



Annual meeting of Special Procedures – June 2013

Joint submission by non-governmental organisations (NGOs)

Introduction

This paper has been prepared for the 20th Annual Meeting of the Special Procedures by the following non-governmental organisations (NGOs) Alkarama, Amnesty International, the Asian Forum for Human Rights and Development (Forum Asia) and the International Service for Human Rights, and endorsed by Association for the Prevention of Torture, Bahá'í International Community, CIVICUS World Alliance for Citizen Participation, Child Rights Connect, Human Rights Watch, the International Rehabilitation Council for Torture Victims (IRCT) and the World Organisation Against Torture (OMCT).

The 20th anniversary of the adoption of the Vienna Programme of Action (VDPA) is a time to reflect on the many successes of the Special Procedures system in the last two decades. The purpose of this paper is to acknowledge the significant advances that have been made by the Special Procedures, both substantively and institutionally, and to highlight some areas where we believe that challenges remain.

The achievements of the World Conference for Human Rights include the reaffirmation that all human rights are universal, indivisible and interdependent, and the first responsibility of governments. Further the VDPA laid the ground for the creation of the High Commissioner for Human Rights as well as the elaboration of various treaty and non-conventional mechanisms for the protection and promotion of human rights. Against these, the

recommendations contained in the VDPA pertaining to the Special Procedures system may seem rather modest.¹ However, they remain pertinent, as they called on states:

- To ensure proper resourcing for the system
- To cooperate fully with the mechanisms
- To give priority to follow-up on recommendations.

The VDPA also recognised the need for increased harmonization and coordination among mandate-holders.

These recommendations provide a useful marker against which to measure what progress has been made in two decades, what steps have yet to be taken and to address some of the chronic challenges facing mandate-holders and the system more broadly.

This paper is organised according to two areas:

- **Institutional issues**, including the Coordination Committee, appointments, cooperation with states, reprisals, mainstreaming and specificity and resources;
- **Working methods**, including communications/joint reports, country visits and follow up, thematic work/studies.

Institutional issues

THE ROLE OF THE COORDINATION COMMITTEE

Among the most notable developments since the VDPA is the consolidation of a collection of separate mandates into an actual 'system of Special Procedures', a development consolidated by the General Assembly in its creation of the Human Rights Council.²

The holding of annual meetings, the support of the OHCHR to the Special Procedures individually but also as a system, and the formation and continuous strengthening of the **Coordination Committee of Special Procedure Mandate Holders** (the Coordination Committee), established in 2005, have all made valuable contributions to the better functioning of a system that is among the most valuable tools from the perspective of human rights defenders on the ground.

While, initially, the Coordination Committee's legitimacy as an important and independent actor of the international human rights system was challenged by some States, in particular within the Human Rights Council, in recent years the Coordination Committee has carved out an important independent space in the institutional architecture of the UN human rights system. Today, it plays an important role in ensuring the integrity of individual mandate holders, but also the 'system' of Special Procedures as a whole. This is perhaps best exemplified by the standing invitation to mandate-holders agreed with the President of the Council in 2008 to participate in special sessions of the Council. The participation of Mr Chaloka Beyani on behalf of the Coordination Committee during the urgent debate on the situation in Syria, when he spoke on behalf of the Special Procedures as a whole is a recent example.³ We welcome this emerging practice, as it shows the potential for joint contributions

¹ The VDPA contains some recommendations aimed specifically at individual mandate-holders, for example, the Special Rapporteur on torture.

²For instance, General Assembly Resolution 60/251 creating the Human Rights Council tasked it to maintain a 'system of Special Procedures'.

³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13376&LangID=E>.

of mandate holders on urgent human rights issues, a contribution which on the institutional front was shown to be effective during the Council's institution-building and review.

SELECTION AND APPOINTMENT OF MANDATE-HOLDERS

A further area that could benefit from additional input by the Coordination Committee is the **selection and appointment of new mandate-holders**. While the enhanced role of the consultative group put in place through the review of the Council's work and functioning has strengthened the selection process, there is currently no systematic elaboration of 'job descriptions' for new or vacant special procedure positions. The Coordination Committee could play a key role in soliciting input on the required qualifications, expertise and experiences from outgoing mandate holders, which would enable more targeted outreach and advertising of vacant positions. Such criteria or 'job descriptions' could contain both general requirements that apply to all mandates, and specific criteria for specific mandates. While such job descriptions may not have a formal character, a more systematic collection of criteria by the Coordination Committee could greatly facilitate the maintenance of a pool of suitable candidates at the nomination stage, and therefore improve the selection process.

STATE COOPERATION AND THE DEVELOPMENT OF COOPERATION INDICATORS

As we have outlined during previous sessions of the annual meeting, the issue of **State cooperation** with special procedure mandate-holders has been a long-standing concern for many civil society organisations, and extends to all aspects of the work of mandate-holders, including the willingness of states to respond to communications, accept and facilitate invitations for country visits, and implementation of recommendations. The work of special procedure and the way they interact and 'cooperate' with States is spelled out by the 'Manual of Operations' and, since 2007, also in the 'Code of Conduct of Special Procedures Mandate Holders'. In 2008, the Coordination Committee has put in place an Internal Advisory Procedure in order to 'provide a standing mechanism for continuous consideration of the practices and working methods of the Special Procedures', and under which the Coordination Committee can receive concerns from stakeholders in connection with the work of individual mandate holders.⁴ In addition, while States are often invited to cooperate fully with Special Procedures through resolutions on individual mandates, and many States make specific commitments on their cooperation with international human rights mechanisms when running for seats on the Human Rights Council, there is currently no common standard of cooperation that States aspire to or are bound by.

The annual meeting of Special Procedures and the Coordination Committee could play a key role in contributing to the assessment of the level of cooperation by individual member States, which could feed into other important processes such as the election of members to the Human Rights Council and the universal periodic review (UPR).

This should include elaboration by the Coordination Committee, with the input of interested mandate holders, of cooperation indicators that would cover all aspects of the work of Special Procedures. A starting point could be previous submissions, including by Amnesty International and the Friends World Committee for Consultation (Quakers) to the Human Rights Council.⁵

As a next step, individual Special Procedures could include standardised summaries of performance measured using the indicators in their annual reports, capturing elements of communications, visits and follow-up. Mirroring the good practice gained with the production

⁴ <http://bit.ly/14kqPj4>.

⁵ A/HRC/19/NGO/24.

of a joint report on communications, information on State cooperation could be provided in an aggregated form as well. Currently, while some mandate-holders include information on, for instance, outstanding visit requests in their annual report, such information is not available across the 'system' of Special Procedures.

INTIMIDATION AND REPRISALS

We have been pleased with the contribution of the Special Procedures as a whole, in particular through the chair of the Coordination Committee, to the emerging response of the Human Rights Council and other parts of the international human rights system to the issue of **intimidation or reprisals** against those cooperating with the UN human rights mechanisms. This is a major issue affecting human rights defenders. In this regard, we wish to draw specific attention to the summary of the Human Rights Council panel discussion on reprisals submitted to this annual meeting,⁶ as well as the report of the 19th annual meeting. At the last annual meeting, we suggested revision of the Manual of Operations of Special Procedures to include specific guidance on preventing and responding to cases of intimidation or reprisals. We would therefore suggest that discussions at this annual meeting focus on concrete revisions to the manual. One proposal that NGOs have discussed with treaty body chairpersons is that states be asked to designate an individual to be responsible for investigating allegations of reprisals or intimidation, including in urgent situations. The special procedures mandate-holders may consider a similar initiative, in particular for missions.

More broadly, we encourage mandate holders to remain engaged with the issue of intimidation and reprisals. Just as attacks on or intimidation of individuals cooperating with any human rights mechanism of the UN is, ultimately, an attack on the UN institution itself, Special Procedures should consider attacks against persons cooperating with mandate as an attack on the 'system of Special Procedures' as a whole. Accordingly, reprisals should be of concern to Special Procedures as a group, and we encourage you to contribute substantively in the on-going debates, including in view of a further Human Rights Council resolution on the issue, which is expected for September 2013. A joint contribution by all mandate holders – through the Coordination Committee – would be beneficial, as would a more concerted response to cases of intimidation or reprisal. Considering the on-going initiatives by the UN treaty bodies to address reprisals, including the designation of one or more members of treaty bodies as focal points about reprisals, Special Procedures should engage in a dialogue with the Meeting of Chairpersons of Human Rights Treaty Bodies and where relevant with individual treaty bodies to ensure that their approaches are mutually reinforcing and share best practices in addressing reprisals.

MAINSTREAMING AND SPECIFICITY

Turning to challenges that we foresee for the system of Special Procedures as a whole in the near future, we wish to highlight the **challenge of mainstreaming versus specificity**. Faced with an increasing number of mandates and topics covered, the Special Procedures system could benefit from further insight into the apparent tensions between mainstreaming attention to a specific human rights issue into the work of Special Procedures as whole and the creation of a dedicated mandate (or inclusion of a dedicated focus in an existing mandate). Such a discussion at a future annual meeting could usefully be prepared by written input collected over the year, which could draw on the experience of existing and former mandate holders and civil society.

⁶ <http://bit.ly/18RvVcO>

RESOURCES

Finally, we are cognisant that as every other part of the UN human rights system, Special Procedures suffer from an increasing strain on available **human and financial resources**. However, the significant contribution of Special Procedures to the actual promotion and protection of human rights on the ground make it essential that the system receive the support required, including through long term and highly qualified staff assisting each mandate, and sufficient clarity in terms of available financial means.

Working Methods

INDIVIDUAL CASES

Good practices

The **joint communications report** of the Special Procedures is proving a useful tool for civil society. It is particularly helpful in reassuring victims and their families that action has been taken about the violation(s) they have suffered. It also allows the source of the communication to know whether the case has been taken up with a much shorter delay than previously, and provides the reference number of the correspondence. Finally, the fact that the communication letter and any available government reply is available as sent is helpful for monitoring purposes as well as for media work. However, as we did in 2012, we encourage the report to be organised by country, rather than by chronological order in order to facilitate research and monitoring.

As a searchable document and one that is issued regularly, it enables civil society to keep track more easily of cases acted upon and any government response. However, given the large number of communications issued by the Special Procedures and length of time that it can take a government to respond, if at all, navigating around several joint communications reports will in time present its own challenges.

The database of the Working Group on arbitrary detention (WGAD), searchable by individual case, country, theme and opinion, is another extremely useful tool. Currently, it contains basic information as to whether a state has responded to the initial communication. To this database could be added information as to what action has been taken by the state in response to the WGAD's opinion, once adopted.

As outlined above, we appreciate the reaction of the Special Procedures to reprisals as it concerns individual cases, for example following the visit of the Special Rapporteur on Torture to Morocco.

We also commend the use of joint actions by Special Procedures. When violations occur, they often concern multiple rights, and a cross-thematic approach is an efficient way to address this problem.

Suggestions for improvement

As civil society organisations working with Special Procedures, we are aware of the budget constraints placed on their work, and the ability they have to respond to cases received. However, grass-roots and national organisations, as well as families, are often not aware of these constraints, and their expectations of the action that will be undertaken after a case is submitted to them are often very high, as is the expected result when action is taken. Thought should therefore be given on how to ensure sources are informed when their case is

taken up, and that the source's expectations about potential government responses are realistic. The criteria for the selection of cases could also be made clearer.

In relation to this, the large number of **communications, which receive no government response** is of concern and undermines the effectiveness of Special Procedures' work. A proposed overall approach to enhancing State cooperation is outlined above, but specifically regarding individual communications we would suggest that the Special Procedures consider adopting a mechanism similar to that of the Working Group on Enforced and Involuntary Disappearances (WGEID) in which a case remains open until it is considered resolved. This would ideally also include the period after the immediate danger to the victim has passed to ensure that appropriate redress is provided.

Suggestions for future action

In addition to the suggestions made above, we encourage mandate holders to **continue to assess the quality of government replies** to communication letters and urgent appeals, as had already been suggested in 2011. We encourage that this be done directly in the communications report itself. This is useful for NGOs, victims and their families who rely on the communications procedure, as well as for providing a basis for mandate holders to follow up and elicit a response that actually addresses concerns on the ground. Those mandate holders who do not do this already are encouraged adopt this practice. It might also be useful to consider a grading system of government replies and compliance with recommendations, a system that could in the long term be used in a uniform manner by all Special Procedures.

Finally, as in 2011, in relation to **follow up of cases**, while NGOs appreciate their responsibility to provide follow-up information to mandate-holders, it is suggested that when government responses are received by mandate-holders, that they provide an opportunity for the source to comment on the responses. This is a practice that is already in place for cases provided to the WGEID and the Working Group on Arbitrary Detention. This would allow the Special Procedures to ensure they are able to make the best assessment of government replies. This form of communication would be in line with the Manual of Operations, falling under the 'specific circumstances' provided for in paragraph 37.

Finally, we suggest the Special Procedures explore the possibility of working more closely with other **human rights mechanisms at regional and national levels** with regards to individual cases. For example, joint allegation letters could be sent with mandate-holders of the African Commission where this is feasible in an efficient and effective manner. It might also be interesting for Special Procedures to be in contact with other national entities regarding individual cases and other work, for example with parliaments or national human rights institutions or ombudspersons, provided that they are established and operate in full compliance with the Paris Principles.

Building on the WGAD model, in time, it will be useful to have a single database available to the public of all communications sent by the Special Procedures. This would include information about responses by the state and action taken to implement the mandate-holders' recommendations, as relevant. As an interim measure, links from the OHCHR's country pages to relevant communications could help to stimulate action by civil society to keep pressure on the state concerned to respond and take action.

COUNTRY VISITS

Preparation for country visits

The practice of the OHCHR Civil Society Section of announcing forthcoming country visits of Special Procedures mandate-holders has been appreciated and useful for civil society at the national level to plan their activities and engagement accordingly.

Some mandate-holders have proactively initiated contact and dialogue with civil society in the planning and preparation of their country visit in order to map the contextual basis for their mission as well as determine the key expected outcomes. It is encouraging that all mandate-holders follow this practice, particularly by contacting those civil society organisations which have submitted case fact sheets as well as by identifying national NGO coalitions through the UPR joint submissions or shadow reports to the treaty bodies. Integrating civil society perspectives into the planning of country visits imparts a sense of ownership and can greatly enhance the effectiveness of the mission and contribute to follow-up activities.

During country visits

As has become an established practice, civil society welcomes opportunities during country visits to provide information to mandate-holders. Those meetings should take place in a format that enables frank assessments of the main human rights concerns and developments as well as suggested areas of focus for the mission report. Mandate-holders are also encouraged to meet victims of human rights violations and, wherever possible, visit places of concern where gross and systematic violations are ongoing, particularly those in relation to the case fact sheets received. Such meetings and visits are not only of symbolic importance, but also lend a sense of urgency to outstanding cases.

There have been numerous cases of reprisals against human rights defenders engaging with mandate-holders during country visits, which have resulted in intimidation and harassment in the aftermath of missions, and even in death. To minimise such risks, mandate-holders are encouraged to consult closely with civil society focal points on matters of security and, where needed, to explore options of closed private meetings or alternative forms of soliciting inputs with the view to prevent reprisals as much as possible. They are also encouraged to insist that the state nominate an official who is the contact point in the case of any concerns about reprisals, who can be contacted urgently at any time during the mission and after it. (See above).

Cooperation on country visits

A number of States have demonstrated persistent non-cooperation in inviting mandate-holders for country visits, even some of those who have issued standing invitations. It is of further concern that many States have opted to invite mandate-holders on issues deemed 'safe' while long outstanding requests from other mandate-holders continue remain unfulfilled. We encourage the Coordination Committee to consider ways to address such cases of non-cooperation with Special Procedures as it forms a hindrance to the functioning of the mechanism as a whole. For instance, a mechanism of reminders or public communiqués from the Coordinating Committee could be initiated if visits remain outstanding for a given number of years.

Follow-up to country visits

Experience of follow-up with the treaty body system suggests that it is helpful to have a few priority recommendations on which to focus, at least in the immediate period following a

review. The prioritisation of a few recommendations could be considered by Special Procedure mandate-holders.

Good practice is being developed by mandate-holders, for example the use of questionnaires sent to stake-holders to assess levels of implementation, for presentation in a subsequent report to the Council. It is useful to have a clear assessment of the extent of implementation, as provided by some mandate-holders already. In situations where several mandate-holders visit within a short period, it might be feasible to consider joint efforts to track implementation, as happened in the situation of Darfur.⁷

When presenting their findings of a mission, mandate-holders can also ask governments to respond within a set time-frame on the effect given to recommendations and to provide information as to the reasons why recommendations have not been implemented. States can also be encouraged to report voluntarily to the Council on their implementation of Special Procedure recommendations.

Few mandate-holders are able to undertake dedicated follow-up missions, yet this is one of the most effective means of actively supporting implementation. To the extent possible, we encourage mandate-holders to incorporate follow-up missions into their work plans, as well as follow-up activities, and for OHCHR to continue to support these activities.

FOLLOW-UP

Follow-up has been defined by the mandate-holders as encompassing the full range of measures 'to encourage, facilitate and monitor the implementation of recommendations by the Special Procedures'.⁸ A positive development since the adoption of the VDPA is that the essential function of follow-up was recognised in the General Assembly in Resolution 60/251 which establishes the Human Rights Council (the Council), and which asserts that the methods of work of the Council shall, among other things, allow for subsequent follow-up discussions to recommendations and their implementation.⁹ Some of the resolutions creating and renewing Special Procedure mandates also request mandate-holders to follow-up on communications and visits, or call on states to facilitate such activities.

It is clear that follow-up is an activity that necessarily requires input from a range of stake-holders, including civil society organisations, particularly at the national level. As with all working methods, it is also important to learn lessons from different experiences and to build on this across the system.

There are many opportunities through the UPR mechanism, elections for the Council and treaty body reviews to follow-up on Special Procedure recommendations. However important, these actions do not substitute the responsibility of the Council for action and are not addressed here.

⁷ Called for by Human Rights Council resolution HRC 4/8. Relevant mandate-holders developed a consolidated chart identifying recommendations and implementation.

⁸ *Report of the Twelfth Meeting of Special Rapporteurs, Representatives, Independent Experts and Chairpersons of Working Groups of the Special Procedures of the Commission on Human Rights and of the Advisory Services Programme*, UN Doc. E/CN.4/2006/4, June 2005.

⁹ UN General Assembly resolution 60/251, operative paragraph 12.