of Conduct (n 50) art 42.

politics within the Council and the main object of creating the mandate holder may fail.

- c) The code requires that all communication of the special procedure must be sent through the diplomats.<sup>59</sup> This is also another limitation faced by the special procedures, as the experts can contact directly through the government and force them to take positive action to stop violation of human rights occurring in their country. Moreover it faces more difficulties when session does exist and the situation requires the instant attention of special procedures experts.

Looking into the limitation of the special procedures of Human Rights Council, the following suggestion can be made:

- a) There should be no scope of nomination of special procedures mandate holders by the government, and
- b) The special procedures experts should be given power that at the time of emergency they can send the communication to the government directly, without any interference of the diplomats.

## Conclusion

Special procedure is a mechanism first used by the Commission on Human Rights for the protection and promotion of the human rights. It entitled experts of the Commission on Human Rights to exchange information, receive individual complaints, visit countries and submit reports on a particular human right or on human rights in a particular context for the promotion and protection of human rights across the world.

In the year of 2006, the UN General Assembly adopted the resolution and replaced Commission on Human Rights with Human Rights Council. While replacing Commission, the Council assumed all the powers and functions of the Commission, including the power to issue special procedures. This mechanism is used by the Council to address either specific country situation or thematic issues around the globe.

In the year 2007, the Human Rights Council by resolution 5/1 adopted institution building process, which includes for the selection and the review of all special procedures mandate holders.

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<sup>59</sup> Ibid art14.

The special procedures of the Human Rights Council led to the development of the human rights in almost all part of the country. Due to this procedure, the government finds themselves to be obliged to take the area of human rights seriously and national policy in the area of peace and security. The Human Rights Council through its special procedures examined those areas which have not been discussed earlier.

The special procedures though led to the promotion and protection of human rights, but it also suffers from certain limitation; such as scope of politics within the Human Rights Council and thus in special procedures, and the sending of communication through diplomats.

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