

Submission to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression:

Access to Information in International Organizations

November 2016

Introduction

The present submission is meant to offer recommendations to the Special Rapporteur in support of his efforts to improve access to information in relation to UN bodies and agencies, thereby increasing the level of transparency of the United Nations vis-à-vis civil society. Ensuring that the work of the UN is public, transparent and easily accessible is fundamental to fruitful cooperation between UN human rights mechanisms and non-governmental organisations (NGOs), national human rights institutions (NHRIs), human rights defenders and other members of civil society. Currently, and despite improvements, access to information remains marred by difficulties.

ISHR, as a Geneva – and New York – based NGO, has focused this submission on the challenges of transparency in the UN human rights system, defined as the human rights mechanisms (the human rights Treaty Bodies, the Human Rights Council and its Special Procedures, and the UPR) and the Office of the High Commissioner for Human Rights (OHCHR). We find that the main challenges regard the lack of proper communication of information by the UN human rights system to the general public, in particular civil society. This can take two general forms:

- 1) Information that should be made available and either is not, or is not presented in an accessible manner; and
- 2) Information that has been requested, but not received, or that cannot be requested either because it is not being collected or because there is no formal Access to Information Request system in place.

A wide range of issues might be raised in connection with either context, such as the insufficient translation of UN documents (lack of translations or poor quality translations);¹ the inaccessible

¹ See 'The Human Rights Council @10' (June 2016, ISHR), pg 17, available at https://www.ishr.ch/sites/default/files/article/files/ishr_hr_monitor_eng_web2.pdf.

nature of the website of the OHCHR; difficulties in accessing documents from sessions of the Human Rights Council (for example, copies of each statement made by States and/or non-governmental observers);² a lack of publicly available, easily accessible information on elections of Human Rights Council Members;³ the need for clearer criteria against which applications for accreditation are considered by the ECOSOC Committee on NGOs;⁴ or the lack of transparency regarding the election of Treaty Body Members.⁵ We urge the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to examine the sources referred in relation to these issues.

In the interests of brevity, this document concentrates on three areas where ISHR has significant experience in cooperating with the UN human rights mechanisms, namely the Special Procedures,⁶ the treaty bodies and reprisals.⁷ When putting forward our recommendations, we wish to emphasise that we fully acknowledge the serious resource constraints under which OHCHR operates and the need to better and more sustainably fund the office.

Special Procedures

ISHR believes that many practical steps could be taken to improve the level of transparency of Special Procedures.

The greatest obstacle is the **lack of responsiveness** to individuals and organisations who submit material to the Special Procedure regarding actual or potential human rights violations. These submissions inform mandate-holders, who may then choose to send Communications to States or make a public statement on the particular situation.

² *Ibid*, pg 60.

³ See Bennett, Richard, 'A vote of confidence: Enhancing the Human Rights Council elections', in *Ibid*, pg 41.

⁴ See 'Success for two NGOs at ECOSOC but systemic reform still urgently needed' (27 July 2016), available at <http://www.ishr.ch/news/success-two-ngos-ecosoc-systemic-reform-still-urgently-needed>, and '230 NGOs call for defence of freedom of association at the UN' (25 May 2016), available at <http://www.ishr.ch/news/230-ngos-call-defence-freedom-association-un>.

⁵ See attempts by civil society to strengthen the election process: <http://www.untbelections.org/>.

⁶ More detailed information regarding Special Procedures can be found on ISHR and its partners' recommendations in 'The Special Procedures: Strengthening the Mechanism and Working Methods – A joint civil society submission to the 23rd annual meeting of Special Procedures of the UN Human Rights Council' (May 2016), available at: http://www.ishr.ch/sites/default/files/article/files/joint_ngo_submission_annual_meeting_special_procedures.pdf.

⁷ More detailed information regarding Special Procedures can be found on ISHR's recommendations in 'Ending reprisals against those who cooperate with the United Nations in the field of human rights – Submission to the UN Secretary-General on recent developments, cases, and recommendations' (May 2016), available at: https://www.ishr.ch/sites/default/files/documents/05-29-2016-ishr_submission_to_2016_sg_report.pdf.

- The recently-created online questionnaire should be further developed to include a systematic means of informing victims, human rights defenders and civil society of the status at all key points in the process of Communications, and especially when actions are taken related to information submitted.
- In addition, we recommend that the Special Procedures initiate a procedure to systematically follow-up on particular situations brought to their attention, for example by designing a set of follow-up questions addressed to the individuals and organisations who submitted information on the situation. The current practice allows for a mandate-holder to directly contact authors of submissions, but follow-up should be regularised and mainstreamed across the system, including through the leadership by the Coordination Committee.

On issues of **data collection**, ISHR finds that the Communications reports are not user friendly and fall short on accountability. The lack of publicly accessible and disaggregated data is particularly worrisome, as is the organisation system, which is organised by date instead than by country and mandate holders.

- Categorising Communications according to country and mandate holder would greatly assist civil society from a specific country or working on particular thematic areas in getting a comprehensive overview of relevant Communications. Providing civil society stakeholders and the public with clearer, easier access to information on Communications could also have a significant impact on, at minimum, the quality of State responses to communications, if not also the quantity.
- Similarly, information related to situations that have been the subject of Communications collected by actors in OHCHR and across the UN system should be regularly and transparently shared with the Special Procedures and made public, whenever possible.
- OHCHR should also consider the recommendation contained in a State joint statement at the 29th Human Rights Council, encouraging the OHCHR to establish and maintain a publicly accessible and regularly updated database of human rights defenders in detention and others detained for exercising their freedom of expression, and requesting that these cases be regularly brought to the Council's attention for its consideration and engagement.⁸ This would bring much needed visibility and transparency to the cases and facilitate monitoring and follow-up by other actors.

⁸ Joint statement on arbitrary detention of human rights defenders, lead by Norway with a cross-regional group of 65 co-sponsors, at the 29th Session of the Human Rights Council, available at: <http://www.norway-geneva.org/Humanrights/Statements/Statements-delivered-by-Norway-during-the-29th-session-of-the-Human-Rights-Council/Item-2-Annual-report-of-the-HC-and-reports-of-the-OHCHR-and-SG/Joint-statement-on-arbitrary-detention-of-human-rights-defenders/#.WDcIaLlrJpg>.

ISHR also advises that Special Procedures improve their communications and outreach in connection with **country visits**. We recommend that:

- Special Procedures improve the manner of dissemination of the announcement of country visits to civil society – particularly in the country concerned – in order to ensure full and meaningful participation by the widest range of civil society representatives possible. Giving notice of visits sufficiently far in advance, and increasing the dissemination – globally and in the country concerned – of information regarding the visits (for example, by systematically reaching out to partners in international NGOs, by announcing visits on social media, etc) is a key aspect of increasing the engagement and participation of organisations that are able to provide invaluable information to Special Procedures during their visits.
- With regards to the country visit database, it is recommended that the Special Procedures standardise and improve the quality of reporting on country visits in the annual reports of the mandate holders. All Special Procedures mandate-holders should make public in their annual report the following categories of information:
 - The total number of invitations for country visit requests made;
 - The identification of all countries who were extended invitations for country visits;
 - Outcomes of each response received to country visit requests including, where possible, the intended broad timeframes of when the visit is set down to be conducted;
 - Which countries did not respond to country visit requests made in the reporting cycle.
 - Which countries have continued to not respond to a request made during the previous reporting period that remains outstanding.

This is a small but significant change that would provide greater overall visibility of country visit data to all key human rights stakeholders within the UN system. This information, in turn, would allow for stakeholders at all levels to reward response, and seek to prevent or disincentivise non-response, and so improve the overall understanding of cooperation with the Human Rights Council and its mechanisms. Some mandate-holders provide these details clearly, but it should be the rule, not the exception.

- Mandate holders should present reports on missions at the Human Rights Council session immediately following the visit, in order to ensure that civil society in the particular country is able to encourage implementation of the Special Procedures' recommendations as soon as possible. Currently, country visit reports are often presented many months after the visit took place, which prevents timely publication and discussion of the recommendations made and

hinders the ability of civil society in each country to make effective use of them, particularly as the situation on the ground may have changed significantly in the meantime.⁹

- Statements by State delegations in the context of interactive dialogues with mandate-holders should without exception be posted to the HRC Extranet. These are important tools for transparency and accountability, enabling communities of defenders at the country level to know (and follow up on) what governments are saying in the Human Rights Council and with regard to specific thematic or country issues. The current pilot practice of self-initiated uploads by State delegations – as opposed to the historic practice of collection and upload of statements by the Secretariat – has resulted in a significant decrease (up to 50% in some cases) of available statements from 2015 to 2016.¹⁰

Another significant concern to ISHR in the context of Special Procedures, as well as civil society cooperation with the UN and its mechanisms more broadly, is **information security**. Security risks must be addressed, as the consequences can be extremely grave for civil society representatives that communicate with Special Procedures. If communications and information storage within UN bodies and agencies are not secure, illegal hacking may occur and compromise the user's data. This is particularly problematic for human rights defenders, as they may become victims of reprisals as a result of the exposure of their activities. The requests of civil society stakeholders for secure, accessible means of submitting communications – communicated through OHCHR's consultation process and at the 23rd Annual Meeting of Special Procedures – are not yet fully realised.¹¹

- We recommend that enhanced security measures be adopted, at a minimum at the request of those submitting information to Special Procedures.

Treaty Bodies

A substantial amount of treaty body proceedings are either particularly difficult to access, or not available. For instance, treaty bodies do not systematically publish their **decisions** on individual complaints publically. Although this used to be the case for at least some treaty bodies, such as the

⁹ For instance, the report of the December 2014 mission of the Special Rapporteur on human rights defenders to Burundi was presented in March 2016, more than one year after the fact, and after a serious deterioration in the situation.

¹⁰ For example, 10 statements on hazardous wastes were available on the extranet in September 2016, compared to 20 the year before. For the interactive dialogue with the COI on Syria, the number of statements available dropped from 52 to 26 over the same period.

¹¹ More detailed information regarding civil society stakeholder recommendations for the online questionnaire can be found in 'The Special Procedures: Strengthening the Mechanism and Working Methods – A joint civil society submission to the 23rd annual meeting of Special Procedures of the UN Human Rights Council' (May 2016), available at: http://www.ishr.ch/sites/default/files/article/files/joint_ngo_submission_annual_meeting_special_procedures.pdf.

Human Rights Committee, it is not anymore. Likewise, the ‘**grades**’ on implementation of Concluding Observations and Views (on individual complaints) are not systematically published as stand-alone items or shared with a large audience.

- We recommend that treaty bodies should strive to disseminate their proceedings to as large an audience as relevant to their work, including through webcasting of meetings.
- Without precluding the specific requirements of confidentiality in situations where the security of individuals is concerned, treaty bodies should aim to make relevant information on individual complaints systematically public, notably by:
 - Publicising complaints as soon as they are submitted to treaty bodies (with agreement from the petitioner)
 - Making the list of all cases pending consideration public (which some Committees such as CESCR have recently done, and which the Human Rights Committee has expressed commitment to)
 - Publicising views on individual complaints as soon as they are adopted, both on the relevant treaty body website and through public statements
- For both concluding observations and views, treaty bodies should publicise, notably through public press statements, information on follow up and implementation by States parties, including ‘grades’ given by treaty bodies, where relevant
- All treaty bodies should make sure that the list of countries to be reviewed as part of the follow up procedure to concluding observations is made public in a timely manner, along with a request for inputs by non-state actors to follow up reviews are issued

Reprisals

Reprisals endanger the work of human rights defenders and civil society at large. It is important to put in place **specific procedures** regarding action to be taken in case of allegations of intimidation or reprisals. It is of paramount importance that the UN voice its concern over allegations and acts of reprisals transparently and publicly while actively following up on them. We welcome progress made in this direction, in particular the high level appointment of Assistant Secretary-General Mr. Andrew Gilmour to tackle reprisals. We also set out further steps that UN mechanisms should consider taking to ensure that the response to reprisals is strong and effective.

High level appointment of Assistant Secretary-General to tackle reprisals

We welcome the high level appointment of Assistant Secretary-General Mr. Andrew Gilmour (the ASG) to tackle reprisals. We call on the ASG to ensure that reprisals are addressed in a transparent, coordinated, systematic and effective manner. We urge the ASG in particular to:

- Develop a public policy or working methods and ensure that the position is visible and accessible.
- Ensure that those communicating with the ASG are kept regularly apprised of the status of their case.
- Compile and maintain a publicly accessible database of cases and correspondence (with the consent of rights holders and victims), bringing greater visibility to cases and enabling follow up by NGOs and States.
- Ensure that the annual Secretary-General's report on reprisals includes all open or unresolved cases, including those in relation to which the State has not responded or provided any follow up information.

Special Procedures

Resolution 24/24, adopted in September 2013, calls on Special Procedures to give an 'account of action' they have taken in relation to allegations of reprisals brought before them. We welcome the adoption by the Special Procedures of a standard operating procedure outlining steps to be taken to enhance the response when faced with cases of intimidation and reprisals. We encourage the Special Procedures to:

- Develop a procedure for full and prompt investigations that takes into consideration the victim's protection needs and the respective roles of different parts of the UN.
- Systematically issue public statements that express concern and condemn cases of intimidation or reprisals, as publicly condemnation is critical to raising the political price of reprisals for States that would not otherwise be exposed. We welcome all such public statements that have been made to date.
- Maintain a comprehensive record of all cases of intimidation and reprisals against individuals and groups cooperating with Special Procedures. This recently created record is welcomed, and going forward, it is key that it record be updated regularly and made publicly accessible.

Human Rights Council

As has been frequently highlighted,¹² it is not uncommon that some States intimidate, harass or commit reprisals against human rights defenders in order to hinder their cooperation with the Human Rights Council. Immediate, unequivocal action is required of the Council to condemn these activities, particularly:

- The President of the Human Rights Council has a responsibility to investigate and publicly denounce specific instances of such acts, in order to preserve the integrity of its processes.
- When appropriate, the President and the Bureau should publicly identify and denounce specific instances of reprisals by issuing formal statements, conducting press-briefings, corresponding directly with the State concerned, and publicly releasing such correspondence with and from States.
- For all past and future cases brought to their attention, the President should publish a list of the allegations made, and the steps taken to address them, including an assessment of whether or not a state response was satisfactory.

Treaty Bodies

While welcoming progress within Treaty Bodies to systemise their response to reprisals against persons who cooperate with them, information about steps that have been taken remain relatively unpublicised. ISHR recommends:

- The creation of an accessible public webpage on reprisals that includes the contact details of the individual member of the Treaty Body responsible for it.
- Information regarding cases received, communications sent to States concerned, responses received and follow-up communications should also be made public, while seeking to protect the confidentiality of victims when required.

¹² See 'Step up UN response to reprisals' (19 September 2016) available at <http://www.ishr.ch/news/secretary-general-step-un-response-reprisals>. See also e.g. 'Bahrain: End reprisals against human rights defenders and lift travel bans to Geneva' (16 June 2016), available at <http://www.ishr.ch/news/bahrain-end-reprisals-against-human-rights-defenders-and-lift-travel-bans-geneva>.