

**INTERNATIONAL COMMISSION OF JURISTS
BACKGROUND NOTE**

**OVERVIEW OF THE FUNCTIONS AND ACTIVITIES OF
SPECIAL PROCEDURES**

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

OVERVIEW OF THE FUNCTIONS AND ACTIVITIES OF THE SPECIAL PROCEDURES ¹

“Special Procedures” is the general name given to the independent expert mechanisms of the Human Rights Council whose purpose is to address either specific country situations or thematic issues in all parts of the world. Special Procedures may be established as individual experts (‘Special Rapporteurs’, ‘Independent Experts’ or ‘Special Representatives of the Secretary General’) or as a group of five experts, each expert being from one of the five United Nations regional groups (‘Working Groups’). In general, the mandates of the Special Procedures involve the functions of monitoring, advising and publicly reporting on human rights situations in particular countries (country mandates) or on major phenomena of human rights violations worldwide (thematic mandates). Each Special Procedure mandate is defined in the resolution establishing or renewing the mandate. Thematic mandates are renewed every three years and country mandates annually, unless otherwise decided by the Human Rights Council.² There are currently 12 country mandates³ and 36 thematic mandates.⁴

General functions of the Special Procedures mandate-holders

The main functions performed by Special Procedures mandate-holders consist of the following:

- Receiving and analysing information on human rights situations provided by various sources on an ongoing basis;
- Networking and sharing information with partners, both governmental and non-governmental, within and outside the United Nations;
- Seeking urgent clarifications from governments on alleged violations and, where required, requesting governments to implement protection measures to guarantee or restore the enjoyment of human rights;
- Raising awareness about specific human rights situations and phenomena, threats to and violations of human rights;
- When circumstances so warrant, communicating their concerns through the media and other public statements;
- Undertaking country visits to assess human rights situations pertaining to their respective mandates, and make recommendations to governments with a view to improving those situations;
- Reporting and making recommendations to the Human Rights Council and, where relevant to their mandates, to the General Assembly (and in some cases to the Security Council) on: regular activities under their mandate; field visits; and specific thematic trends and phenomena;
- Follow-up activities related to recommendations made; and
- Contributing thematic studies to the development of norms and standards in the subject area of the mandate, and sometimes providing legal expertise on specific issues.

These functions are supported by the Office for the High Commissioner for Human Rights (OHCHR), which provides personnel, logistical and research assistance to the mandate-holders.

¹ The information contained in this document is mainly a summary of the OHCHR “Manual of Operations of the Special Procedures of the Human Rights Council” (2008), available at URL: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

² See HRC Resolution 5/1, annex, para. 60, and “Terms of office of special procedure mandate-holders”, UN Doc A/HRC/PRST/8/2.

³ The list of current country mandates can be found at URL: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx>.

⁴ The list of current thematic mandates can be found at URL: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx>.

Establishment and election of mandate-holders

Establishing mandates:

The establishment of mandates is generally undertaken based upon the following considerations:⁵

- (a) Mandates should offer a clear prospect of an increased level of human rights protection and promotion;
- (b) The balance of thematic mandates should broadly reflect the equal importance of civil and political rights and economic, social and cultural rights;
- (c) Every effort should be made to avoid unnecessary duplication in creating or reviewing mandates, so as to structure the mechanism in a way that most effectively increases human rights protection; and
- (d) Any consideration of merging mandates should have regard to the content and predominant functions of each mandate holder as well as to the workload of individual mandates.

Electing mandate holders:

The following entities may nominate candidates: governments, regional groups operating within the UN human rights system, international organisations, NGOs, other human rights bodies and individuals.⁶

Nominations are sent to a Consultative Group, who identify a list of candidates with the highest qualifications and present recommendations to the President of the Human Rights Council at least one month before the session of the Council at which the mandate-holder is to be appointed. The President will select a candidate on the basis of the recommendations of the Consultative Group and on other broad consultations.

Individual mandate-holders are selected on the basis of their expertise, experience, independence, impartiality, integrity and objectivity. Mandate-holders serve in their personal capacities and do not receive salaries.

Code of conduct

Human Rights Council Resolution 5/2 established a code of conduct for Special Procedure mandate-holders. The code of conduct defines the standards of ethical behaviour and professional conduct to be observed by mandate-holders when discharging their mandates. Article 3 of the code prescribes the general principles of conduct as follows:

Mandate-holders are independent United Nations experts. While discharging their mandate, they shall:

- (a) Act in an independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts based on internationally recognized human rights standards, and free from any kind of extraneous influence, incitement, pressure, threat or interference, either direct or indirect, on the part of any party, whether stakeholder or not, for any reason whatsoever, the notion of independence being linked to the status of mandate-holders, and to their freedom to assess the human rights questions that they are called upon to examine under their mandate;
- (b) Keep in mind the mandate of the Council which is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, through dialogue and cooperation as specified in General Assembly resolution 60/251 of 15 March 2006;
- (c) Exercise their functions in accordance with their mandate and in compliance with the Regulations, as well as with the present Code;

⁵ See Note by the UN High Commissioner for Human Rights, "Rationalisation of the work of the Commissions: Enhancing and strengthening the effectiveness of the special procedures of the Commission on Human Rights", UN Doc E/CN.4/2006/115, [17].

⁶ In accordance with HRC Res 5/1.

- (d) Focus exclusively on the implementation of their mandate, constantly keeping in mind the fundamental obligations of truthfulness, loyalty and independence pertaining to their mandate;
- (e) Uphold the highest standards of efficiency, competence and integrity, meaning, in particular, though not exclusively, probity, impartiality, equity, honesty and good faith;
- (f) Neither seek nor accept instructions from any Government, individual, governmental or non-governmental organization or pressure group whatsoever;
- (g) Adopt a conduct that is consistent with their status at all times;
- (h) Be aware of the importance of their duties and responsibilities, taking the particular nature of their mandate into consideration and behaving in such a way as to maintain and reinforce the trust they enjoy of all stakeholders;
- (i) Refrain from using their office or knowledge gained from their functions for private gain, financial or otherwise, or for the gain and/or detriment of any family member, close associate, or third party;
- (j) Not accept any honour, decoration, favour, gift or remuneration from any governmental or non-governmental source for activities carried out in pursuit of his/her mandate.

Other provisions of the code outline specific conduct requirements in relation to the main activities of the Special Procedures.

ACTIVITIES OF THE SPECIAL PROCEDURES

Communications

One of the main functions of the Special Procedures is to receive information from various sources and to then send communications to governments in response to that information where it discloses credible information relevant to the mandate, and provided that this function has been expressly authorised.⁷ Communications vary in content, but they may include matters relating to: situations concerning individuals, groups or communities, general patterns of human rights violations, and matters relating to current or draft legislation. Such communications are usually sent through diplomatic channels, and can be sent even when domestic remedies have not been exhausted.⁸

Information upon which the Special Procedures will act must be in writing, and include full details of the identity of the sender. Factual information on the allegation or relevant situation must be clear, concise, in good faith and not based solely on reports in the mass media.⁹

Communications process

Communications are coordinated through the "Quick Response Desk" of the Special Procedures Division of the OHCHR. Information is collated and presented to the relevant mandate holder(s), along with any additional information necessary (such as whether the case has been previously dealt with) in order to assist the mandate-holder(s) in ascertaining whether action is required.

When a decision is made to take action, the mandate-holder consults the OHCHR and UN desk officers within the field office as well as the country mandate-holder (if applicable) before drafting a communication. Joint communications between country and thematic mandate-holders are encouraged.¹⁰

⁷ For example, the procedures for sending communications of the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances has several specificities which are reflected in their methods of work. See OHCHR Fact Sheet No. 26, Annex IV and E/CN.4/2002/79, Annex I available at URL: <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

⁸ Above n 1 [42].

⁹ Ibid, [38]-[39].

¹⁰ Ibid, [32].

The source of the information contained in a communication is normally kept confidential until the point at which it is published in the report of the mandate-holder. In light of information received in response from the government concerned, or of further information from other sources, the mandate-holder will determine how best to proceed. This might include the initiation of further inquiries, the elaboration of recommendations or observations to be published in the activities report of the mandate-holder, or other appropriate steps designed to achieve the objectives of the mandate.¹¹

Urgent appeals

Urgent appeals are used to communicate information in cases where the alleged (actual or imminent) violations are time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims that cannot be addressed in a timely manner by the procedure under letters of allegation.

Urgent appeals generally follow a standard format consisting of four parts:

1. A reference to the resolution creating the mandate(s) concerned;
2. A summary of the available facts, and where applicable an indication of previous action taken on the same case;
3. An indication of the specific concerns of the mandate-holder(s) in light of the provisions of relevant international instruments and case law; and
4. A request to the government to provide information on the substance of the allegations and to take urgent measures to prevent or stop the alleged violations.

The content of the questions or requests addressed to a government will vary significantly according to the situation in each case. Governments are generally requested to provide a substantive response within 30 days. In appropriate cases mandate-holders may decide to make urgent appeals public by issuing press releases.¹²

Letters of allegation

Letters of allegation are used to communicate information about violations that are alleged to have already occurred and in situations where urgent appeals do not apply.

Letters of allegation generally follow a standard format consisting of four parts:

1. A reference to the resolution creating the mandate(s) concerned;
2. A summary of the available facts, and where applicable an indication of previous action taken on the same case;
3. An indication of the specific concerns of the mandate-holder(s) in light of the provisions of relevant international instruments and case law; and
4. A request to the Government to provide information on:
 - a) the substance of the allegations;
 - b) measures taken to investigate and punish alleged perpetrators;
 - c) compensation, protection, or assistance provided to the alleged victims;
 - d) legislative, administrative and other steps taken to avoid the recurrence of such violations in the future; and
 - e) other relevant information.

The content of the specific questions or requests addressed to a government may vary considerably according to the substance of the allegations. Governments are usually requested to provide a substantive response to communication letters within two months. Some mandate-holders forward the substance of the replies received to the source of the allegation for comments.

¹¹ Ibid, [36].

¹² Ibid, [45].

Public and press statements

In appropriate situations, including those of grave concern or in which a government has repeatedly failed to provide a substantive response to communications, a mandate-holder may issue a press statement, other public statement or hold a press conference, either individually or jointly with other mandate-holders.

In general, mandate holders usually engage in a dialogue with a government through the communications procedure before resorting to a press release or other public statement. When a mandate holder sends a communication with the intention of issuing a press release shortly thereafter, such intention may be indicated to the government concerned in the communication.

Status of communications

The main purpose of communications is to establish greater clarity in respect to a particular situation and therefore they do not have any legal or judicial authority. Their purpose is also not one of accusation and so does not imply a type of value judgement.¹³ They will nevertheless often involve a clear evaluation by an independent expert of the Human Rights Council of the application of international law and standards to a particular situation and may therefore subsequently form the basis for political pressure by other States.

Country Visits

Country visits allow for direct observation of the human rights situation in a particular country and facilitate an intensive dialogue between the mandate-holder and all relevant State authorities, including those in the executive, legislative and judicial branches, as well as with civil society. Visits enhance awareness of the problems under consideration through meetings, briefings, press coverage of the visit and dissemination of a written report on the country mission. They also allow for contact with and information gathering from victims, relatives of victims, witnesses, national human rights institutions, international and local NGOs and other members of civil society, the academic community, and officials of international agencies present in the country concerned.

Country visits generally last between one and two weeks and occur at the invitation of the State. Country visits are expected to be facilitated in the situation where a country has issued a 'standing invitation' to the thematic mandates of the Special Procedures.

Situations that might lead to a request for a country visit include the availability of reliable information regarding human rights violations, developments at the national level, or a wish to pursue a thematic interest, including for the identification of best practice. The decision to undertake the visit may depend on the expected impact of the visit, the willingness of the State to cooperate and the likelihood of any follow-up on recommendations made.

The process

- An invitation is either sent by the State on their own initiative or it comes in response to a request for a country visit by the mandate-holder, the General Assembly, the Human Rights Council or the High Commissioner for Human Rights. Such a request must be accepted by the State.
- Some States issue a "standing invitation" to all thematic Special Procedures so that all visits will be automatically accepted.
- Preparation for a country visit is carried out by the mandate-holder in close consultation with the concerned Permanent Mission in Geneva, the OHCHR and other relevant UN entities.
- The OHCHR prepares a "country profile" for the mandate-holder which contains a briefing on the overall situation in the country.
- In consultation with the receiving State, the mandate-holder sets the agenda for the mission and negotiates the necessary meetings with government officials.

¹³ Ibid, [30].

- Meetings with civil society are organised through the United Nations Country Team, OHCHR field presence and NGOs.
- When arriving in the country, the mandate-holder will first meet with the government and brief them on the purpose of the visit.
- At the end of the visit, the mandate-holder will share his or her preliminary findings and recommendations with the government.
- A press conference is also usually held at the end of the visit to share the preliminary findings.
- Following the visit, a mission report is prepared and the draft sent to the government to correct any inaccuracies. Comments of the government are usually annexed to the final report.

Other activities

Thematic studies

Mandate-holders usually produce thematic reports on topics of relevance to the mandate. Such studies may be administered through questionnaires and requests for information sent to governments, UN agencies, NGOs, treaty bodies, regional organisations and other experts.

Dissemination

All mandate-holders have a webpage on the OHCHR website that provides information about the mandate and provides links to all relevant reports and documents. Four times a year, the OHCHR publishes the "Special Procedures Bulletin" to provide a general overview of the main activities of Special Procedures.

Reporting on activities

Mandate-holders regularly report on their activities to the Human Rights Council and General Assembly, normally once each year to each body. The presentation of their report is usually done through an interactive dialogue, giving States the opportunity to respond to the contents of the reports and pose questions.

Follow-up

Follow-up to the work of Special Procedures includes the full range of "measures taken to encourage, facilitate and monitor the implementation of recommendations by any of the Special Procedures".¹⁴ The precise approach adopted varies from one mandate to another.¹⁵

Follow-up to communications usually takes the form of:

- Reporting to the Human Right Council¹⁶;
- Analysis of general trends, including the documentation of positive developments; and
- Maintaining a systematic and constructive dialogue with the government concerned.

Follow-up to country visits usually takes the form of:

- Formulating recommendations in ways that facilitate implementation and monitoring;
- Undertaking follow-up initiatives through communications and further visits; and
- Cooperating with relevant partners.

Follow-up to thematic studies usually takes the form of:

- Wide dissemination of reports in a variety of formats; and
- Providing human rights input into the formulation of legislative, policy and other initiatives in the relevant fields.

¹⁴ Report of the 12th Annual Meeting of Special Procedures , UN Doc E/CN.4/2006/4, [85].

¹⁵ Examples of well-developed follow-up arrangements can be found, for example, in the work of the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on torture, and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

¹⁶ Many mandate-holders issue a separate report on communications as an addendum to their main report.

SUPPORT AND COOPERATION PROVIDED TO SPECIAL PROCEDURES

Cooperation by States

It is commonly recognised that States have the primary responsibility for the promotion and protection of human rights. The cooperation of States is therefore essential to the functioning of the Special Procedures system. This entails according Special Procedures full access to all countries, seeking to implement recommendations and responding in a timely manner to communications.¹⁷

Cooperation by States is particularly essential to the follow-up work of the Special Procedures, as implementation is “the true test of the effectiveness of human rights mechanisms”.¹⁸ This cooperation entails: replying to invitations, implementation of recommendations, accepting follow-up missions, providing information on the steps taken, requesting technical assistance where necessary, and creating domestic mechanisms and awareness-raising among government departments and civil society.¹⁹

OHCHR support

The OHCHR provides an essential support role to the work of the Special Procedures through the development of its thematic expertise, its circulation of recommendations throughout the UN system, its coordination of requests for country visits and its compilations of country profiles. Its support to Special Procedures is considered one of the core functions of the OHCHR.²⁰

NGOs

A key role is also played by NGOs in providing mandate-holders with relevant information about human rights situations and alleged violations and ensuring appropriate follow-up to recommendations. NGOs will normally lobby governments for implementation of recommendations, report back to the Special Procedures when this is not progressing, participate in the interactive dialogue with Special Procedures at the Human Rights Council and use the media to raise awareness about the work of the Special Procedures. Mandate-holders usually consult with NGOs before, during and after country visits and information gathered by NGOs is often used by the OHCHR in their country profile documents.

UN agencies

UN agencies also provide an essential means of supporting the work of Special Procedures. For example, the UNHCR offers support through its contribution to the preparation and organisation of country visits, the exchange of information regarding conditions that could possibly lead to *refoulement*, negotiations regarding border access, conditions regarding return, and discussion of the needs of specially vulnerable groups.²¹

¹⁷ Above, n 5 [20].

¹⁸ Comment of the representative of Canada: Ibid. [44].

¹⁹ Ibid.

²⁰ Ibid at [66].

²¹ Ibid at [59].