

Strengthening cooperation with the Special Procedures

**Submission to the 21st annual meeting of Special
Procedures of the UN Human Rights Council**

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1. Introduction

This submission by the International Service for Human Rights incorporates and updates a range of recommendations contained in a joint submission made by a group of NGOs to the 20th annual meeting of special procedures in 2013.¹ This submission, however, is made by ISHR in its own right.

We see the annual meeting of special procedures as a critical opportunity for substantive interaction between mandate holders and various stakeholders, and for mandate holders to coordinate their approaches with a view to optimising the contribution of the special procedures system to the promotion and protection of all human rights for all.

ISHR considers the failure of many States to cooperate in good faith with Special Procedures – mechanisms established by the Member States – to be an issue of grave concern, which clearly undermines the effectiveness of the work of Procedures. We welcome the efforts made to provide easier access to updated information regarding State responses to communications, and on country visits requested and carried out. In this paper we would like to suggest additional recommendations to encourage better State responses and cooperation.

We regret and condemn the fact that Special Procedures have been targeted for personal attack, within and outside of the Human Rights Council, as a result of their work as independent experts. We will support all efforts to demand retraction of these in the strongest terms, and to support the independence of mandate-holders.

We thank the Special Procedures for their acknowledgement of our 2013 NGO joint submission. This paper reiterates several of the recommendations that the Special Procedures have yet to respond to, in the hope they may be considered during the 2014 meeting.

2. The role of the Coordination Committee

We welcome the openness of the Coordination Committee to meet regularly throughout the year, but note the challenge for both the special procedures and civil society to effectively follow up to recommendations and outcomes of the annual meeting.

Among the most notable developments in the last 20 years 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

¹ The original paper was prepared for the 20th Annual Meeting of the Special Procedures by the following non-governmental organisations: Alkarama, Amnesty International, the Asian Forum for Human Rights and Development (FORUM-ASIA) and the International Service for Human Rights, and endorsed by the 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).

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

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.

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.

We welcome the emerging practice of the Coordination Committee feeding into substantive debates of the Human Rights Council, as it shows the potential for joint contributions 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.

RECOMMENDATIONS FOR THE 21ST ANNUAL MEETING:

- **Mandate the Coordination Committee to consult on and contribute the views of mandate holders to urgent debates and special sessions of the Human Rights Council.**

3. Selection and appointment of mandate-holders

Over the past 10 months, we witnessed increasingly political 'bargaining' over the selection of mandate holders, particularly in relation to the geographic origin of mandate holders, which we deeply regret. This bargaining resulted in the delay of appointments and the annual meeting itself, and has the potential both to politicise the mandate holders eventually appointment and to undermine the integrity and independence of the system of special procedures as a whole.

A potential contribution to depoliticising the selection of mandate holders may be for the Coordination Committee to engage at an early stage with the Consultative Group and the President of the Human Rights Council to provide expert input into the appointment of new mandate holders.

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.

For several of the appointments in 2014, ISHR and other NGOs have drafted such criteria, seeking to contribute to more informed decisions by the Consultative Group and the Human Rights Council President.³

³ See, eg, <http://www.ishr.ch/news/ishr-releases-guidelines-appointment-un-human-rights-experts> and http://www.ishr.ch/sites/default/files/article/files/a_hrc25_ngo_176_en_item5.pdf.

RECOMMENDATIONS FOR THE 21ST ANNUAL MEETING:

- **Mandate the Coordination Committee to compile input from outgoing mandate holders for each vacancy.**
- **Reject any imposition of additional and fixed criteria as to national or regional origin for the selection of any mandates (whether thematic or geographical).**

4. State cooperation and the development of cooperation indicators

STATE COOPERATION

As we have outlined during previous sessions of the annual meeting, the issue of **State cooperation** with special procedure mandate-holders remains a long-standing concern for many NGOs, 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 implement recommendations.

We share your deep concern about the lack of State response to communications and to requests for country visits. In a statement to the 27th session of the Human Rights Council, ISHR proposed one approach to increase the likelihood of States responding to communications in a prompt and substantive way; namely that during interactive dialogues with mandate-holders, those States that have received but not responded substantively to mandate-holder communications be invited to take the floor first. This would mirror the practice of concerned countries speaking first when mission reports are presented.

Lack of adequate responses is particularly galling when it concerns Members of the Human Rights Council, who are required under GA *Resolution 60/251* to 'fully cooperate with the Council'. In the joint communications report submitted to the 27th session alone, there were communications *without response* concerning 13 members of the Council; namely, Algeria, Argentina, Brazil, China, Cote d'Ivoire, India, Indonesia, Kenya, Mexico, Pakistan, the Philippines, Saudi Arabia and Venezuela. ISHR named each of these States in a statement to the 27th session of the Council during the General Debate under Item 5. We are pleased to advise that a further Member State that had not responded to a communication at the time of publication of the joint communications report was prompted to respond urgently when ISHR advised that we would be compelled to name that State in the Item 5 statement. This experience demonstrates the positive incentive to cooperate of a practice such as inviting States that have not responded to communications to take the floor to give a response during interactive dialogues.

COOPERATION INDICATORS

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.

In this regard, 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).

While we welcome the emerging practice of some mandate holders to make information relating to state responses to communications more easily accessible in a timely fashion, there is currently no coordinated approach.

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.⁴

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 of a joint report on communications, information on State cooperation could also be provided in an aggregated form. 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.

RECOMMENDATIONS FOR THE 21ST ANNUAL MEETING:

- **Commence development of cooperation indicators measuring the level to which States comply with their obligation to cooperate with special procedures in relation to visit requests and communications, taking into account the differentiated responsibilities of States members of the Human Rights Council.**
- **During interactive dialogues on the presentation of annual reports, special procedures mandate holders should as a matter of practice invite States that have not responded adequately to any communications in the interim period to take the floor first.**
- **After each annual meeting of Special Procedures, at a minimum, make a public statement regarding failure of States to abide by standing invitations or respond to requests for country visits.**

5. Intimidation and reprisals

ISHR deeply regrets the continued incidence of intimidation and reprisals against individuals and organisations which cooperate or seek to cooperate with the UN in the field of human rights, including intimidation and reprisals against persons in connection with their communication or proposed communication with Special Procedures. The Secretary-General's most recent report to the Human Rights Council on cooperation with the UN human rights mechanisms documents a number of cases in this regard, including the arrest, incommunicado detention, ill-treatment and even torture of persons in connection with their cooperation with Special Procedures.⁵

Such cases engage the obligations of the Special Procedures and the UN human rights system as a whole, as discussed further below.

⁴ UN Doc A/HRC/19/NGO/24.

⁵ 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: Report of the Secretary-General', UN Doc A/HRC/27/38.

OBLIGATIONS OF SPECIAL PROCEDURES TO PREVENT AND PROMOTE ACCOUNTABILITY FOR REPRISALS

States have the primary responsibility to uphold fundamental rights and freedoms, including individuals' and groups' right to freedom of association and their right to safe and unhindered access to and communication with international bodies. This includes an obligation to prevent and protect against intimidation and reprisals, to fully and promptly investigate cases of alleged intimidation and reprisals, to ensure accountability for perpetrators, and to secure access to effective remedy for victims.

As mechanisms of the Human Rights Council, Special Procedures also have legal obligations in this regard. Such obligations derive from, inter alia, the constituent instruments of the Human Rights Council,⁶ and relevant resolutions adopted by the General Assembly,⁷ and the Human Rights Council, with Human Rights Council resolution 24/24 explicitly calling on Special Procedures to 'give an account of action' they have taken in relation to allegations of intimidation or reprisals.⁸

In ISHR's view, the legal obligations of the Special Procedures in this regard include an obligation to:

1. take such preventative and precautionary measures as are necessary to reduce the likelihood of reprisals, including in the context of country missions and communications;
2. fully and promptly investigate allegations of intimidation or reprisals arising in connection with their mandate or work;
3. publicly condemn cases of intimidation and reprisals;
4. call on the State concerned to respond promptly and substantively to allegations of intimidation or reprisals;
5. set out what steps are required to prevent recurrence and provide an effective remedy;
6. report publicly to the Council on cases of intimidation or reprisals, including steps taken by the mandate holder and the response or lack thereof by the State; and
7. support and pursue efforts to strengthen the response of the Special Procedures and the UN as a whole to the issue of intimidation and reprisals.

APPOINTMENT OF UN WIDE FOCAL POINT

There is growing consensus on the need for a coherent and systematic approach to prevent and respond to acts of intimidation and reprisal at the national, regional and international levels, as reflected in the calls in Human Rights Council resolution 24/24 for States to adopt specific laws and policies to prevent reprisals and for the UN Secretary-General to designate a UN-wide senior focal point on reprisals.

While the implementation of this aspect of the resolution has been delayed by the General Assembly in New York, the Secretary-General has subsequently called for the expeditious implementation of all aspects of resolution 24/24 in his most recent annual report on

⁶ This includes UNGA Resolution 60/251 on the Human Rights Council, 3 April 2006, UN Doc A/RES/60/251, which sets out the obligations of the Council and, by extension, its mechanisms, in relation to prevention, protection, cooperation and remediation, among other things.

⁷ This includes the Declaration on Human Rights Defenders, which explicitly enshrines the right of all persons to unhindered access to and communication with UN human rights mechanisms: see especially articles 5(c) and 9(4).

⁸ See Human Rights Council resolution 24/24, UN Doc A/HRC/Res/24/24, OP 11.

cooperation with the UN human rights mechanisms submitted to the Human Rights Council.⁹ The cases documented in that report – several of which relate to individuals' engagement with Special Procedures – make the need for a better UN-wide response even more pressing.

In this regard, we strongly welcome the joint statement made by special procedures mandate holders on 10 December 2013, expressing serious concern at acts of reprisal against anyone cooperating with them and stating that they were looking forward to the designation of the focal point on reprisals.¹⁰

We also welcome statements made by a range of mandate holders, such as the Working Group on Enforced or Involuntary Disappearances,¹¹ calling for the prompt and comprehensive implementation of resolution 24/24, including through the expeditious appointment of the UN-wide senior focal point on reprisals to 'engage with all stakeholders, in particular Member States, to promote the prevention of, protection against and accountability for reprisals and intimidation related to cooperation with the United Nations, its representatives and mechanisms.'

We encourage mandate-holders to continue to publicly raise concerns about the further delay in the designation of a focal point. The current paralysis on the issue licences further cases of reprisals, and perpetuates impunity. Due to the particular relevance of the issue of reprisals to the work of Special Procedures, we strongly encourage mandate-holders – individually and through the Coordination Committee – to contribute actively to a solution on this issue.

COORDINATION AMONG SPECIAL PROCEDURES TO PREVENT AND PROMOTE ACCOUNTABILITY FOR REPRISALS

Whilst the General Assembly continues its deliberations on reprisals, it is clear that parts of the system can make their own advances. In their 2014 annual meeting the Chairpersons of Treaty Bodies noted that initiatives taken by individual Treaty Bodies, such as the definition of a new joint-policy on reprisals, should be part of a more general approach to reprisals by the relevant UN human rights mechanisms.

At that meeting, Treaty Body Chairs invited all treaty bodies which have not yet done so to establish a rapporteur for reprisals, and to take such steps as are necessary to prevent, protect against, investigate and ensure accountability for acts of intimidation or reprisals.

We strongly encourage the Coordinating Committee to designate a rapporteur on reprisals to coordinate and encourage consistent best practice in follow up on cases of reprisals against those cooperating with Special Procedures. This could be part of developing an overall policy on reprisals, providing specific guidance on preventing and responding to cases.

In addition, we recommend that special procedures mandate-holders request States designate an individual responsible for investigating allegations of intimidation or reprisals. This could be an element in the planning of country visits.

⁹ 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: Report of the Secretary-General', UN Doc A/HRC/27/38.

¹⁰ OHCHR press release, 10 December 2013.

¹¹ See, eg, Report of the Working on Enforced or Involuntary Disappearances, UN Doc A/HRC/27/49, para 119.

RECOMMENDATIONS FOR THE 21ST ANNUAL MEETING:

Recommendations to mandate holders

- **Special Procedures should take such preventative and precautionary measures, including in relation to communications and country missions, as is necessary to reduce the risk of reprisals.**
- **Where allegations of intimidation or reprisal are made, Special Procedures should, in accordance with their legal obligations:**
 - **fully and promptly investigate the allegation;**
 - **to the extent that the allegation is verified and the safety of the victim will not be put at risk, send a communication to the State concerned which: (a) strongly condemns the act of intimidation or reprisal; (b) sets out what steps are required to prevent recurrence and provide an effective remedy; and (c) requests the State to report back urgently on the steps and measures taken in this regard; and**
 - **report publicly to the Council on the steps and action taken.**
- **Special Procedures should systematically request States to designate an individual responsible for investigating allegations of intimidation or reprisals as part of the TOR's for country missions.**

Recommendations to the Coordination Committee

- **The Coordination Committee should develop and adopt a comprehensive policy to guide action on reprisals across the Special Procedures.**
- **The Coordination Committee should designate a rapporteur on reprisals, with authority to follow-up on cases of intimidation or reprisals, in conjunction with the mandate holders concerned.**
- **The Coordination Committee should maintain a publicly available (where appropriate) registry of allegations of intimidation or reprisals, potentially as part of a general database of communications.**
- **The Coordination Committee should annually review cases of reprisals across all the Special Procedures and assess both the actions taken by the mandate holder and by the State concerned, and make recommendations to the Special Procedures as relevant to ensure a consistent and effective approach.**
- **The Coordination Committee should ensure effective coordination to follow up on cases of reprisals including by sharing particular cases of reprisals arising with respect to one mandate holder with other mandate holders where this could be relevant to an upcoming mission or report, to provide for follow up and ensure that States are held accountable in a consistent manner.**

6. Individual cases

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 and accountability purposes as well as for advocacy work.

However, as we did in 2012 and 2013, we encourage the report to be organised by country, rather than by chronological order in order to better facilitate research and monitoring.

To complement the joint communications report, an online database – inspired by the Working Group on Arbitrary Detention database – would be the logical next step.¹² Such a database should include the original communications, but also Government responses, if any, as well as follow-up steps taken by the State.

While we commend the use of **joint actions by Special Procedures**, we are concerned about the excessive delay caused by the need to coordinate with several mandate holders. We encourage Special Procedures, as is foreseen by the Code of Conduct of Special Procedures for cases where alleged violations are time-sensitive, to make use of **individual Urgent Appeals**, which could be followed up by joint action by several mandate holders.

The lack of acknowledgement of communications, and the **lack of information provided to the authors** of communications in relation to the steps taken by mandate holders is, at best, problematic and, at worst, disenchanting and disempowering for victims. Particularly grass-roots and national organisations, as well as families, are often not aware of constraints related to resources or time, and their expectations of the action that will be undertaken after a case is submitted to them are often high, as is the expected result when action is taken. Special Procedures should therefore, at a minimum, inform authors of receipt of communications, and on what if any steps are taken, even if only in general terms. 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

As requested in previous annual meetings, in relation to **follow-up of cases**, authors of communications should be invited to comment on responses received by Special Procedures. This is a practice that is already in place for cases provided to the Working Group on Enforced or Involuntary Disappearances 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, and would provide valuable information for the assessment of the level of cooperation (see cooperation indicators, above).¹³

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 on Human and Peoples' Rights 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.

RECOMMENDATIONS FOR THE 21ST ANNUAL MEETING:

- **Publish online the database containing all individual cases dealt with by Special Procedures, including government responses and a qualitative assessment thereof (this database could also include cases of intimidation or reprisals linked to the work of Special Procedures, and any follow-up or lack thereof to those allegations).**

¹² 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. <http://www.unwgadatabase.org/>

¹³ Note that in ISHR's opinion, this form of communication would be in line with the Manual of Operations, falling under the 'specific circumstances' provided for in paragraph 37.

- **Systematically inform the author of communications of receipt, decision to act on or not, and any follow-up information received on communications in relation to individual cases.**

7. Country visits

PREPARATION FOR COUNTRY VISITS

The practice of the OHCHR Civil Society Section of announcing forthcoming country visits of Special Procedures mandate-holders is 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 desirable 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.

To minimise the risk of intimidation or reprisals in connection with visits, mandate-holders are encouraged to consult closely with civil society 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).

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.¹⁴

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.

RECOMMENDATIONS FOR THE 21ST ANNUAL MEETING:

- **Amend the Manual of Operations of Special Procedures to ensure that prior to conducting country visits, Special Procedures insist on the nomination by the State of an official contact point in case of any concerns about reprisals.**
- **Ensure that persons cooperating with Special Procedures mandate holders, particularly in connection with country visits, can do so without fear of intimidation or reprisals, and respond to any allegations in a timely manner including by aborting visits as required.**

8. Engagement of Special Procedures with international and regional forums

We welcome the participation of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Frank La Rue, in a meeting with Security Council members, in Arria formula, on the protection of journalists in December 2013. This kind of engagement contributes to encouraging greater human rights interest by members of the Security Council, a process urged by Navi Pillay in her final statement to Security Council members, as UN High Commissioner for Human Rights¹⁵.

Welcome participation by mandate-holders in debates at the African Commission for Human and Peoples' Rights, as one piece of strengthening cooperation between mechanisms as expressed in the Addis Ababa Roadmap. Such engagement across mechanisms encourages advances on human rights concerns in different spaces, as well as solidifying working relationships between regional and international mandate-holders.

The visit of the UN Special Rapporteur on Eritrea to meetings around the 53rd Ordinary Session of the African Commission on Human and Peoples' Rights helped facilitate conversation between State representatives and Commissioners. We welcome the outcome of the recent review of the Addis Ababa Roadmap, and **encourage prompt involvement of civil society partners in the planning of joint activities between regional and international procedures to maximise the impact of these activities.** We encourage UN Special Rapporteurs to develop similar work with other regional mechanisms.

¹⁴ Called for by Human Rights Council resolution HRC 4/8. Relevant mandate-holders developed a consolidated chart identifying recommendations and implementation.

¹⁵ <http://www.un.org/News/Press/docs/2014/sc11528.doc.htm>