



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*"Dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"*

## Special Procedures of the United Nations Human Rights Council

18<sup>th</sup> Annual Meeting, 27 June – 1 July 2011

### Agenda Item 6, Consultations with human rights mechanisms, stakeholders and partners

#### Oral Statement of the International Commission of Jurists

30 June 2011

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Madam Chair,

The International Commission of Jurists (ICJ) welcomes the continued practice of the United Nations Special Procedures to engage with civil society, NGOs and national human rights institutions. In an effort to maximise the efficiency of this exchange, a number of Geneva-based NGOs held a meeting last week to identify common points of interest to bring to the attention of this Meeting. With the aim of avoiding undue overlap, different NGOs will elaborate on the following issues:

1. Coordination by Special Procedures with treaty bodies and the UPR (ICJ);
2. Working methods during Human Rights Council sessions (ICJ);
3. Follow-up to recommendations of Special Procedures (Amnesty International);
4. Coordination of country visits (Amnesty International);
5. Cooperation of States with Special Procedures (International Service for Human Rights (ISHR));
6. Reprisals against persons cooperating with UN mechanisms (ISHR);
7. Issues concerning sexual orientation and gender identity (ARC International);
8. Rights of persons with disabilities (International Disability Alliance);
9. Action by Special Procedures on country issues where there is inaction by the Human Rights Council (Human Rights Watch).

The ICJ intends to address the first of these two issues and, related to these, to separately address the relationship between Special Procedures and NGOs.

Concerning the enhanced coordination by Special Procedures with other UN human rights mechanisms, NGOs have observed a number of good practices adopted by mandate holders. They are in large part obvious, but we would highlight the following examples as practices that would benefit from wider application in order to enhance the operation and effectiveness of Special Procedures:

- A. In preparation for country missions, most mandate holders review relevant recommendations of treaty bodies. The ICJ sees this as a good practice given the limited time and resources that the treaty bodies have to themselves follow-up on the implementation of Concluding Observations from periodic reports, and/or of specific recommendations coming from Views on individual communications. In the context of recommendations in Concluding Observations, this is important because Concluding Observations stand as an authoritative interpretation of the reporting State's obligations. In the context of recommendations from individual communications, this may be vital to ensure that access to justice is meaningful, i.e. by helping to push for the actual provision of effective remedies and reparations as recommended by the treaty bodies.
- B. Also concerning the preparation and conduct of country missions, there are advantages, it is suggested, in consideration of the relevant country's Universal Periodic Review (UPR). Although there may be those of you who are sceptical of the utility of the UPR process, because the State under review must accept the recommendations made, it is in fact this very feature that has the ability to translate into a useful tool for Special Procedures. Where recommendations relevant to your

mandate have been accepted by the State under review, the fact of that acceptance should provide you with leverage to push for meaningful action on such recommendations. On the flip-side, mandate holders are likely to also find it useful to consider why certain key recommendations have not been accepted by the State under review.

- C. In the same way that accepted UPR recommendations could be used to push for meaningful action, so too could pledges made by States when standing for election to the Human Rights Council.
- D. A final suggestion about the UPR concerns the perennial problem faced by Special Procedures: how to obtain invitations for country missions and, where such invitations are made (whether *ad hoc* or through standing invitations), how to turn these into an actual country mission. We would suggest here that the prospect of a forthcoming UPR could be utilised as a persuasive tool. Mandate holders may wish to consider the Second Cycle of the UPR, which begins in June next year, to see which countries might be encouraged to facilitate a country mission for the sake of enhancing the UPR outcome report. This might be particularly useful in the case of countries that are about to be reviewed under the UPR process, but for which there has been a lack of periodic reporting to treaty bodies, or in respect of which there is no standing invitation. My colleague from the ISHR will touch further on the question of State cooperation with the Special Procedures.

Madam Chair,

On the subject of the role of and interaction of Special Procedures with civil society, both concerning country missions and working methods, I wish to be a little more provocative.

A former colleague of mine recently said to me that civil society actors, especially local ones, are at the end of the day the key drivers of change and that the work of the UN's human rights mechanisms would be empty without them. Civil society demands the establishment and continuance of Special Procedure mandates. Civil society pushes for their continued independence and for increased support of and resources to those mandates. Civil society works to expose and bring to the attention of human rights mechanisms the existence of human rights violations or of laws that fail to effectively implement, or go against, international human rights law. In the case of local civil society actors who remain within the environment they are complaining of, and who may thereby face the risk of reprisals, this sometimes comes at great personal sacrifice.

I have heard a number of mandate holders, and a number of your colleagues in the treaty bodies, reflect very positively on the important role played by civil society and NGOs. Recognition of this kind is very much appreciated, and I would like to challenge the Council's Special Procedures to collectively translate this into meaningful action in the following four areas:

- i. A number of mandate holders have during Council sessions organised NGO briefings. This may seem like a simple gesture, albeit that it is time-consuming for you, but it is something very much appreciated by both Geneva-based NGOs and civil society actors who come to Geneva to participate in interactive dialogues with mandate holders. NGOs have just 20 minutes amongst them all for each interactive dialogue, which means in practice that there is much information that cannot be conveyed to mandate holders during the interactive dialogue process. NGO briefings can therefore be helpful to your work, although it should be acknowledged that we NGOs also welcome the opportunity to hear directly from you about your aims and plans for the coming year. In some cases, this can greatly influence our own work plans, and even our donor-based action.
- ii. NGOs would welcome pressure brought by the Special Procedures to bring about the declustering of interactive dialogues, which might be pursued, for example, by way of a formal joint letter from the Special Procedures to the President of the Human Rights

Council. The clustering of dialogues can mean that certain NGOs must choose which mandate holders to interact with. In the June 2011 session of the Council, for example, the ICJ sponsored an interactive dialogue with the Special Representative of the Secretary General on human rights and transnational corporations but was thereby prohibited from making an intervention with the Special Rapporteur on the independence of judges and lawyers, because she was scheduled within the same clustered dialogue.

- iii. My next point also concerns the interaction of Special Procedures with civil society, but concerns engagement by mandate holders in the preparation of country missions. The OHCHR Civil Society Unit has relatively recently started a practice of announcing forthcoming visits. This is a positive step, and the general openness of mandate holders to receiving information from civil society is greatly appreciated. To enhance that process, you may wish to consider a heightened level of engagement with NGOs, particularly with civil society in the country in question. Especially in cases where a country mission is to focus on limited issues, you may find that obtaining focussed information from civil society prior to the conduct of the mission will greatly enhance the effectiveness and outcome of the mission.
- iv. My final point relates to this Annual Meeting. Here, I wish to make two alternative suggestions on behalf of a number of NGOs.
  - 1st. We NGOs appreciate that there are certain restrictions on your ability to speak frankly amongst yourselves where meetings are open. As a consequence, the vast majority of your programme of work for Annual Meetings is conducted in private. We would nevertheless ask that careful thought be given to whether all meetings should be held in private. We very much welcome, in this regard, the holding in public of the Special Procedures and Inter-Committee Meeting (ICM) joint meeting on Wednesday morning. This had been scheduled to be held in private and we hope that the ICM's initiative to hold the meeting in public is carried through to future similar meetings.
  - 2nd. Given that so many of your meetings are held in private, and are likely to remain so, we would collectively request that the exchange with civil society take place earlier in your programme of work than has happened this year. While it is appreciated that there are certain constraints concerning room availability, it is a great shame that this exchange today comes at the end of your penultimate day of the Annual Meeting. Civil society, NGOs and NHRIs have good ideas to share with the Special Procedures. It would be more meaningful for us – and we suggest for you too – if you could hear from us early in your programme of work so that the ideas and questions we generate might carry through to your private discussions on those issues, rather than hearing from us after you have already had those discussions.

Madam Chair,

My last points do not take away from the considerable respect and support that NGOs and civil society hold for the work of the Special Procedures. Your expertise and work lends considerable weight to the functioning of the UN's human rights mechanisms. You will not find more support than from civil society. We are aware of the financial and resource constraints faced by you and by the OHCHR Special Procedures Branch, particularly in the lack of sufficient regular budget resourcing. Civil society remains ready to support your work and looks forward to continued positive relations with all mandate holders.

I thank you.

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