POLICY REPORT

HUMAN RIGHTS
SPECIAL PROCEDURES:
DETERMINANTS OF
INFLUENCE

Understanding and strengthening the effectiveness of the UN’s independent human rights experts

by Marc Limon & Ted Piccone

The conclusions reached in the report are entirely the authors’ responsibility and do not necessarily reflect the views of their respective institutions, donors or partners. The authors wish to acknowledge the invaluable contribution to this report of Hilary Power of the Universal Rights Group and Ashley Miller of the Brookings Institution.

© Universal Rights Group 2014

Image Credits

“Human Rights Council, March 11, 2010 (Archive Photo)” by Eric Bridiers/United States Mission Geneva is licensed under CC BY-NC-ND 2.0; “Secretary General Meets with UN Special Rapporteur on Freedom of Association” by Patricia Leiva/SAM is licensed under CC BY-NC-ND 2.0; “Olivia Shokrany, Special Rapporteur on contemporary forms of slavery, and on her missions to Kazakhstan and Madagascar during the 36th Session of the Human Rights Council, 12 September 2013” by Jean-Marc Ferré/ON Geneva is licensed under CC BY-NC-ND 2.0; “General Assembly Hall, United Nations HQ (New York City)” by Luke Redmond is licensed under CC BY-NC-ND 2.0; “The human right to water and sanitation, hosted by UN-Water: Decade Programme on Advocacy and Communication (UN Water)” by Deutsche Welle used under CC BY-NC 2.0 (Cropped from original); “Victims in the State of Coahuila organizing and demanding a hearing with President Felipe Calderon. They have more than 130 different cases they want answered. They also presented their case to the UN Special Working Group for Torture and Involuntary Disappearances in March.” by Pepe Rivera licensed under CC BY-NC-SA 2.0; “Oshakata Bayete, Special Rapporteur on the Human Rights of Internally Displaced Persons on a urgent debate on the deteriorating situation of Human Rights in the Syrian Arab Republic and the recent killings in Al-Quway during the 22nd Session of the Human Rights Council, 29 May 2013.” by Jean-Marc Ferré/ON Geneva is licensed under CC BY-NC-ND 2.0; “NNWO Executive Director Clara Pratte introduces the UN Special Rapporteur James Anaya during a meeting with civil society at the Navajo Nation Washington Office. The Special Rapporteur is on an official visit to the United States and will meet with tribal, state and government officials from April 23 to May 4, 2013’” by Jared King / NNWO is licensed under CC BY-ND 2.0
EXECUTIVE SUMMARY

The United Nations’ (UN) independent human rights experts – otherwise known as ‘Special Procedures’ – are considered by many to be, in the words of then UN Secretary-General Kofi Annan, the ‘crown jewel’ of the international human rights system. From their first appearance in 1967 when the Commission on Human Rights established an Ad Hoc Working Group on human rights in southern Africa, Special Procedures have grown into one of the international community’s most important tools for promoting and protecting human rights. Today, the UN human rights system boasts almost fifty separate Special Procedures mandates covering a wide range of thematic and country-specific issues – with more in the pipeline. Their unique place in the international human rights architecture is almost universally assumed.

But as the fifteenth active Special Procedure is appointed in March 2014, it is important to stand back and objectively evaluate the strengths and weaknesses of the Special Procedures system, and to question whether it can continue to grow and evolve organically as it has done since 1967. In short, it is important to ask the questions: what makes Special Procedures so special anyway, how do they seek to influence human rights policy and practice, and, looking to the future, what should be done to preserve their ‘specialness’?

The Special Procedures mechanism emerged in the late 1960s when a group of newly-independent countries from Africa, the Middle East and Asia joined the UN and rejected the status quo position that the international community has ‘no power to act’ to address violations of human rights. Thanks to their efforts, the UN began to authorize missions to examine human rights abuses in apartheid-era South Africa and military-ruled Argentina. By the early 1990s, following the rapid quantitative and qualitative expansion of both country-specific and thematic mandates, the international community began to perceive Special Procedures as a distinct and coherent system, and states, concerned at the largely ad hoc nature of the mechanism’s evolution, began a series of intergovernmental reform exercises.

The most recent reform efforts have come in the context of the establishment of the Human Rights Council in 2006, and the new body’s five-year review in 2011. While these negotiations led to some changes, their most notable achievement was to further crystallise opposing state visions of what the Special Procedures mechanism is and what it is there to do.

Today’s Special Procedures mechanism is heir to these momentous events, and to the efforts of generations of state representatives, mandate-holders, NGO leaders and victims who refused to accept that the UN had ‘no power to act’ and built a system, brick by brick, that could shine a light on human rights violations and work with all stakeholders to promote and protect the enjoyment of human rights ‘in all countries’.

Despite (or perhaps because of) the failure of the various systemic reform exercises of the past fifteen years, the mechanism remains remarkably robust and continues to exert a major influence over global efforts to strengthen the enjoyment of human rights. Their effectiveness is the product of six main structural determinants of influence:

- Independence and accountability
- Expertise and standing
- Flexibility, reach and accessibility
- Cooperation
- Implementation and follow-up
- The availability of resources and support

In order to guide future steps to improve the mechanism’s on-the-ground effectiveness, it is necessary for policy-makers to fully understand the complex and interconnected nature of these structural determinants of influence, as well as the various tools that mandate-holders use to exert that influence at a practical level (e.g. country missions, norm-setting and communication with governments).

The continued growth of the mechanism calls for action by states, mandate-holders, the Office of the High Commissioner for Human Rights (OHCHR) and others. Today there are forty-nine fully operational Special Procedure mandates (and seventy-two mandate-holders), an increase of around 25% since 2006. In March 2014, the Council will appoint an individual to the UN’s fifteenth active mandate (thirty-seven thematic mandates and thirteen country mandates). At current growth rates, the number of mandates will reach one hundred by 2030. Once established, mandates are notoriously difficult to discontinue.

The debate over whether this growth is a good or a bad thing has become one of the defining issues in the recent history of Special Procedures, with some arguing it widens the system’s scope and others believing that the ground effectiveness, it is necessary for policy-makers to fully understand the complex and interconnected nature of these structural determinants of influence, as well as the various tools that mandate-holders use to exert that influence at a practical level (e.g. country missions, norm-setting and communication with governments).

The provision of objective information on state practices, and user-friendly to human rights defenders and states.

The expansion of regular UN budget support to Special Procedures allowing for a reduction in earmarked voluntary contributions, and improved transparency for both UN and non-UN financing;

The deployment of new technology to make the Special Procedures communications system relevant, credible and user-friendly to human rights defenders and states.

All stakeholders share a common responsibility to actively consider these and other recommendations and to build on the legacy of those who have gradually built the Special Procedures mechanism over the past fifty years.
The United Nations’ (UN) independent human rights experts – otherwise known as ‘Special Procedures’ - are considered by many to be, in the words of then UN Secretary-General Kofi Annan, the ‘crown jewel’ of the international human rights system. From their first appearance in 1967 when the UN Commission on Human Rights established an Ad Hoc Working Group to inquire into the situation of human rights in southern Africa, Special Procedures have grown into one of the international community’s most important tools for promoting and protecting human rights. Today, the UN human rights system boasts almost fifty separate Special Procedures mandates covering a wide-range of thematic and country-specific issues - with more in the pipeline. Their unique place in the international human rights architecture and their status as the ‘crown jewel’ of the human rights system is almost universally accepted or even assumed.

But with the appointment of the UN system’s fiftieth active Special Procedure in March 2014, it is important to stand back and objectively evaluate the strengths and weaknesses of the Special Procedures system, and to question the assumption that it can continue to grow and evolve organically as it has done since 1967. In short, it is important to ask the questions: what makes Special Procedures so special anyway, how do they seek to influence human rights policy and practice, and, looking to the future, what should be done to preserve their ‘specialness’?

Sensible and considered analysis of the Special Procedures system is often lost amongst political rhetoric. A cursory review of UN speeches finds Special Procedures variously described as a ‘powerful tool for the powerless,’ the frontline troops to whom we look to protect human rights, the most precious acquis’ of the Commission of Human Rights, and as a ‘cornerstone’ or ‘one of the main pillars’ of the human rights system. Corporal analogies seem particularly popular: Special Procedures have been variously described as the ‘eyes and ears’ of the Human Rights Council, the ‘public face of the UN human rights system or a voice for the voiceless.’

While well meaning and often justified, this rhetorical admiration of Special Procedures can act as a barrier to objective and reasoned reflection of what they are, what they do, and the challenges to their future sustainability and effectiveness. This report aims to provide an opportunity and a basis for such reflection, and in this regard it is instructive to begin by understanding the origins of, and the political dynamics and rationale behind, this crucial human rights mechanism.
PART I  
SPECIAL PROCEDURES: ORIGINS, EVOLUTION AND REFORM

To understand Special Procedures, it is instructive to look back in time at the conditions and imperatives that guided their emergence and evolution.

The foundations of today’s international human rights system were laid in the aftermath of the Second World War as part of the new United Nations organisation. Participants in the first meetings of the Commission on Human Rights (the Commission) envisioned a human rights system built upon two inter-related and inter-dependent pillars: first, the establishment of international human rights norms through an International Bill of Human Rights consisting of a declaration of principles and one or more treaties that, after ratification by governments, would contain legally binding obligations; and second, the creation of ‘measures of implementation’ – i.e. the international institutions, mechanisms and processes needed to realise those norms.

The second part of this new human rights architecture has consistently proved more difficult to achieve than the first: A persistent obstacle to progress has been disagreement over whether the UN should be empowered to protect human rights, or merely to promote them.

As has been widely noted, ‘the Charter nowhere explicitly provides authorisation for the political organs of the United Nations to assume monitoring competences in the field of human rights’. Indeed, the term ‘protection’, was deliberately left out of the Charter, inter alia on the grounds that it would (...). It was inevitable that the Commission would have to consider such violations and to establish mechanisms for dealing with them.

If there was any doubt as to the UN’s reluctance to hold states accountable for human rights violations, it was immediately dispelled when members of the Commission met for the first time at Lake Success in 1947 and declared that the Commission had no power ‘to take any action in regard to any complaints concerning human rights’.14

This ‘no power to act’ doctrine held sway for the next twenty years (1946–1966). During that time, the Commission gave priority to human rights promotion actions, such as drafting the international human rights instruments, and repeatedly rejected the notion that it had a protection mandate.

With some notable and often-overlooked exceptions, such as the General Assembly’s decision in 1963 to dispatch a mission, headed by the Chair of the Commission, to investigate the “Violation of Human Rights in South Viet-Nam”, the post-war ‘no power to act’ doctrine was not seriously challenged until 1965 when a group of newly-independent states from Africa, the Middle East and Asia started to press the UN to respond to human rights violations associated with colonialism, racism and apartheid. In June of that year, the UN Committee on Decolonization called on the Commission ‘to consider individual petitions concerning human rights violations in the territories under Portuguese Administration, South Africa and South Rhodesia’.15 Pursuant to this request, ECOSOC invited the Commission ‘to consider as a matter of importance and urgency the question of the violation of human rights and fundamental freedoms (...) in all countries’.

One consequence of this historic shift was that it gave rise to a further question: by what means would the Commission decide its responsibility? The Commission took its time to respond to this question, the newly-enlarged Commission passed resolution 2 (XXXI) informing ECOSOC that in order to deal with human rights violations in all countries, it needed the appropriate tools. The authorisation to create such tools was subsequently provided by ECOSOC in resolution 1164 (XLI) and by the General Assembly in resolution 2144 A (XX), which invited the Commission ‘to give urgent consideration to ways and means of improving the capacity of the UN to put a stop to violations of human rights wherever they may occur’.15

The following year (1947), the Commission not only gave urgent consideration to this matter, it actually put them in place. In March, a cross-regional group of states from Africa, Asia, the Middle East and the Caribbean, secured the adoption of two resolutions establishing the first two Special Procedure mandates: an Ad-Hoc Working Group of Experts on South Africa and a Special Rapporteur on Apartheid. The Special Procedures mechanism was born.

Immediately after establishing these first-ever Special Procedure mandates, member states adopted resolution B (XXIII), which decided to ‘give annual consideration to the item entitled question of violations of human rights’.22

Then, to confirm the Commission’s general and permanent prerogative to deal with human rights violations (including a post facto approval of its decision to appoint Special Procedures), it asked ECOSOC (in resolution 9 (XXIII)) to include ‘the power to recommend and adopt general and specific measures to deal with violation of human rights’ in its terms of reference.22 This request was significant because it helped ECOSOC resolution 1225 (XLII), which constituted the legal basis for the establishment of future Special Procedures.

Although it was focused primarily on the question of human rights violations in the context of racial discrimination and apartheid, resolution 1225 nonetheless welcomed the decision of the Commission to consider the question of the violation of human rights as a whole. As will be seen, it was never the intention of the sponsors of the first two Special Procedures to establish a new human rights protection mechanism to cover, potentially, every country in the world. Yet that is exactly what was to happen.

The Violation of Human Rights... in All Countries

Two years later, in 1949, India, Mauritania, Pakistan and Yugoslavia tabled a resolution establishing a further Working Group, on the situation of human rights in the Palestinian territories occupied since 1947. Twenty countries voted in favour of the resolution, one against (Israel) and sixteen abstained (mainly Western and Latin American States).24

Until this point, the Commission’s work had been focused solely on racial discrimination and colonialism, especially in the context of Africa. However, between 1975 and 1980 the Commission’s focus shifted to political developments in Latin America, a shift that brought with it two broad and lasting consequences for the Special Procedure system. First, the shift represented a de facto rejection of the assumption or understanding (on the part of the initiators and sponsors) that the mandates on apartheid, South Africa and the Palestinian Territories were ‘special’ in the sense that they were specific responses to very specific (and special) human rights situations and should not constitute a precedent. And second, the widening of the Commission’s gaze to cover ‘the violation of human rights and fundamental freedoms...in all countries’ led, indirectly, to the establishment of the first thematic mandate.

In 1975, against a backdrop of international concern at the violent coup d’État in Chile, the Commission adopted resolution 8 (XIII) establishing an Ad Hoc Working Group on the situation of human rights in Chile. The resolution was tabled by Senegal and was adopted without a vote. One of the principal human rights concerns leading to the establishment of the new mandate – the disappearance of persons – was not, however, exclusively (or even principally) a problem in Chile. In the second half of the 1970s, the phenomenon of disappearances was particularly associated with Argentina.

Taking note of UN action against Chile, and fearful of being placed on the ‘blacklist of gross violators’, Argentina launched a diplomatic offensive to ‘avoid the condemnation and institutionalization of the case of Argentina’ in the United Nations.24 When the Commission finally moved to take action during the 1980 session, Argentina’s argument that the creation of a country-specific mechanism would be discriminatory and failed to succeed in channelling states towards the adoption of a mechanism with a thematic mandate: the Working Group on enforced or involuntary disappearances.

Ironically, considering the impetus behind this step was partly a wish, on the part of states, to avoid the spread of Special Procedure mandates to address violations ‘in all countries’, the emergence of the exception to such ‘ways and means’ is actually ironic, Miko Lempineon has noted: ‘the establishment of the thematic mechanisms dealing with specific human rights issues where they may occur can be seen as one of the most dramatic developments in the work of the Commission on Human Rights after the abandoning of the doctrine of inaction more than a decade earlier. It is believed that governments may not have fully realized the impact of establishing the thematic approach’.

The Working Group on disappearances was soon followed by new thematic mandates: a Special Rapporteur on extrajudicial, summary and arbitrary executions (1983), a Special Rapporteur on torture and other cruel, inhuman or degrading treatment (1985), a Special Rapporteur on religious intolerance (1986), a Special Rapporteur on mercenaries (1987), a Special Rapporteur on the sale of children (1990), and a Working Group on arbitrary detention (1991). Virtually every annual session of the Commission resulted in the creation of one or more new Special Procedures mandate(s). Initially, new mandates were established to focus on core rights associated with physical, political and civil rights. However, following the Vienna Conference on Human Rights in 1993, Special Procedures were increasingly established to deal with economic, social and cultural rights.
GROWTH OF MANDATES


Note: Primary research conducted by Hilary Power, Universal Rights Group. For a full interactive timeline visit www.universal-rights.org/research/special-procedures-timeline

Date source: Commission on Human Rights Session Reports 1966-2005; HRC Extranet; OHCHR website.

The Vienna Conference was also the first time that Special Procedures gathered together, encouraging enhanced cooperation among mandate-holders. The Vienna Declaration encouraged Special Procedures to “harmonize and rationalize their work through periodic meetings.” Accordingly, in 1993, Special Procedures began convening annual meetings. At their sixth gathering in 1999, they adopted a Manual of Operations that aimed “to provide guidance to mandate-holders...and to facilitate a better understanding of their work by other stakeholders.” At their 12th annual meeting in 2005, mandate-holders made further efforts to coordinate their work by founding a five person Coordination Committee.

SPECIAL PROCEDURE REFORM: AN ELUSIVE GOAL

If one lesson, above all else, can be gleaned from the early history of Special Procedures, it is that the system has developed not according to any grand design, but rather in an ad hoc, incremental manner. States identified a gap – the need to address the violation of human rights in all countries – and the Special Procedure system grew organically to fill that gap. Indeed, it was only in the early 1990s that people began to conceive of Special Procedures as a new, distinct and coherent system or mechanism. By this time, it had become clear that the system’s various constituent parts (the different mandates) all had clearly defined and broadly similar roles and methods of work, and were increasingly projecting themselves collectively as well as individually. The explicit importance which states attached to “preserving and strengthening the system of special procedures” in the Vienna Declaration further codified and legitimised this “systematisation” of the mechanism.

With the realisation that Special Procedures now represented a distinct and increasingly important human rights mechanism came the impetus to conduct systemic reviews. There have been three serious efforts to undertake a systemic and comprehensive review and reform of the Special Procedure system: the first by the Commission between 1998 and 2000, the second in the context of broader UN reforms between 2002 and 2004, and the third at the time of the establishment of the Human Rights Council in 2006 and in the context of the Council’s five-year review in 2011. In general, these reform exercises have embodied the law of diminishing returns. In addition, in 2004, the Commission adopted far-sighted resolution 2004/46 on ‘Human rights and Special Procedures’, which provided clear and implementable requests to governments, mandate-holders,
and follow-up, the council remained silent. notwithstanding
the matter of the implementation of recommendations
‘the principles of objectivity, non-selectivity, and the elimination
thereof) with special procedures, resolution 5/1 only said that
mandate-holders. on the matter of state cooperation (or lack
improvement of mandates ‘would take place in the context of
process, a vague statement that the review, rationalisation and
improvement of all mandates.

Interventions during the subsequent negotiations centred on a
number of systemic debates with implications for the future
independence, scope and operational effectiveness of Special
Procedures. Generally speaking, two distinct sides emerged:
One was led by the West and some Latin American states and
emphasised the importance of maintaining the independence
of Special Procedures, asserting that the main issue to address
was the lack of cooperation with the mechanism on the part of
states. The other was led by the African Group, the Organisation
of the Islamic Conference (OIC) and the Non-Aligned Movement
(NAM) and emphasised the need for greater supervision and
accountability of mandate-holders.

The final outcome of the 2006 negotiations, encapsulated in
Human Rights Council resolutions 5/1 and 5/2, were small but
important modifications to the Special Procedure appointment
process, a vague statement that the review, rationalisation and
improvement of mandates ‘would take place in the context of the
negotiations of the relevant resolutions’ (essentially kicking
the matter into the political ‘long grass’), an assertion that it
would be preferable to move to a ‘uniform nomenclature... to make the whole system more understandable’, and the
establishment of a state-imposed Code of Conduct for
mandate-holders. On the matter of state cooperation (or lack
thereof) with Special Procedures, resolution 5/1 only said that
‘the principles of objectivity, non-selectivity, and the elimination
of double standards and politicisation should apply’, while
on the matter of the implementation of recommendations and
follow-up, the Council remained silent. Notwithstanding these modest outcomes, Ambassador Husak later identified
the ‘major achievement’ of the process to be ‘the retention of
country resolutions (i.e. country mandates) as an instrument’.38
General Assembly resolution 60/251 establishing the Council
also stipulated that the new body should ‘review its work and
functioning five years after its establishment.’39 In principle this
offered another opportunity for states to consider the challenges
crystallisation of opposing state visions of what the mechanism is and what it is there to do.40 Of the 437 state proposals put
forward on the question of Special Procedure reform, 154 (35%)
presented (conflicting) views on the question of independence and accountability, 31 (7%) focused on the proliferation of
mandates, 75 (17%) focused on what to do (or not to do) about
state non-cooperation, and 74 (17%) centred on secretariat
support and the management of resources.41 Unsurprisingly,
the negotiations failed to agree on significant changes to the
status quo and, moreover, left many states wary of any further attempts at system-wide reform.

Its original (1967) mandate to ‘study of situations which reveal
a consistent pattern of violations of human rights’. However,
in practice the 2011 review achieved little more than a further
crystallisation of opposing state visions of what the mechanism is and what it is there to do.42 Of the 437 state proposals put
forward on the question of Special Procedure reform, 154 (35%)
presented (conflicting) views on the question of independence and accountability, 31 (7%) focused on the proliferation of
mandates, 75 (17%) focused on what to do (or not to do) about
state non-cooperation, and 74 (17%) centred on secretariat
support and the management of resources.43 Unsurprisingly,
the negotiations failed to agree on significant changes to the
status quo and, moreover, left many states wary of any further attempts at system-wide reform.

Its original (1967) mandate to ‘study of situations which reveal
a consistent pattern of violations of human rights’. However,
the council, called upon the new body to ‘review, and where
necessary, improve and rationalise all mandates, mechanisms,
functions, and responsibilities of the Commission on Human
Rights in order to maintain a system of special procedures.’40
On 30 June 2006, the newly formed Council established an
open-ended intergovernmental working group to formulate
recommendations on the review, rationalisation and
improvement of all mandates.

Interventions during the subsequent negotiations centred on a
number of systemic debates with implications for the future
independence, scope and operational effectiveness of Special
Procedures. Generally speaking, two distinct sides emerged:
One was led by the West and some Latin American states and
emphasised the importance of maintaining the independence
of Special Procedures, asserting that the main issue to address
was the lack of cooperation with the mechanism on the part of
states. The other was led by the African Group, the Organisation
of the Islamic Conference (OIC) and the Non-Aligned Movement
(NAM) and emphasised the need for greater supervision and
accountability of mandate-holders.

The final outcome of the 2006 negotiations, encapsulated in
Human Rights Council resolutions 5/1 and 5/2, were small but
important modifications to the Special Procedure appointment
process, a vague statement that the review, rationalisation and
improvement of mandates ‘would take place in the context of the
negotiations of the relevant resolutions’ (essentially kicking
the matter into the political ‘long grass’), an assertion that it
would be preferable to move to a ‘uniform nomenclature... to make the whole system more understandable’, and the
establishment of a state-imposed Code of Conduct for
mandate-holders. On the matter of state cooperation (or lack
thereof) with Special Procedures, resolution 5/1 only said that
‘the principles of objectivity, non-selectivity, and the elimination
of double standards and politicisation should apply’, while
on the matter of the implementation of recommendations and
follow-up, the Council remained silent. Notwithstanding these modest outcomes, Ambassador Husak later identified
the ‘major achievement’ of the process to be ‘the retention of
country resolutions (i.e. country mandates) as an instrument’.38
General Assembly resolution 60/251 establishing the Council
also stipulated that the new body should ‘review its work and
functioning five years after its establishment.’39 In principle this
offered another opportunity for states to consider the challenges
crystallisation of opposing state visions of what the mechanism is and what it is there to do.40 Of the 437 state proposals put
forward on the question of Special Procedure reform, 154 (35%)
presented (conflicting) views on the question of independence and accountability, 31 (7%) focused on the proliferation of
mandates, 75 (17%) focused on what to do (or not to do) about
state non-cooperation, and 74 (17%) centred on secretariat
support and the management of resources.41 Unsurprisingly,
the negotiations failed to agree on significant changes to the
status quo and, moreover, left many states wary of any further attempts at system-wide reform.

Its original (1967) mandate to ‘study of situations which reveal
a consistent pattern of violations of human rights’. However,
in practice the 2011 review achieved little more than a further
crystallisation of opposing state visions of what the mechanism is and what it is there to do.42 Of the 437 state proposals put
forward on the question of Special Procedure reform, 154 (35%)
presented (conflicting) views on the question of independence and accountability, 31 (7%) focused on the proliferation of
mandates, 75 (17%) focused on what to do (or not to do) about
state non-cooperation, and 74 (17%) centred on secretariat
support and the management of resources.43 Unsurprisingly,
the negotiations failed to agree on significant changes to the
status quo and, moreover, left many states wary of any further attempts at system-wide reform.
STRUCTURAL DETERMINANTS OF INFLUENCE

There are six inter-connected structural determinants of Special Procedure influence: independence and accountability, expertise and standing; flexibility, reach and accessibility; cooperation; implementation and follow-up; and availability of resources and secretariat support.

1 INDEPENDENCE AND ACCOUNTABILITY

The independence of Special Procedures is crucial to their utility and influence. In a rare example of institutional liberalism in a neo-realist world, states created a mechanism that in theory would be autonomous of their control even to the extent that it might encroach on state sovereignty and address sensitive issues of domestic prerogative.

The important point here is that they initially did so upon the assumption that it would be the domestic affairs and sovereignty of other states, not themselves, that would be the focus of attention. When it became clear that this independent human rights protection mechanism could potentially address human rights ‘in any country’, some states began to push back and divide, in commentaries on special procedures, into those that were divided upon the assumption that it would be the domestic affairs and the sovereignty of other states, not themselves, that would be the focus of attention. They had, through various texts and turn, to a situation today wherein countries are often divided, in commentaries on Special Procedures, into those that were or ‘against’ the mechanism’s independence. For example, Ambassador Tomas Husak, the facilitator of the 2006 review, later reflected that only a ‘minority of states’ during the review wished to improve the mechanism, whereas ‘other states’; a majority in fact, questioned the independence of Special Procedures.44

In this sense, debates and disagreements over Special Procedures independence occur not over whether mandate-holders are or should be substantively independent, but over the exact nature of the relationship between independence and accountability. This may seem like an academic point, yet its implications could not be more important. Get it right and the independence and independence of the whole system stands to gain. Get it wrong and either (on the one hand) the substantive independence of Special Procedures will be constrained or (on the other) states will lose trust in the system and refuse to cooperate. Put simply, the independence and effectiveness of Special Procedures is dependent to a large degree on the political latitude provided to them by states, and the degree to which states are willing to cooperate with them.

Although the outcome of the 2011 review is often criticised as the diplomatic equivalent of tossing water, resolution 16/21 on the review of the work and functioning of the Human Rights Council is in fact extremely useful in at least one respect: it presents a clear and nuanced understanding of the complex inter-relationship between independence, accountability and cooperation, as well as of the fact that all three are needed for the Special Procedure system to work effectively. Resolution 16/21 states that ‘the independence and independence of Special Procedures and the principles of cooperation, transparency and accountability are integral to ensuring a robust system of Special procedures.’45 States should, it continues, ‘cooperate with and assist special procedures in the performance of their tasks and it is incumbent on mandate-holders to exercise their functions in accordance with their mandates and in compliance with the Code of Conduct.’46

The net result of the 2006–2007 and 2011 reform processes is a situation in which states have adopted a Code of Conduct but have left mandate-holders themselves to oversee compliance with it as was with the Manual. So, far, this self-regulatory ‘Internal Advisory Procedure’ (IAP), has only been formally invoked on one occasion (in 2013).47

It is vital for the future independence and effectiveness of the Special Procedure system that states and mandate-holders remain committed to this self-regulatory arrangement. The threat implicit in any move towards a quasi-judicial ‘Ethics Committee’ is clear: it would undermine the independence of Special Procedures system by intimidating mandate-holders, promoting self-censorship and introducing an adversarial process. But this also places an important responsibility on mandate-holders themselves to ensure that their internal guidelines and self-regulatory arrangements are credible, robust and transparent.

2 EXPERTISE AND STANDING

There is broad agreement that the quality, expertise and reputation of mandate-holders is one of, if not the principal determinants of Special Procedure influence. A Western diplomat has noted that: ‘The best mandate-holders are those who are sensible, stay within their mandate and who can command the respect of governments. In other words, those who have gravitas. Those who seemingly want to make a name for themselves and who ‘follow the news’ tend to have limited influence.’48 Others note the paramount importance of ‘political and diplomatic skills’ that allow successful mandate-holders to influence governments and ‘sell-in their findings.’49 There is also a strong sense that the maintenance of diversity across the board (i.e., gender, origin, professional background) strengthens both effectiveness and legitimacy.

The Human Rights Council Institution Building Package identified, expertise, experience in the field of the mandate, independence, impartiality, personal integrity and objectivity, as being of paramount importance when nominating, selecting and appointing mandate-holders.50 Resolution 51/1 also calls for ‘due consideration [to be] given to gender balance and equitable geographical representation, as well as to an appropriate representation of different legal systems.’51

The IBP maintained the Commission practice of giving the President (or Chair as he/she was then called) the principal role in selecting mandate-holders, but in a break with past practice, the President would now be supported in this task by a Consultative Group made up of one representative (usually an ambassador) nominated by each regional group (but serving in a personal capacity). The Consultative Group scrutinises applications and presents a short-list of the best candidates to the President along with guidance on who to choose. Based on this advice, and following wide consultations with regional groups, the President makes his/her choice and proposes this to the Council for appointment. This procedure was further strengthened during the 2011 review, for example by requiring the Consultative Group to interview shortlisted candidates.

The reformed appointment procedure has generally worked well, although it of course remains open to state influence and lobbying. Views on whether it succeeds in selecting and appointing the best candidates vary and are in any case subjective, although there is a widely-held view that the enhanced procedure gives greater weight to a candidate’s experience and expertise and is more transparent than was the case under the Commission.
Special Procedures play a uniquely flexible and independent role in a system otherwise dominated by states. This flexibility exists at two levels: systemic flexibility (different types of mandate and range of issues covered), and operational flexibility (enjoyed by individual mandate-holders). As such, these mechanisms serve a dual role: to protect new and perhaps poorly understood or defined rights, and to leverage existing rights in new situations.

Regarding the former, the various mechanisms together known as ‘Special Procedures’ are often presented as broadly uniform. However, this is, however, misleading. In reality there are five distinct types of Special Procedure (earlier there were many more), and each is very different in terms of both form and function. Figure 3 shows the different types of Special Procedures according to their composition, objective and tools used.

As shown in Figure 3, the five types of Special Procedure are thematic Special Rapporteurs, thematic Independent Experts, thematic Working Groups, country Special Rapporteurs and country Independent Experts. The type of mandate used in a particular case is dependent on the nature of the issue at hand and what the international community wants to achieve. For example, for thematic issues, when an issue is relatively new and perhaps poorly understood or defined, it is likely that an Independent Expert will be established with the objective of clarifying the extent and nature of relevant human rights obligations. In such cases the tools placed at the mandate-holder’s disposal will emphasise norm-setting over receiving petitions and issuing communications. As the issue (and with it the mandate) matures, the Independent Expert may be replaced with a Special Rapporteur or a Working Group, which normally place a greater emphasis on implementing the right(s) in question through targeted country missions and a greater use of communications with governments. In the context of country mandates, Independent Experts tend to be appointed with the consent of the concerned state and focus on capacity-building and technical assistance, whereas Special Rapporteurs are generally established without the consent of the concerned state and focus more on violations (for example by receiving petitions and collecting information on the human rights situation in the country).

In addition to the strength it derives from this functional flexibility, the Special Procedure system is also unique in terms of the sheer range of human rights issues it is able to address. Because they are not limited to any particular treaty (nor, necessarily, to any particular internationally-recognised right), Special Procedures have become the ‘mechanism of choice’ when states wish to highlight and/or take forward a new human rights concern (or, as is often the case, merely wish to ‘boost their profile in the Human Rights Council and be seen to be active’). This, together with the associated lack of alternative mechanisms, has led to the rapid expansion of the Special Procedure mechanism over recent decades.

Today there are forty-nine fully operational Special Procedure mandates (and seventy-one mandate-holders), an increase of around 25% since 2006. In March 2014, the Council will appoint an individual to the UN’s fifth active mandate: an Independent Expert on the enjoyment of all human rights by older persons. At that time there will be thirty-seven active thematic mandates and thirteen active country mandates. At current rates, the number of mandates will reach one hundred by 2030 (see figure 1). Broken down by country, Cuba has been responsible for the creation of six current mandates (the same number as the whole of the African Group), three times as many as the next most prolific countries (France, Mexico, Norway and Sweden, with two mandates each). Notwithstanding, it is important to note that new mandates are increasingly established by ‘core groups’ of states working together rather than by individual countries, and if participation in such groups is included then the African Group’s contribution jumps to five mandates and Germany’s to four. Broken down by region (not including cross-regional core groups), Latin America and the Western Group retain the greatest responsibility for the growth in mandates (having established 13 and 16 mandates respectively, not including involvement in cross-regional core groups). The Western Group, perhaps surprisingly, is responsible for almost half of the mandates focused on economic, social and cultural rights while, even more surprisingly, the African Group has created only one economic, social and cultural mandate, but the most country mandates (five).

The debate over whether the exponential growth in the number of mandates is a good or a bad thing has become one of the defining issues in the recent history of Special Procedures and has been a key part of all reform debates since 1998 (see ‘The Quantitative Expansion of the Special Procedures System’ box overleaf).
Turning to the flexibility of individual mandate-holders, while in principle the nature of each Special Procedure mandate is laid down in the Council resolution establishing (or renewing) that Special Procedure, in practice mandate-holders enjoy a remarkable degree of functional flexibility. This flexibility extends to the legal foundations of their work, their ability to focus on a human rights issue in a country that may not even be party to the relevant human rights convention(s), the absence of any prerequisite to have exhausted domestic remedy, and their wide strategic freedom on how to approach an issue and which tools to use.

Partly because of this operational flexibility, as well their standing and visibility, Special Procedures are a uniquely accessible focal point for government officials, NGOs, the media and, most importantly, the victims of human rights violations. As OHCHR has noted, Special Procedures are ‘the most directly accessible mechanism of the international human rights machinery.’

4 COOPERATION

The ability of a mandate-holder to secure cooperation and the concurrent willingness of a state to work with a given Special Procedure, are amongst the most important structural determinants of the mechanism’s influence and impact. Such notions may well offend the sensitivities of those who see Special Procedures as ‘front-line troops’ or international special investigators, however the central reality of the human rights system is that Special Procedures, in common with other mechanisms, cannot force states to give them access or implement their recommendations. The Council may well have urged ‘all states to cooperate with, and assist, the special procedures in the performance of their tasks,’ but there is no legal obligation for states to do so, and no legal sanction available when they do not. Securing, cultivating, and working within a cooperative relationship is therefore key – and crucially this must work both ways.

For mandate-holders this means (where possible) establishing a strong, even cordial relationship with state representatives, and developing a high degree of mutual trust and confidence. There is no secret recipe for achieving this, and much depends on the personalities of those involved. However, at its most basic level it means that mandate-holders should implement their mandate upon the assumption that ‘states are partners, not adversaries,’ and should establish and maintain a cooperative and constructive dialogue in that spirit. The importance of this point could not be greater. Nearly all the best practices and success stories revealed during the preparation of this report were built upon a close cooperative relationship between mandate-holders and governments.

For states, the responsibility to cooperate with Special Procedures is equally clear and is spelt out in the founding documents of the Council, especially resolutions 52/16 and 14/21 which urge states to cooperate with special procedures by responding, in a timely manner, to requests for information and visits. When states take this responsibility seriously, the mechanism can have a powerful influence upon domestic human rights policy and the on-the-ground enjoyment of human rights. Problems arise, of course, when they do not do so.

This problem has long been recognised by the international community but has never fully been grasped and attempts to find workable solutions have been, at best, half-hearted. For example, the 1998-2000 reform exercise noted that lack of cooperation must be a cause of serious concern and that in such cases, steps to encourage a more cooperative response are critically important and should be carefully considered.

The vagueness of this suggestion is striking, and therein lie the challenges: how can a mechanism that has no enforcement powers compel a government to cooperate? The answer, of course, is that it cannot. Nevertheless, there are a wide-range of steps that can be taken to make it extremely uncomfortable for states not to cooperate. At the heart of those steps are the principles of transparency and public accountability. In other words, the best way to strengthen state cooperation with Special Procedures is to shine a clear spotlight on those states that are cooperating - and those that are not.

Since the first systemic reforms began in 1998, there have been many useful proposals designed to do just this – the problem is they have never been fully implemented.

The proposals have generally focused on identifying criteria to measure cooperation, and then leveraging information on a state’s compliance with those criteria. Suggested criteria include: whether a state has extended a standing invitation for visits, whether states are responding in a timely and favourable manner to visit requests, and whether they are responding to requests for information from Special Procedures (for example, in response to urgent appeals).

The challenge then is how to leverage this information. Some Western and Latin American states have suggested (for example in 2011) that the level of a given country’s cooperation as measured against the above criteria be used as a condition for Council membership. This proposal is unworkable however, as all states have an equal right to stand for election. Another (French) proposal in 2011 was to establish a ‘Code of Conduct’ for state cooperation; however this was mainly a (clever) diplomatic manoeuvre to counter calls for an Ethics Committee, rather than a serious proposal in its own right.

Another more practical proposal has been made (in different formulations) during almost every reform process since 1999 and is based on two steps. First, to ‘compile and make available objective information on the cooperation…between states and UN human rights mechanisms, giving effect to paragraph 9 of resolution 60/251.’ This could be achieved for example, through a document on ‘cooperation’ compiled by OHCHR, the inclusion of a ‘cooperation’ section in the High Commissioner’s annual report, or through an easily searchable online database. The goal would be to provide a robust, objective at-a-glance analysis of the level of cooperation of states. The second step is to then use Council sessions (specifically under agenda item 9) as a ‘forum for open, constructive and transparent discussion on cooperation between States and special procedures.’ For example, during the 2011 review, Poland called for an annual discussion of this topic under agenda item 5, while the UK called for a ‘greater emphasis’ to be placed on cooperation during Council sessions.

Today, however, these proposals remain largely unimplemented with a few exceptions: for example, the OHCHR does now
18

5

IMPLEMENTATION AND FOLLOW-UP

Academic literature and UN reports on Special Procedures often present ‘cooperation’ and ‘implementation and follow-up’ as separate issues. This is wrong; to understand and eventually strengthen Special Procedures’ influence and effectiveness, it is important to see cooperation, implementation and follow-up as mutually reinforcing aspects of the same continuum.

Special Procedures are, in the end, just that – procedures, i.e. a series of steps taken to accomplish an end.101 Their work and influence, especially in the context of engaging with states to secure improvements in human rights, must likewise be seen as a series of steps – as a process. As has been noted, the Special Procedures mechanism is at its most effective when mandate-holders and states cooperate. However, that cooperation should not end upon the presentation of a report to the Human Rights Council. Rather it must continue within a framework of long-term engagement and dialogue if recommendations are to be implemented and if progress is to be made. This entails a ‘real commitment from the States to take into account the recommendations and views expressed by mandate-holders and inform them of the steps taken towards implementation’,102 and a regularised and systematic programme of follow-up on the part of mandate-holders with governments, local NGOs and other actors. This centrality is reflected in General Assembly resolution 40/251 which emphasised that the body’s methods of work must ‘allow for subsequent follow-up discussions to recommendations and their implementation’.103 Where states and mandate-holders do continue to work together to follow-up on the implementation of recommendations, the Special Procedures mechanism has time and again demonstrated its capacity to generate real improvements in the on-the-ground enjoyment of human rights. For example, of the six case studies chosen for the United Nations Development Group’s 2013 report on best practices in mainstreaming following-implementing human rights recommendations, three (Uruguay, Moldova and Vietnam) focused on the work (and impact) of Special Procedures.104

Unfortunately, it is impossible at present to determine the extent to which such ‘implementation success stories’ are being replicated across the system as a whole. This is because while there are examples of individual mandate-holders taking steps to regularise follow-up to their country reports and recommendations through, for instance, follow-up visits linked to the current Special Rapporteur on torture and/or ‘intimidation or reprisals’ against victims, human rights defenders and others who engage with the mechanism.90

The second point concerns instances where state non-cooperation. In cases of non-cooperation, it is vital that the wider international community, in the form of the Council, works to uphold the dignity of mandate-holders and/or ‘intimidation or reprisals’ against victims, human rights defenders and others who engage with the mechanism.99

As with cooperation, this lack of follow-up has long been recognised as a problem. For example, the 1998-2000 review ‘revealed particular concern about the discrepancy between the energy and resources invested in establishing and maintaining special procedure mechanisms and the limited and inconsistent manner in which much of their work is addressed by the Commission’.106

Because follow-up is part of a continuous process of cooperation, the ways to strengthen it in many ways reflect ideas to improve cooperation; namely, to put in place a regular, transparent process, a process that encourages and even incentives mandate-holders, governments and NGOs to maintain their focus, continue their dialogue, and sustain their efforts to engender change. The availability of resources to conduct follow-up research and outreach is also critical.

Again, many of these ideas are already in the public domain, having been put forward during the various review exercises of the past fifteen years. Two particular areas of thought have been prevalent. The first focuses on the means of gathering information on what has been done to implement recommendations and the constraints thereon. Here there are two main, mutually inclusive options: the organisation of ‘follow-up visits as appropriate in order to help to contribute to the effective implementation of recommendations’107 (some diplomats believe mandate-holders should conduct one follow-up visit per year108), and the dispatch of written requests such as ‘questionnaires designed to elicit relevant information from Governments’.109

The second line of thought focuses on how to then present this information so as to leverage the power of transparency and public accountability. For example, in 2004 the Commission urged Special Procedures to include in their reports information provided by Governments on follow-up action, as well as their own observations thereon, including in regard to both problems and improvements, as appropriate.110 Similar ideas were presented in 2011 by Argentina, Chile, the UK, Peru, the US, Sweden and the Maldives. These ideas emphasised the importance of mandating independent mechanisms following-implementing human rights recommendations, three (Uruguay, Moldova and Vietnam) focused on the work (and impact) of Special Procedures.111

Since 1999 states have made a number of useful proposals to establish such a forum or mechanism for discussing information on implementation and follow-up. The 1998-2000 review recommended that the Commission Bureau should hold a special review meeting to consider information on ‘implementation and follow-up’, and should thereafter ‘conduct dialogue with concerned governments’ and a public briefing for all Commission members.112 During the 2011 review, many states emphasised the importance of creating a forum in the Council which states and others could use to discuss implementation and follow-up. The UK, for example, called for ‘a dedicated discussion of follow-up to previous reports and country visits carried out by special procedures’,113 while the US asked for follow-up to be built into the Council’s programme of work.114

19
In this regard, critical financial imbalances which see human rights - one of the three pillars of the UN system - receive less than 3% of the regular budget, immediately place Special Procedures in a precarious position. With the exception of a doubling of the budget for human rights at the time of the creation of the Human Rights Council in 2006, human rights financing has failed to evolve in a manner reflective of the growing importance and profile of the human rights system. Moreover, matters are unlikely to improve in the short-term; the biennium 2014-2015 will actually see the annual human rights budget reduced by $4.5 million.\(^{115}\)

Resources allocated to Special Procedures must be seen within this broader context. For example, in 2012 human rights (OHCHR) received only $92 million (around 3%) of the total UN budget of $2.58 billion.\(^{116}\) Of that, Special Procedures (Special Procedure Branch\(^{117}\)) received only around $10 million (12.4% of human rights regular funding). This means that the ‘jewel in the crown’ of the UN system is deserving of less than half a percent of the organisation’s regular budget\(^{118}\) - only slightly more than the proportion allocated to the UN library in Geneva\(^{119}\) and for the ‘peaceful use of outer space.’\(^{120}\)

Understandably, this has significant implications for the effectiveness of the system. As the Commission repeatedly noted: ‘the level of support available to the mechanisms is not commensurate with their activities and the importance of their responsibilities,’\(^{121}\) and ‘key to the effectiveness of the Special Procedures will be to address the critical inadequacy of resources for the United Nations human rights programme.’\(^{122}\) This view was repeated in 2011 when the Human Rights Council ‘recognized the importance of ensuring the provision of adequate and equitable funding’ and requested the UN Secretary-General ‘to ensure the availability of adequate resources within the regular budget.’\(^{123}\) If the Secretary-General and member states are serious about human rights, and about the impact and effectiveness of the international human rights mechanisms, they must address these systematic financial imbalances as a matter of priority.

In an attempt to bridge the funding shortfall, some states have expanded the scope of their voluntary contributions to the Special Procedures. Since the Council was established in 2006, OHCHR has relied heavily on these extra-budgetary funds to compensate for the low levels of regular budget resources. For example, in 2012 it received $82 million from the UN’s regular budget and $114.5 million from voluntary contributions.\(^{124}\) Of these extra-budgetary funds, Special Procedure Branch\(^{125}\) received $8.4 million; $1.8 million (22%) was ‘earmarked’ by states to support specific mandates and $6.1 million (49%) was earmarked to Special Procedure Branch as a whole. The remaining 29% was allocated to Special Procedure Branch by OHCHR from un-earmarked voluntary contributions\(^{126}\) (see figure 4).

While necessary to ensure the on-going viability of the Special Procedures system, the reliance on voluntary contributions leads to less financial predictability and, crucially, to questions being raised about the independence of the Special Procedures and imbalances between mandates.

For example, a regular criticism levelled at Special Procedures by some developing states is that the reliance of a given mandate on earmarked funds from certain donor countries\(^{127}\) gives those countries undue influence over the conduct of the mandate. Another (unfounded) allegation is that, contrary to the principle of the indivisibility of human rights, earmarking creates a hierarchy of mandates with, for example, those dealing with civil and political rights (CPR) receiving more resources than those focused on economic, social and cultural rights (ESCR).\(^{128}\) Indeed, unease at the possible political strings attached to voluntary contributions also extends to mandate-holders themselves, with at least one expressing unease at the source of earmarked funds allocated to his mandate via OHCHR.\(^{129}\)

But this does not tell the whole story. Even with voluntary contributions to the OHCHR, many mandate-holders still feel that they lack the financial and human resources to effectively carry out their UN mandate. Many therefore have ‘outsourcing’
arrangements whereby donor funds are channelled through non-UN organisations (typically universities and NGOs), which then support the mandate-holder (for example, by providing human resource and research support). Even more than with voluntary state contributions, this practice raises concerns as to transparency, equality between mandates, and its implications for the independence of Special Procedures. The UN Board of Auditors, in a 2011 report, noted with concern that mandate-holders’ reporting process is riddled with omissions, including the role of specific audiences, support from unspecified governments and other institutions, and noted that ‘the absence of clear disclosure could put in doubt the perceived independence of mandate-holders.’

So long as the human rights system continues to receive such low levels of UN’s regular budget, the Special Procedures will continue to rely heavily on voluntary contributions and non-UN outsourcing arrangements. This is unavoidable. The only solution to the inter-linked challenges of resource availability, independence and non-discrimination, therefore lies with improving levels of transparency.

Although transparency has improved markedly in recent years in response to the Council’s call for full transparency in the funding of the special procedures,126 many states continue to express concern. To help deal with this, OHCHR and states should work together to address residual uncertainties. Important lessons from the considerable political scope to do so, because financial disclosure seems to be one of the few areas upon which all states agree. During the 2011 review, countries from all regions called for increased transparency127 in ‘funding from Special Procedures’ that are as all voluntary contributions to be “consolidated into a single fund”128 which ‘equitably supports all special procedures’129 in order to guarantee their independence.130 Indeed, matters do seem to be moving in this direction. There is now a general fund for all Special Procedures (in practice, extra-budgetary resources placed here are only used for thematic mandates – unless the donor makes clear they can also be used for country-mandated) and, as of last year, there is also a general fund for country-mandated.131

Disclosure and transparency are equally important in terms of non-UN outsourcing arrangements. Here there is a clear onus on mandate-holders to publicly disclose the sources of their (non-UN) funding and in-kind support (e.g. human resource support) and, at the very least, to issue a disclaimer stating that such contributions will not be allowed to affect their independence. This point has been recognised by mandate-holders themselves who, at their 20th annual meeting (June 2013), decided to move to respond to ‘concerns related to external funding.’132

Secretariat support

The financial constraints faced by the human rights system in general and Special Procedures in particular have clear implications for the level of secretariat support available to mandate-holders. In common with other international human rights mechanisms, secretariat services for Special Procedures are provided by OHCHR. Mandate-holders, to greater or lesser degrees, rely on their assistants (OHCHR staff) to, inter alia, organise country missions, receive and process petitions, help draft reports and take care of the administrative issues associated with the mandate. Special Procedures interviewed for this report expressed almost universal admiration for the dedication of their assistants, and considerable praise for the quality of their work. It was pointed out by one senior OHCHR official that considering the expectations-resource gap described above, the only thing that prevents the Special Procedures system from collapsing is that OHCHR is ‘a building full of activists’133 and a related belief among assistants that the work of Special Procedures is indeed special.

Notwithstanding, it is also clear that there are a number of resource issues with important implications for the independence and the effectiveness of Special Procedures.

To understand these issues it is necessary to know how secretariat support for Special Procedures is managed. Before 1st January 2014, the nearly fifty Special Procedure mandates were spread across three of the four main Divisions of OHCHR. Most thematic mandates were housed within the Human Rights Council and Special Procedures Division (and specifically the Special Procedures Branch (SPB)). However, some (such as the Independent Expert on international solidarity and the Working Group on human rights and transnational corporations) sat within the Research and Right to Development Division (RRDD). Meanwhile, country mandates fell under the relevant geographic branch of the Field Operations and Technical Assistance Division (FOTAD). As of 1st January 2014, almost all mandates from RRDD were moved to SPB.134

One implication of spreading the mandates across more than one OHCHR Division is that it makes resource management and transparency more difficult. For example, the centralisation of mandates and resources in one place would allow greater levels of accountability in terms of secretariat support. Many mandate-holders interviewed for this report identified ‘insufficient and volatile staffing levels’135 and ‘very high staff turnover’136 as key obstacles to the successful fulfillment of their mandate. Some noted that instead of having one or two full-time assistants attached to their mandate, they had only a single assistant who also covered other mandates (in the case of Staff in SPB) or who had other geographical responsibilities (in the case of staff from FOTAD). In the latter case, it does not seem uncommon for country mandate-holders to share one assistant with five or six field desk responsibilities (i.e. country desks in FOTAD).

Finally, the practice of managing Special Procedures across two or three different Divisions can create difficulties in terms of ensuring the independence of Special Procedures from extraneous influence. Without a clear delineation and (to some extent) ring-fencing of the Special Procedures secretariat function, there is a risk of other parts of the Office exerting undue influence over decisions of individual Special Procedures (for example, by pressing them to visit a country which might be a priority for the OHCHR or by exerting undue influence over the content of reports). Some Special Procedures concede that ‘OHCHR has a lot of influence, even control, over which countries to visit and which not’137 and also, for example, ‘over whether and when to issue press releases.’138 Others, however, point out that the Special Procedures mechanism relies on OHCHR’s field knowledge in order to understand local contexts and to generate impact. Like much else in this report, this issue raises difficult and sensitive questions about the nature of the Special Procedures mechanism, and its relationship with OHCHR, states and NGOs. Some diplomats believe the only solution is to split OHCHR between its secretariat and UN agency functions.139 Others suggest that the answer lies in creating clearer and stronger lines of demarcation between different parts of OHCHR, while at the same time giving ‘greater legal standing’140 to the Coordination Committee of Special Procedures.

MODES OF INFLUENCE – THE SPECIAL PROCEDURES TOOLBOX

The influence of Special Procedures, as derived from the inter-related structural determinants discussed above, is exerted, at a practical level, through a variety of tools. The most important of these are: country visits, norm setting, petitions and communications, interactive dialogues and media relations.

The ability of Special Procedures to conduct independent missions in order to review, understand and (where possible) work with governments to improve the on-the-ground enjoyment of human rights remains one of their most important means of generating impact. From the very beginning of the mechanism in the 1940s, its capacity to go beyond the meeting halls of the UN and travel to countries to meet victims and talk to people ‘at the coal-face’ of human rights has set it apart from other mechanisms (such as Treaty Bodies).

The impact of missions is evident in both the immediate- and the medium-term. In the immediate-term, the very fact that a mission is taking place tends to have a salutary impact on the human rights situation in a given country. Nearly all of the diplomats interviewed for this report noted that their governments ‘take country missions very seriously.’141 Such visits tend to elevate human rights on the national agenda, bring public attention and debate through the media, validate allegations of human rights violations in a credible way, and allow supporters to keep an issue raised and discussed at the highest levels of government. Perhaps their most important immediate effect is to provide direct support to victims and human rights defenders - a very visible means of demonstrating the international community’s interest in and concern about the human rights situation in a country. In the medium- to long-term, the effectiveness of country missions stems from the degree to which they provide an accurate snapshot of the human rights situation in a country and a platform for further dialogue and engagement designed to improve that situation.

It is therefore encouraging that the rapid growth in the number of Special Procedure mandates and resources coincide with a significant increase in the number of missions, both in absolute terms and in terms of the average number of visits per mandate. For example, in 2000, 32 mandates undertook a total of 56 Special Procedure missions, an average of 1.8 visits per mandate. Similar (low) ratios were also seen in 1998, 2001, 2003 and 2004. By contrast, in 2011, 41 mandates undertook 86 missions, at an average of 2.1 visits per mandate. Similar (high) ratios were seen in 2002 and 2005.142

Note that instead of having one or two full-time assistants attached to their mandate, they had only a single assistant who also covered other mandates (in the case of Staff in SPB) or who had other geographical responsibilities (in the case of staff from FOTAD). In the latter case, it does not seem uncommon for country mandate-holders to share one assistant with five or six field desk responsibilities (i.e. country desks in FOTAD).

Notwithstanding, this overall increase in the number of country missions masks significant variations in terms of which states are cooperating with the mechanism. These variations are evident in the degree to which mandate-holders are willing to extend so-called standing invitations to Special Procedures, and in the degree to which they facilitate the actual conduct of a mission once a mandate-holder has asked to come.

A standing invitation is an open invitation extended by a government to all Special Procedures to undertake country missions. By extending such an invitation, states announce that they will always accept requests to visit from all thematic mandates. As of 1st December 2013, 106 states had extended standing invitations. Such invitations are a useful voluntary indicator of state cooperation with Special Procedures. It is important to note, however, that they are not binding and nor is it an official mechanism. States merely make a declaration that they have decided to extend a standing invitation, and OHCHR then puts them on an unofficial list.
help advise on issues that the government considers important for national development – for example, on housing, or water and sanitation. As one Asian diplomat notes: ‘where we see a real chance for a given mandate to contribute to an important domestic policy, we invite them.’150 For others, it means inviting mandates to address those issues where the government is conscious there is a problem or where they are falling short of their international obligations.

Some would argue that such exercises risk turning the special procedures into an international human rights consultancy. Certainly, special procedures à la carte is not what the system was originally designed to provide. However, if governments are willing to concede that they have a problem or need, if they are willing to work with the Special Procedures mechanism to address that need, and if the resulting intervention does indeed contribute to the strengthening of human rights, then it is difficult to find fault; at least, so long as this is accompanied by a willingness on the part of the country to also receive other mandates (upon their request) with which it might be less comfortable.

While some diplomats and NGOs question the real-world value of standing invitations, noting that certain countries on the list rarely, if ever, actually allow missions to take place (states cannot be struck off the list as it is voluntary), Figure 5 shows a broad correlation between standing invitations and the actual conduct of country missions. For instance, nearly all Western and Eastern European states have extended standing invitations, and these two groups also have the highest rates of compliance with visit requests. Conversely, less than half of all countries from Africa (31%) and the Asia Pacific (43%) have extended standing invitations, and these two regions also have the highest proportion of outstanding visit requests.

Going beyond the declaratory and moral value of standing invitations, it is the willingness of states to actually receive and follow-up on country missions that offers the best measurement of their commitment to human rights. Here it is worth noting that while African and Asia-Pacific states receive both the most visit requests and the most visits (though when weighted to take account of the larger size of the African and Asian Groups, the number of visits per region is fairly evenly balanced), these two regions also have by far the highest number (and proportion) of outstanding requests.

A final interesting point to consider is the state practice of inviting mandate-holders selectively based on national priorities. For some states this means inviting Special Procedures that can

While some diplomats and NGOs question the real-world value of standing invitations, noting that certain countries on the list rarely, if ever, actually allow missions to take place (states cannot be struck off the list as it is voluntary), Figure 5 shows a broad correlation between standing invitations and the actual conduct of country missions. For instance, nearly all Western and Eastern European states have extended standing invitations, and these two groups also have the highest rates of compliance with visit requests. Conversely, less than half of all countries from Africa (31%) and the Asia Pacific (43%) have extended standing invitations, and these two regions also have the highest proportion of outstanding visit requests.

Going beyond the declaratory and moral value of standing invitations, it is the willingness of states to actually receive and follow-up on country missions that offers the best measurement of their commitment to human rights. Here it is worth noting that while African and Asia-Pacific states receive both the most visit requests and the most visits (though when weighted to take account of the larger size of the African and Asian Groups, the number of visits per region is fairly evenly balanced), these two regions also have by far the highest number (and proportion) of outstanding requests.

A final interesting point to consider is the state practice of inviting mandate-holders selectively based on national priorities. For some states this means inviting Special Procedures that can
in the number of thematic Special Procedures reports (due to the growth in the number of mandates) together with what they perceive to be a qualitative decline in the overall standard of reports, has led to a situation in which the norm-setting work of Special Procedures has been reduced. For example, most diplomats interviewed for this report admitted that their delegation does not have the capacity to read any but a handful of the (more important) Special Procedures reports, and only sends a small selection of them to their capital.157 Furthermore, many of these diplomats expressed serious doubt that the reports are read by either foreign ministries (which often have only one or two officials focused on human rights) or (even less so) line ministries.158 Others disagree, stating that thematic reports are regularly fed into their national decision-making processes and do influence policy (though they were not able to give specific examples).159

PETITIONS

The capacity of some Special Procedures mandates to receive petitions from the victims of human rights violations (or their representatives) and to communicate with relevant governments to verify the complaint and to press for remedy and redress160 is among the mechanism’s most important tools, not least because it represents a direct interface between individuals (“the peoples” identified by the UN Charter as the basic constituency of the organisation) and the UN itself.

Sadly, considering the centrality of the petition system to the history and contemporary effectiveness of Special Procedures, over time (and despite the efforts of many mandate-holders and OHCHR officials), the communication procedure has become devalued.

The gap between the potential of the human rights petition system to provide relief to victims and its actual delivery has been brought into stark relief by an in-depth analysis of the procedure conducted by the Universal Rights Group and the Brookings Institution.

Before presenting the results of that analysis into whether the system works, it is important to recall how the system is supposed to work, not least because the modalities of the procedure remains poorly understood, even among state and NGO experts.

NORM-SETTING

As well as holding states accountable against existing human rights norms, Special Procedures have made and continue to make a significant contribution to the elaboration, interpretation, acceptance and internationalisation of those norms. They do so through their regular reports to the Human Rights Council and (in some cases) to the General Assembly, the contents of which may then be reflected in Council and/or General Assembly resolutions, and through the elaboration of soft law instruments such as UN guidelines.

One regularly cited example of this influence is the demystification of economic, social and cultural rights over the past two decades, including the refutation of the idea that such rights suffer a “lack of justiciability.”151 On the one hand, Special Procedures have attempted to define the content of the different economic, social and cultural rights and the corresponding obligations of states. They have also sought to fill normative gaps by developing analytical frameworks or clarifying aspects of a certain human right, including the specific application to particular groups such as women, children, indigenous people, prisoners and people with disabilities.152 Examples include: the “4As scheme” of Katarina Tomasevski, the first Special Rapporteur on the right to education, according to which governments are obliged to make education available, accessible, acceptable and adaptable;153 and the efforts of Catarina de Albuquerque, the Special Rapporteur on water and sanitation, to establish access to water and sanitation as an internationally-recognised human right, and to clarify the scope of state obligations.154

In addition to norm-setting and norm-shaping, Special Procedures have also contributed to the development of international standards and other soft law instruments to help promote the implementation of those norms. Examples include the UN Guiding Principles on internal displacement and the UN Guiding Principles of transnational corporations and human rights. Key to the success of having norms implemented domestically is to make those norms accessible and understandable at a practical level, which one mandate-holder has termed “the practicalisation of human rights.”155 This practicalisation and implementation of new norms can be significantly strengthened where Special Procedures interact with other human rights mechanisms (e.g. Treaty Bodies) and other international organisations (e.g. the World Bank, UNDP, WHO, UNICEF), a process that can lead to “a spill-over effect” and the “legitimisation” of norms among governments.156

Notwithstanding these achievements, some policy-makers in Geneva worry that the combination of a quantitative increase
**FIGURE 7: PETITIONS FLOW CHART**

**Data source:** Special Procedures Communications Reports of the 1990s-21st Century; UNG’s primary research and interviews.


**URG/Brookings Institution analysis:** Shows the quality of these responses varies substantially:
- Initial Response (IR)
- Violation Reported Without Substantiation (VRS)
- Responsive but incomplete (RI)
- Stops Taken to Address Alleged Violation (ST)

**Note:** The number of individual submissions received by OHCHR and the mandate holders is unknown. In the overall figures above, but are very few in number.**

The responsiveness of the system does not, however, depend only on OHCHR and the Special Procedures. It is also heavily reliant on the willingness of the state concerned to respond to the communication and respond in a substantively meaningful way. Between 1st June 2008 and 31st May 2013, the overall government response rate to communications was around 50% [73]. While masking some important variations (for example, governments tend to respond to very few communications sent by country mandates) this 50% response rate remains remarkably consistent across mandates (for example, the six most prolific mandates in terms of communications sent [74] all saw response rates of between 46% and 53% (see Figure 8). [75]

Nor does responsiveness seem to vary significantly between single mandate communications (of which 48% were not responded to across our sample) and joint communications (of which 53% were not responded to). [76]

First, at the time of submission, the petitioner does not receive any acknowledgment of receipt nor information on what happens next (not even an automated reply). Indeed, the first a victim will know about whether his/her submission has been taken up or not is when and if the case appears in the three yearly ‘Communications Report’ presented to the Human Rights Council. Again, this problem is not new: in 1999 the Bureau of Human Rights (OHCHR) urged the OHCHR ‘to put in place procedures to ensure that the initiators of all communications directed to the special procedures receive an appropriate acknowledgment and indication of how their communications are being addressed. [77] Second, the QR only has the capacity to review submissions made in English, Spanish and French. A fact that excludes large parts of the world from this key human rights protection mechanism. Third, those (genuine) submissions that are in English, French or Spanish are then sent to the assistants of all relevant mandates – often to as many as thirty people across numerous different offices. While this practice reflects the often-complex nature of human rights violations, according to human rights defenders ‘how to submit information,’ namely what information to include in a petition (or their representatives) can send an individual submission (petition) to special procedures either directly to the relevant mandate-holder (for example to the Special Rapporteur on torture in the case of allegations involving torture), or indirectly via OHCHR’s Quick Response Desk (QRD). If a victim chooses the latter option, those OHCHR officials staffing the QRD will forward submissions to relevant mandate-holders (or rather to their assistants). Upon receipt of a submission (either directly or via the QRD), the mandate-holder will review it and transmit a communication (either a Letter of Allegation (AL) if it concerns a past violation or an Urgent Appeal (UA) if it concerns a time-sensitive, on-going or imminent grave violation) to the concerned state. [78] Mandate-holders increasingly send these communications in conjunction with other concerned mandates: these are known as joint communications (either JUAs or JALS). The communication will ask the concerned government to clarify the facts of the case. In theory, if the mandate-holder(s) is satisfied with the government’s response (where he/she receives one) then he/she will discontinue the case (for example, if the mandate-holder deems there has not been a violation or if the matter has already been resolved). If not, he/she will revert to the government with a view to seeking remedy/redress.

Like the Special Procedures mechanism more broadly, the communications procedure has developed over time in a largely ad hoc manner. But unlike the mechanism as a whole, it has never undergone a system-wide review (either in its own right or in terms of its interaction with the other human rights communications procedures such as those overseen by the Council and the Treaty Bodies).

Such a review is very much needed. Measured against criteria such as visibility, accessibility, responsiveness and remedy, the communications procedure falls far behind what should be deemed acceptable – especially from the perspective of victims.

In terms of visibility, knowledge of the existence of the procedure and how best to access it appears to be very low among the actual victims of human rights violations. Like so much else, awareness of this problem is not new. The Bureau of the Commission referred to it in 1999 and acknowledged the ‘need for grassroots awareness of the existence, purposes, and basic workings of special procedures.’ [79] The key to whether an individual knows of and is able to make use of the communications procedure seems to be whether or not the victim has access to a wider support network including NGOs that are aware of the possibility of submitting petitions.

For those who are aware of the communications procedure and who seek to petition relevant Special Procedures, the next step is to make a submission, [80] which generally means recourse to the OHCHR’s webpage on Special Procedures communications. [81] Here the victim or his/her representative is offered guidance on how to submit information, namely what information to include and where to send it. As the main ‘gateway’ for petitioners, the OHCHR webpage is central to the accessibility (for otherwise) of the system. It is important to acknowledge, in this regard, that the system has established a single point of contact, a single interface and a single email address, all of which are to be welcomed. However, according to human rights defenders interviewed for this report, the interface can still be somewhat confusing and there is room for improvement in terms of user-friendliness, especially from the perspective of victims who do not necessarily know (in legal terms) which of their rights have been violated.

Turning to responsiveness, a number of points should be made.
For the purpose of this analysis, ST and RI responses can be considered ‘substantive’ in that they meaningfully address the alleged violation contained in the initial communication, while VR and IM responses can be considered ‘non-substantive’ in that they fail to do so. It is important to note that these categories of response do not correspond to whether a state accepts or rejects the allegations, but the manner in which they do so, i.e. their level of cooperation with the system. For example, the category indicative of the highest level of cooperation – ST – includes cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.

This qualitative analysis (see Figure 7) revealed that in only 8% of assessed180 responses did sample states present substantive information on steps taken to address an alleged violation (ST). A further 42% provided information that can be described as substantively responsive but incomplete (RI). Exactly half of all government responses either simply rejected the allegation(s) of violation without substantive evidence to back-up the rejection (VR - 24%), or presented information that was not directly relevant to the alleged violation (IM - 24%).

By country, the highest proportion of substantive responses (ST + RI) came from Nepal, Tunisia, and Guatemala, which all scored 100%. But while Tunisia and Guatemala’s overall response rates were also considerably above average (63% and 44% respectively, compared to a 48% average response rate for the study), Nepal’s was considerably lower at just 18%. Colombia and Mexico had the next highest proportion of substantive responses (85% and 84% respectively) and both had near-average response rates (50% and 64% respectively). Meanwhile, the Russian Federation had the highest overall response rate (82%) but only 38% of its responses were substantive, while India had the next best response rate (67%), yet just 8% of its responses were substantive.

What does all this mean in the context of the capacity of the Special Procedures communications procedure to respond to the needs of victims and to deliver substantive remedy? While it is impossible to provide exact overall numbers (because there is simply no data on the number of submissions received by the OHR, the number passed to mandate-holders, the number received directly by mandate-holders, and the number deemed inadmissible), it seems clear that only a small proportion of all communications received by mandate-holders include cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.

For the purpose of this analysis, ST and RI responses can be considered ‘substantive’ in that they meaningfully address the alleged violation contained in the initial communication, while VR and IM responses can be considered ‘non-substantive’ in that they fail to do so. It is important to note that these categories of response do not correspond to whether a state accepts or rejects the allegations, but the manner in which they do so, i.e. their level of cooperation with the system. For example, the category indicative of the highest level of cooperation – ST – includes cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.

This qualitative analysis (see Figure 7) revealed that in only 8% of assessed responses did sample states present substantive information on steps taken to address an alleged violation (ST). A further 42% provided information that can be described as substantively responsive but incomplete (RI). Exactly half of all government responses either simply rejected the allegation(s) of violation without substantive evidence to back-up the rejection (VR - 24%), or presented information that was not directly relevant to the alleged violation (IM - 24%).

By country, the highest proportion of substantive responses (ST + RI) came from Nepal, Tunisia, and Guatemala, which all scored 100%. But while Tunisia and Guatemala’s overall response rates were also considerably above average (63% and 44% respectively, compared to a 48% average response rate for the study), Nepal’s was considerably lower at just 18%. Colombia and Mexico had the next highest proportion of substantive responses (85% and 84% respectively) and both had near-average response rates (50% and 64% respectively). Meanwhile, the Russian Federation had the highest overall response rate (82%) but only 38% of its responses were substantive, while India had the next best response rate (67%), yet just 8% of its responses were substantive.

What does all this mean in the context of the capacity of the Special Procedures communications procedure to respond to the needs of victims and to deliver substantive remedy? While it is impossible to provide exact overall numbers (because there is simply no data on the number of submissions received by the OHR, the number passed to mandate-holders, the number received directly by mandate-holders, and the number deemed inadmissible), it seems clear that only a small proportion of all communications received by mandate-holders include cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.

For the purpose of this analysis, ST and RI responses can be considered ‘substantive’ in that they meaningfully address the alleged violation contained in the initial communication, while VR and IM responses can be considered ‘non-substantive’ in that they fail to do so. It is important to note that these categories of response do not correspond to whether a state accepts or rejects the allegations, but the manner in which they do so, i.e. their level of cooperation with the system. For example, the category indicative of the highest level of cooperation – ST – includes cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.

This qualitative analysis (see Figure 7) revealed that in only 8% of assessed responses did sample states present substantive information on steps taken to address an alleged violation (ST). A further 42% provided information that can be described as substantively responsive but incomplete (RI). Exactly half of all government responses either simply rejected the allegation(s) of violation without substantive evidence to back-up the rejection (VR - 24%), or presented information that was not directly relevant to the alleged violation (IM - 24%).

By country, the highest proportion of substantive responses (ST + RI) came from Nepal, Tunisia, and Guatemala, which all scored 100%. But while Tunisia and Guatemala’s overall response rates were also considerably above average (63% and 44% respectively, compared to a 48% average response rate for the study), Nepal’s was considerably lower at just 18%. Colombia and Mexico had the next highest proportion of substantive responses (85% and 84% respectively) and both had near-average response rates (50% and 64% respectively). Meanwhile, the Russian Federation had the highest overall response rate (82%) but only 38% of its responses were substantive, while India had the next best response rate (67%), yet just 8% of its responses were substantive.

What does all this mean in the context of the capacity of the Special Procedures communications procedure to respond to the needs of victims and to deliver substantive remedy? While it is impossible to provide exact overall numbers (because there is simply no data on the number of submissions received by the OHR, the number passed to mandate-holders, the number received directly by mandate-holders, and the number deemed inadmissible), it seems clear that only a small proportion of all communications received by mandate-holders include cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.

For the purpose of this analysis, ST and RI responses can be considered ‘substantive’ in that they meaningfully address the alleged violation contained in the initial communication, while VR and IM responses can be considered ‘non-substantive’ in that they fail to do so. It is important to note that these categories of response do not correspond to whether a state accepts or rejects the allegations, but the manner in which they do so, i.e. their level of cooperation with the system. For example, the category indicative of the highest level of cooperation – ST – includes cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.

This qualitative analysis (see Figure 7) revealed that in only 8% of assessed responses did sample states present substantive information on steps taken to address an alleged violation (ST). A further 42% provided information that can be described as substantively responsive but incomplete (RI). Exactly half of all government responses either simply rejected the allegation(s) of violation without substantive evidence to back-up the rejection (VR - 24%), or presented information that was not directly relevant to the alleged violation (IM - 24%).

By country, the highest proportion of substantive responses (ST + RI) came from Nepal, Tunisia, and Guatemala, which all scored 100%. But while Tunisia and Guatemala’s overall response rates were also considerably above average (63% and 44% respectively, compared to a 48% average response rate for the study), Nepal’s was considerably lower at just 18%. Colombia and Mexico had the next highest proportion of substantive responses (85% and 84% respectively) and both had near-average response rates (50% and 64% respectively). Meanwhile, the Russian Federation had the highest overall response rate (82%) but only 38% of its responses were substantive, while India had the next best response rate (67%), yet just 8% of its responses were substantive.

What does all this mean in the context of the capacity of the Special Procedures communications procedure to respond to the needs of victims and to deliver substantive remedy? While it is impossible to provide exact overall numbers (because there is simply no data on the number of submissions received by the OHR, the number passed to mandate-holders, the number received directly by mandate-holders, and the number deemed inadmissible), it seems clear that only a small proportion of all communications received by mandate-holders include cases where the concerned government undertook an adequate investigation and concluded that a violation had not occurred.
a useful means of mainstreaming Special Procedures analyses and recommendations into the wider work of the UN, others see it as an unnecessary duplication and suboptimal use of resources. Is it sensible, for example, for mandate-holders to use their limited time drafting two sets of reports every year, one to the Council and one to the General Assembly (GA), especially when the Council itself reports to the GA? Or should the ‘default setting’ of reporting to the Third Committee be replaced or supplemented by more targeted mainstreaming interventions such as briefings to the Security Council, or regular interactions with relevant international organisations like UN Women or the World Health Organisation?

The media is a powerful channel through which many Special Procedures seek to exert influence. For example, mandate-holders will usually issue press releases before a country mission and will hold a press conference at its conclusion. They have also regularly used press releases to raise awareness and mobilise public opinion around a particular concern where they have been unable to secure a substantive response from a government.

The work of Special Procedures, especially in the context of their country missions, has the potential to generate considerable media attention and public debate. An analysis of Special Procedures visibility across eight key online media (representing different regions and languages) between 2011 and 2013, conducted by the Universal Rights Group, shows that the Special Procedures mechanism generated a total of 564 articles. This overall figure however masks considerable divergences between mandates. The six most visible mandates together generated more articles than all other mandates combined. These tend to be high-profile civil and political rights mandates and high-interest country Special Rapporteurs. The most visible mandates between 2011 and 2013 were the Special Rapporteur on torture (with 98 articles commenting on what the mandate-holder had said or done), the Special Rapporteur on human rights while countering terrorism (65), the Special Rapporteur on arbitrary executions (59), the Special Rapporteur on the right to food (36), the Working Group on enforced disappearances (35), the Special Rapporteur on Myanmar (33) and the Special Rapporteur on Iran (32). The least visible tended to be newly created economic, social and cultural rights mandates and country Independent Experts.

The growing power of social media has created new and dynamic channels for Special Procedures influence by allowing them to mobilise public interest in and public support behind a given issue. Despite this, only fourteen of the forty-nine Special Procedures are currently active on Twitter. These tend to be the same mandates-holders who are most visible in traditional media. Some of these mandates-holders have significant followings (the Special Rapporteur on adequate housing, for example, has over 13,000 Twitter followers) and produce prodigious numbers of Tweets (the Special Rapporteur on Iran, for example, has offered up over 11,400). Eight Special Procedures have also created distinct websites for their mandates (i.e. separate from their official webpages on the OHCHR website).

However, use of the media (including social media) is also a particularly sensitive matter. Indeed, interviews conducted for this report reveal that almost all of the most acute examples of Special Procedures-state tension today, including the first formal (internal) Advisory Procedure in 2013, centre on disagreements over the use of the media. As one diplomat noted: ‘more than any other issue, press releases and comment have the potential to spoil relations’ between mandate-holders and states.

The Manual of the Special Procedures does provide guidance to mandate-holders on their interactions with the media. As with other aspects of Special Procedures work, the Manual’s advice attempts to balance the independences of mandate-holders and their right to use the media, especially where ‘a government has repeatedly failed to provide a substantive response to communications’, with procedural guidance designed to ensure predictability for governments and to build trust. For example, the Manual notes that ‘standard practice is that press releases are shared with the Permanent Mission sufficiently in advance’.

Indeed, there appears to be broad consensus on the basic parameters of Special Procedure interaction with the media, including giving sufficient time for a government to respond to a communication before issuing a related press release, and sharing a draft of any press release with governments before issuing it. Problems arise when mandate-holders do not follow such protocols or where there are differences of opinion over what, for example, constitutes ‘sufficiently in advance’ (is it six hours, twelve hours, twenty-four hours? does it include weekends?) or what is the relationship (and time-lag) between an urgent appeal and the issuing of a related press statement?

In order to provide greater clarity on these points and to take into account the growing importance of social media, and conscious of the fact that concerns over the use of the media have laid at the heart of so many recent Special Procedure ‘flash-points’, there is a clear case to be made for revisiting the Manual and strengthening the guidance it offers on media (and social media) interaction.
SUPPORTING SPECIAL PROCEDURES

While Special Procedures are an independent mechanism, their mandates are established (and revised) by states and they rely, in order to have impact, on securing and leveraging the cooperation of states. It is therefore important for states to show genuine and visible support for the work of the mechanism.

RECOMMENDATION 1 (STATES):
States that support the work of Special Procedures should coordinate their efforts and visibly demonstrate their commitment by establishing a Group of Friends of the Special Procedures in both Geneva and New York.

RECOMMENDATION 2 (STATES):
The Group of Friends should consider concrete steps to help strengthen the Special Procedures mechanism, such as delivering regular cross-regional statements under item 3 of the Council’s agenda and/or tabling a bi-annual or tri-annual resolution on Special Procedures (similar to resolution 2004/76 on ‘Human rights and Special Procedures’ adopted by the Commission). They should also ‘lead by example’ for instance by strengthening those mandates they sponsor or engage with in line with the cooperation, follow-up and implementation recommendations of this report.

INDEPENDENCE AND ACCOUNTABILITY

The independence, impartiality and integrity of Special Procedures has always been, and must always remain, a central element of their success and of their ability to secure improvements in the on-the-ground enjoyment of human rights. However, as we have seen, substantive independence does not mean that mandate-holders can do as they like – rather, there are clear behavioural and procedural norms with which they must comply.

With the exception of one or two states, there does appear to be general agreement that the current situation – in which a state-imposed Code of Conduct is complemented by the Manual of Operations (produced by mandate-holders themselves) and overseen by an essentially self-regulatory mechanism – is broadly correct. Certainly, it is difficult for anyone to argue that the Internal Advisory Procedure (IAP) is inherently dysfunctional or should be replaced by a state-led mechanism to enforce compliance with the Code, when it has only ever actually been invoked on one occasion.

That said, there remains an important onus on mandate-holders to ensure that the Manual and the IAP are as robust as possible. There is a strong case for revising the Manual, especially in terms of the guidance it offers on media relations and social media activity, and for examining experiences garnered from the 2013 invocation of the IAP to see if lessons can be learnt and improvements made. There is also a case to be made for improving awareness and transparency around the more informal complaint procedure and, where concerns are raised that appear justified, for the Coordination Committee to deal robustly and transparently with instances of unacceptable behaviour or conduct.

RECOMMENDATION 3 (STATES):
Maintain the current self-regulatory procedure for dealing with alleged violations of the Code of Conduct.

RECOMMENDATION 4 (MANDATE-HOLDERS):
Review and, where necessary, strengthen the Manual of Operations, including as it relates to the use of the media, social media and new technology. Mandate-holders should guide and lead this exercise.

RECOMMENDATION 5 (STATES, COORDINATION COMMITTEE):
As far as possible, states should continue to make use of the informal procedure for bringing complaints or concerns about alleged violations of the Code of Conduct to the attention of the Coordination Committee. At the same time, the Committee should strengthen its outreach with states and NGOs, so as to familiarise them with the informal procedure (and receive views on its operation).

RECOMMENDATION 6 (COORDINATION COMMITTEE):
The Coordination Committee must deal robustly and transparently with those complaints or concerns – lodged informally or formally – that prove to be justified, in order to protect the integrity of the system as a whole.

RECOMMENDATION 7 (COORDINATION COMMITTEE):
In addition to the existing dialogues with states and NGOs during the Annual Meeting of Special Procedures, the Coordination Committee should meet regularly with the Bureau of the Human Rights Council to discuss concerns and attempt to resolve them at an early stage.

RECOMMENDATION 8 (MANDATE-HOLDERS AND STATES):
Give consideration to strengthening the legal base of the Coordination Committee, for example through a Human Rights Council resolution (for example, the same as that proposed in recommendation 2) which could recognise the important role of the Committee and invite the Chair to present annual reports to the Council under agenda item 5 on cooperation, and on implementation and follow-up.

RECOMMENDATIONS

Research conducted for this report has revealed a deep unease about further system-wide efforts to review, rationalise and improve the Special Procedures system. This caution is partly informed by the experience of the previous three reform exercises and partly by the contemporary (unpromising) political climate of the Human Rights Council.

Such trepidation is entirely understandable. However, if this report demonstrates one thing, it is that more focused attention should be taken to improving the efficiency and effectiveness of the Special Procedures mechanism, and that careful, targeted steps can and should be taken to better support the system. It is clear from this and earlier analyses that the Special Procedures are a remarkably strong and flexible mechanism that has had, and continues to have, a significant positive impact on the enjoyment of human rights around the world. However, there is a clear risk of it becoming a victim of its own success unless its rapid horizontal expansion is matched by changes in how it operates, how it interacts with states, how it is managed, resourced and overseen. In short, for the mechanism to remain sustainable, relevant and effective, it should be modernised to face the challenges of the 21st Century.

The good news is that significant and tangible improvements to the system’s efficiency and effectiveness can be secured without recourse to a further intergovernmental process of system-wide reform – through a series of relatively straightforward individual steps. Those steps, and the ideas that underpin them, are not new or revolutionary, but have been debated for many years. The problem is that, for various reasons, they have not so far been implemented.

With this in mind, the authors of this report recommend that many of these sensible and practicable ideas be brought back to the table for review and implementation. In that regard, all stakeholders share a common responsibility to build on the legacy of those who have gradually built the mechanism over the past fifty years.

The independent advisory mechanism to remain sustainable, relevant and effective, it should be modernised to face the challenges of the 21st century. for that reason, all stakeholders share a common responsibility to build on the legacy of those who have gradually built the mechanism over the past fifty years.

Table for review and implementation. in that regard, all stakeholders share a common responsibility to build on the legacy of those who have gradually built the mechanism over the past fifty years.
EXPERTISE AND STANDING
This report has revealed significant challenges in terms of complying with the institution-building package's call for gender balance and equitable geographic representation, as well as for an appropriate representation of different legal systems.

Many believe that the only way to genuinely improve diversity would be to give renewed thought to offering remuneration to Special Procedures mandate-holders, for example by providing limited monthly honoraria or by introducing a compensation structure similar to that enjoyed by special envoys or representatives of the Secretary-General.

RECOMMENDATION 9 (CONSULTATIVE GROUP OF THE HUMAN RIGHTS COUNCIL):
At the close of the 8th cycle of the Council, the Consultative Group should undertake an analysis of the degree to which the Special Procedures appointment process is delivering on paragraphs 29 and 40 of resolution 5/1 (e.g. on securing gender and geographic balance). This should be forwarded to the President of the Council for consideration by the Bureau and possible wider consultations.

FLEXIBILITY, REACH, ACCESSIBILITY
Much of the power and influence of the Special Procedures system stems from its functional flexibility and its reach, i.e. the range of issues and situations it is able to address and the breadth of people with whom it is able to connect. This flexibility and reach is the result, to a large degree, of the organic evolution of the system – as new challenges have arisen the system has expanded and adapted in response. notwithstanding, faced with this ad hoc growth, states and others have often asked the breadth of people with whom it is able to connect. this flexibility main that the system – as new challenges have arisen the system has expanded and adapted in response. notwithstanding, faced with this ad hoc growth, states and others have often asked the main that the system – as new challenges have arisen the system has expanded and adapted in response. notwithstanding, faced with this ad hoc growth, states and others have often asked the

RECOMMENDATION 11 (STATES, NGOs):
Rather than further reductions in the different types of Special Procedures, states should consider further differentiation. For example, all new thematic Independent Expert mandates could have a sunset clause (one or two terms) ensuring that the mandate will complete the prescribed norm-setting task and then be automatically discontinued (or converted into a Special Rapporteur where this is justified).

RECOMMENDATION 12 (BUREAU OF THE HUMAN RIGHTS COUNCIL):
The Bureau of the Council, with the support of the Council secretariat, should consult with delegations, NGOs and other stakeholders to explore the scope, in the context of normal mandate renewals, for merging, broadening, transforming, terminating and creating mandates.

RECOMMENDATION 13 (STATES):
States should give active consideration, in consultation with mandate-holders, OHCHR and NGOs, to new types of Council mechanism that might reduce the international human rights community’s dependence on and recourse to Special Procedures. This has already happened, to some extent, in the context of country situations, with fact-finding missions and commissions of inquiry having become an alternative rapid-deployment mechanism. For thematic issues, consideration could be given to establishing a roster system of UN certified human rights experts (from every region of the world) to be deployed, at the request of a government, to support domestic efforts to strengthen human rights. This would be based on a stand-by roster, similar to that set up by the intergovernmental ‘Justice Rapid Response’ facility. In response to a government request, relevant (unpaid) experts from the roster (e.g. judicial experts to support justice sector reform) would be deployed, with their transport and subsistence costs covered by the concerned country, the UN country team or a development partner. A request for such support could be made in writing to the President of the Human Rights Council and announced under agenda item 5.

Considering the low levels of success of previous reform exercises and the current politicised nature of the Human Rights Council, it was a positive outcome to conduct a further system-wide reform effort at present. Nevertheless, building on lessons learned from previous attempts, a number of small incremental steps might be envisaged.

RECOMMENDATION 10 (STATES, NGOs):
While the rationale behind recent moves to harmonise the nomenclature of Special Procedures was perhaps admirable (i.e., improve clarity), it should not be taken any further, as the current diversity of mandate types (e.g. thematic Special Rapporteurs, thematic Independent Experts, thematic Working Groups, country Special Rapporteurs, country Independent Experts) is an important strength of the system. When establishing or renewing mandates, states should carefully consider which type of Special Procedure best fits with the relevant policy objectives. The current default recourse to Working Groups for any issue considered politically contentious is undermining the integrity of the system and should be reconsidered.

RECOMMENDATION 14 (MANDATE HOLDERS, STATES):
As far as possible, mandate-holders should focus on establishing a strong, constructive and cooperative relationship with states, with the goal of developing a high degree of mutual trust and confidence. This should include establishing regular informal lines of communication with delegations in Geneva and New York; making sure all recommendations are specific, measurable, attainable, realistic and time-bound; and focusing on the ‘practicalisation’ of human rights norms to make those norms accessible and understandable to those at national and local levels who have to apply and implement them.

Similarly, states should strengthen cooperation by, inter alia, responding, in a timely and substantive manner, to requests for information, by allowing country visits, by establishing clear national procedures for implementing recommendations, and by regularly updating mandate-holders and the Council on progress.

RECOMMENDATION 15 (OHCHR):
To give full effect to paragraph four of General Assembly resolution 60/251, OHCHR should ‘compile and make available objective information on the cooperation… between states and mandate-holders, which facilitates the exchange of information, mechanisms and procedures’ (in a stand-alone report on cooperation [building on the current Communications Report] tabled, inter alia, under agenda item 5). The report should include information on standing invitations, visit requests and visits undertaken, and responses to communications. To aid transparency and accountability, the information should be organised by country. It is necessary, states (e.g. the Group of Friends) should request such a report via a cross-regional statement or resolution.

RECOMMENDATION 16 (STATES):
Use each Council session, in particular the item 5 General Debate, as a forum for open, constructive and transparent discussion on cooperation between states and special procedures. The Debate, which would consider the report on cooperation mentioned above, would be a forum for all stakeholders – mandate-holders, states and NGOs – to present ideas on strengthening cooperation and improving impact. [The Debate would also allow for an exchange of views on the implementation of recommendations and challenges thereto (see below).

COOPERATION, IMPLEMENTATION AND FOLLOW-UP
Both cooperation between states and mandate-holders, and ensuring follow-up on the implementation of recommendations are vital determinants of Special Procedures influence. And yet regular acknowledgements of this fact by policy-makers have so far not been matched by any discernible improvement in the situation. That is despite many positive ideas and proposals put forward over the past two decades. It is important for the effectiveness and credibility of the system that those ideas and proposals are revisited and, this time, fully implemented.

RECOMMENDATION 20 (STATES):
Almost every reform exercise, stretching back to 1998-2000, has emphasised the importance of having a forum for dialogue with governments on implementation and follow-up. Fortunately, the Human Rights Council has a ready-made space for such dialogue, in its General Debate and in the ‘progress reports’ on the ‘practicalisation’ of human rights norms, this situation must be reversed. Thus, in addition to debating the aforementioned report on cooperation under the item 5 General Debate, states and NGOs should also consider the various follow-up and implementation reports submitted by mandate-holders (in annex to their main reports) at that particular session.

RECOMMENDATION 21 (STATES, MANDATE-HOLDERS):
Also under item 5, supportive states (e.g. the Group of Friends) should convene an annual panel debate focusing on ‘best practice’ for implementing recommendation. This would feature selected state representatives, relevant mandate-holders and other stakeholders familiar with two or three positive case studies.
RECOMMENDATION 22 (OHCHR): A number of those interviewed for this report emphasised the importance of having ‘a comprehensive and regularly updated electronic compilation of Special Procedure recommendations by country’.

RECOMMENDATION 26 (OHCHR): Further steps should be taken to bring all Special Procedures mandates, including country mandates, under the Special Procedures Branch. At present, the benefits (such as sharing geographic expertise) of dividing the mechanism between two parts of the Office (as of 1st January 2014) are outweighed by the problems it causes in terms of transparency, inadequate staffing levels and Special Procedures independency.

RECOMMENDATION 27 (OHCHR): Notwithstanding the very real difficulties caused when states (in the General Assembly’s Fifth Committee) do not approve budget allocations for some mandates, immediate steps should be taken to ensure that all existing mandates enjoy the correct level of secretariat support as per the relevant Programme Budget Implication (PBI) documents (meaning, broadly-speaking, one and a half assistants), that they can conduct all mandated activities (e.g. two country missions, or regional consultations) and that, where they wish to conduct further activities (e.g. further missions including follow-up missions), there are clear and transparent procedures in place for them to access available funds. Linked with these points, PBIs should more precisely reflect the type of Special Procedure and the activities laid down in the resolution establishing or renewing the mandate.

STRENGTHENING THE SPECIAL PROCEDURE TOOL-KIT

RECOMMENDATION 28 (ALL STAKEHOLDERS): It is clear that the current communication system is falling far short of the needs and expectations of victims. If the Special Procedure communications system (and the Special Procedures mechanism more broadly) is to remain relevant and credible, it is difficult to avoid the conclusion that systemic reform is necessary. Notwithstanding, like all other recommendations in this report, such reform does not necessarily require a further round of intergovernmental negotiations, but rather can be achieved through incremental improvements driven and guided by mandate-holders and founded upon dialogue between all stakeholders. For example, there is enormous potential to deploy new technology both to make the petition system more visible and accessible to victims, and to manage case files and information flows. There is also a strong case to be made for acting on the then High Commissioner’s 2000 call to centralise and streamline the communications procedure. As a starting point, this would mean significantly strengthening the Quick Response Desk to enable it to respond to, and collect data on, all petitions in all UN languages, make an assessment on admissibility and, in consultation with the most relevant mandate-holder(s), send an initial communication (requesting further information) to the relevant government.

RECOMMENDATION 29 (STATES): Short of adding more time to regular sessions of the Human Rights Council (or reducing the number of mandates), it will be difficult to secure improvements in the current – unsatisfactory – nature of interactive dialogues with Special Procedures. Nevertheless, as discussed above, far better use could and should be made of agenda item 5.

Turning to the practice of dual reporting to both the Council and the General Assembly’s Third Committee (including convening two sets of interactive dialogues), states should give serious thought to whether this represents an optimal use of resources or whether other options, such as regular dialogues with other relevant bodies and organisations (e.g. the Security Council, the World Health Assembly) might obtain better results.

AVAILABILITY OF RESOURCES AND SECRETARIAT SUPPORT

It has long been recognised that the availability of resources and the quantity and quality of secretariat support are crucial determinants of Special Procedures influence.

RECOMMENDATION 23 (SECRETARY-GENERAL, STATES): As this report has shown, if the UN Secretary-General and member states are serious about human rights, and about the impact and effectiveness of the international human rights mechanisms, they must address the current imbalances which see the human rights pillar receive less than three per cent and Special Procedures less than half a per cent of the UN’s regular budget. Nearly all those interviewed for this report agreed that mandated activities, including Special Procedures, should be fully financed by the regular budget. In the context of the preparation of, and negotiations on, the regular budget for the 2016-2017 biennium, the Secretary-General must respond to this consensus position.

RECOMMENDATION 24 (STATES, OHCHR): Given the on-going and serious gap between mandated activities and regular budget allocations, voluntary contributions will continue to be an important source of financing for many UN human rights activities. Where voluntary contributions are used to bridge the funding gap for Special Procedures, states should provide un-sar-marked funds or earmark their contributions to either the general fund for all Special Procedures (in practice, extra-budgetary resources placed here are only used for thematic mandates, unless the donor makes clear they can also be used for country mandates) or to the general fund for all country mandates. OHCHR should in turn guarantee a minimum threshold of financial disclosure and transparency for each individual mandate: the level and sources of funding and how it is used.

RECOMMENDATION 25 (MANDATE-HOLDERS): Disclosure and transparency are equally important in terms of non-UN outsourcing arrangements. Here, as recognised by Special Procedures themselves, there is a clear onus on mandate-holders to publicly disclose the sources of their (non-UN) funding and in-kind support (e.g. human resource support) or, at the very least, to issue a disclaimer stating that such contributions will not affect their independence.

RECOMMENDATION 28 (OHCHR): Notwithstanding the very real difficulties caused when states (in the General Assembly’s Fifth Committee) do not approve budget allocations for some mandates, immediate steps should be taken to ensure that all existing mandates enjoy the correct level of secretariat support as per the relevant Programme Budget Implication (PBI) documents (meaning, broadly-speaking, one and a half assistants), that they can conduct all mandated activities (e.g. two country missions, or regional consultations) and that, where they wish to conduct further activities (e.g. further missions including follow-up missions), there are clear and transparent procedures in place for them to access available funds. Linked with these points, PBIs should more precisely reflect the type of Special Procedure and the activities laid down in the resolution establishing or renewing the mandate.

STRENGTHENING THE SPECIAL PROCEDURE TOOL-KIT

RECOMMENDATION 28 (ALL STAKEHOLDERS): It is clear that the current communication system is falling far short of the needs and expectations of victims. If the Special Procedure communications system (and the Special Procedures mechanism more broadly) is to remain relevant and credible, it is difficult to avoid the conclusion that systemic reform is necessary. Notwithstanding, like all other recommendations in this report, such reform does not necessarily require a further round of intergovernmental negotiations, but rather can be achieved through incremental improvements driven and guided by mandate-holders and founded upon dialogue between all stakeholders. For example, there is enormous potential to deploy new technology both to make the petition system more visible and accessible to victims, and to manage case files and information flows. There is also a strong case to be made for acting on the then High Commissioner’s 2000 call to centralise and streamline the communications procedure. As a starting point, this would mean significantly strengthening the Quick Response Desk to enable it to respond to, and collect data on, all petitions in all UN languages, make an assessment on admissibility and, in consultation with the most relevant mandate-holder(s), send an initial communication (requesting further information) to the relevant government.

RECOMMENDATION 29 (STATES): Short of adding more time to regular sessions of the Human Rights Council (or reducing the number of mandates), it will be difficult to secure improvements in the current – unsatisfactory – nature of interactive dialogues with Special Procedures. Nevertheless, as discussed above, far better use could and should be made of agenda item 5.

Turning to the practice of dual reporting to both the Council and the General Assembly’s Third Committee (including convening two sets of interactive dialogues), states should give serious thought to whether this represents an optimal use of resources or whether other options, such as regular dialogues with other relevant bodies and organisations (e.g. the Security Council, the World Health Assembly) might obtain better results.
NOTES

1. Secretary-General’s message to the Third Session of the Human Rights Council (delivered by Mrs Louise Arbour, High Commissioner for Human Rights), 29 November 2006.


3. UN Secretary-General, Kofi Annan, The Secretary-General’s address to the 1st session of the Human Rights Council, 19 June 2006.


8. UNCHR.

9. UN Secretary-General, Kofi Annan, The Secretary-General’s address to the 1st session of the Human Rights Council, 19 June 2006.


22. UNHCR Resolution 2144 A (XX) (Question of the Violation of Human Rights and Fundamental Freedoms, including policies of racial discrimi- nation and segregation of and of apartheid in all countries, with particu- lar reference to colonial and other dependent countries and territories), 26th October 1986, operative para 12.

23. UNHRC Resolution 8 (XXIII) (Study and investigation of situations which reveal a consistent pattern of violation of human rights), 16th March 1967.

24. UNCHR Resolution 7 (XXI) (Question of the violation of human rights and fundamental freedoms, including policies of racial discrimi- nation and segregation and of apartheid in all countries, with particular reference to colonial and other dependent countries and territories), 26th October 1986, operative para 12.

25. UNCHR Resolution 6 (XXI) [Question of human rights in the ter- ritories occupied as a result of hostilities in the Middle East], 4 March 1969.

26. At the Commission’s 27th session in 1971, Morocco and Pakistan tabled a resolution calling for consideration to be given to appointing a Special Rapporteur on colonialism and self-determination at its next (28th) session. However, this did not materialize.

27. Sutter, op. cit., p.83.

28. Ibid.


30. The Commission decided to change the title of this mandate to “Special Rapporteur on freedom of religion or belief” in 2000; UNCHR Resolution 2000/33 (Implementation of the Declaration on the Elimina- tion of All Forms of Intolerance and of Discrimination Based on Religion or Belief), 20 April 2000, operative para 11.


34. Vienna Declaration and Programme of Action, op. cit., para 95.

35. The Council replaced the Commission on Human Rights.

36. UNHCR Resolution 60/251 (Human Rights Council), UN Doc. A/ RES/60/251 (3rd April 2006), operative para 6.

37. UNHRC decision 1/104 (Implementation of paragraph 6 of General Assembly resolution 60/251), 30th June 2006.

38. Husak, P; 94.

39. UNCHR Resolution 60/251, op. cit., operative para 14.

40. With three small but important exceptions. First, the negotiations led to a further refinement of the appointment process: candidates must now submit a motivational letter as part of the nomination pro- cess. The OHCHR will maintain separate lists for each public candidacy, and if the President of the Council decides to deviate from the recom- mendation of the consultative group in the appointment process, he or she must justify this decision. Second, the outcome clearly delineated the relationship between independence, accountability and cooperation. Third, it provided a basis for OHCHR to continue to present information on state cooperation with the mechanism: UNHRC Resolution 14/29 [Review of the work and functioning of the Human Rights Council], UN Doc. A/HRC/RES/14/29 (3rd April 2006), operative para 6.


42. A 51st is already in the pipeline - a Special Rapporteur on the sit- uation of human rights in the Syrian Arab Republic will start once the mandate of the commission of inquiry ends; a mandate-holder has al- ready been appointed but will not actively take up the mandate until the commission of inquiry is concluded; see UNHRC Resolution 5/1871 (The human rights situation in the Syrian Arab Republic), UN Doc. A/ HRC/RES/5/1871 (9th December 2013).
42
162. or sometimes to non-State actors such as international organizations or multinational companies (as ‘Other Letters’).


164. The term ‘submission’ is preferred to ‘complaint’ because communications can relate to broader issues as well as to individual alleged human rights violations. In this report, the term ‘submission’ refers to communications from individuals to Special Procedures, while the term ‘communication’ refers to communications from mandate-holders to Governments and ‘Government responses’ refer to the replies to those communications.


167. This limitation is acknowledged on the OHCHR’s web page.

168. Interview with OHCHR official, conducted in the context of this report.

169. Unlike other human rights communications systems, there is no strict formal admissibility criteria or a need for an alleged action to have exhausted domestic remedy. Mandate-holders use their own discretion or independently developed criteria to assess admissibility.


172. Which were: Human rights defenders, freedom of expression, torture, arbitrary detention, summary execution and independence of judges and lawyers; Ibid.

173. Ibid.


175. Selected according to which ones received the highest number of communications in 2004-2008 (based on Ted Piccone’s 2012 study, Catalysts for Change).

176. For detailed information on the categories, methodology and results of this study, see www.universal-rights.org/research/special-procedures-communications-analysis.

177. A small number were not translated in time for the analysis (6 of communications in 2004-2008, 1 of communications in 2011-2013).

178. Although this study of communications between 2011-2013 is based on a sample of fifteen countries from the five regional groups, a previous study by Ted Piccone was based on all member states. It is possible that other articles were generated but were later archived. Thus the analysis should be seen as indicative rather than comprehensive.

179. This ‘end-game’ for the petitions system was recalled by two different thematic mandate-holders interviewed for this report.

180. Interview with a Western diplomat.


183. The analysis is based upon articles accessible online as at 20th November 2013. It is possible that other articles were generated but were later archived. Thus the analysis should be seen as indicative rather than comprehensive.

184. The analysis includes those articles which comment on what a given Special Procedure has said or done in a direct and substantive sense. It also includes articles written by the mandate-holder (e.g. op-eds) or press interviews with a mandate-holder. It does not include articles focused on what other groups are saying or doing (e.g. NGOs) that make a passing reference to the fact that, for example, they intend to bring their issue to the attention of a given Special Procedure. It will also miss, for example, live TV or radio interviews that were not subsequently written down as an article.

185. Analysis correct as of 29th December 2013.

186. Interview with Asian diplomat, conducted in the context of this project.


188. Ibid, para 51.

189. Including instances of mandate-holders behaving inappropriately towards their OHCHR assistants.


191. Ibid, para 40.


193. Where appropriate. While there is a strong argument to be made for some mandates to be Working Groups, the current trend for all ‘delicts’ or potentially ‘controversial’ issues to be addressed by Working Groups may serve to undermine the independence of the system.


196. Ibid, para 27.

197. UNCHR Resolution 2004/76, op. cit., operative para 2(1).


199. UNCHR Resolution 2004/76, op. cit., para 10(c).