

The United Nations Special Procedures System  
Expert Workshop

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**The operationalization of the Special Procedures – a view from a Working Group**

Olivier de Frouville  
Member and former Chair-Rapporteur of the Working Group on Enforced or Involuntary  
Disappearances

There are in fact two series of precise questions that are put to us. The first series relates to the way we work as a working group, especially in comparison with an individual mandate. The second series has more to do with the position and interaction of special procedures with the UN system for the protection of human rights.

I will try to deal with those two sets of issues. In 15 minutes, of course, I can only raise a few points and ideas, without elaborating further, but I will try to be as explicit as I can and I stand ready to answer your questions.

*a) What are the primary roles and functions of mandate holders and how do these relate to the dual mandates of protecting and promoting human rights? What are the main obstacles to those roles and functions being carried out?*

I think the two words “promotion” and “protection” really mean something. They are not only empty words of a bureaucratic or institutionalized language.

First we are tasked to *protect*. Remember that the WGEID has developed in the beginning of the 80s the procedure of urgent appeal: the procedure was implemented by the WGEID and it is clear from its report that it saw it as taking the first steps towards a kind of “international habeas corpus”.

So our first task is to be an EYE: to make the governments understand that they are being watched by the United Nations. That whenever their criminal officials are disappearing somebody, we are there and we will expose them publicly. I think we have made huge

progress in this field. We now have a tight monitoring net and it's becoming very hard for a State to blatantly violate human rights without the international community taking notice of it. The world is definitely more transparent than it used to be and it is more difficult for torturers to hide their deeds.

As far as the WGEID is concerned, our task of protection is not limited to urgent actions. As you know, we have a database, with more than 43 000 cases. Some of those cases have been transmitted in the first years of the WGEID. Some of those cases date back to 30, 60, sometimes 70 years ago...

Each individual present in the database is for us a unique person, with a name, a date of birth, a particular story... Each year, we ask the governments concerned to take the necessary steps in order to clarify the fate or the whereabouts of disappeared person. I call this database an "international registry" of the disappeared persons – although it is far from reflecting the reality of the phenomenon because of underreporting. Whatever happens at the national level, these names are kept safely in our database, safe from oblivion. So we are protecting those disappeared from the effect of time and politics.

*Protecting* also means protecting those who are searching for the truth, those who are fighting against enforced disappearances: the families of the disappeared, the human rights defenders and the NGOs, the journalists... all of them who are threatened, intimidated and victims of reprisals. And it is not only about sending urgent appeals in their favor, it is about meeting with them, communicating with them on a regular basis, it is about how to behave with victims, how to create a "welcoming atmosphere" for victims when we meet with them. And not appear as "judges" or as a cold administrative body with no sympathy for the cause and for the suffering of the peoples we are meeting with.

Now what are the *obstacles* in this task of protection. There are multiple obstacles. Of course, we can always say we don't have sufficient means, which is true, but this is a general limitation and I would rather think about what we can do to improve our work in the present situation. I would mention only two points:

In terms of intervening urgently, we for sure have made huge progresses, as I said, but there is still room for improvements. We sometimes intervene in less than 24 hours, but it sometimes can take longer, especially when we do joint communications. We could be much

more efficient by using new technologies, including the social media, and if we had contact points in countries, be it the UN presences or the national human rights institutions.

In terms of protecting our sources, the families, the human rights defenders, we are far behind what we could do. In the human rights field, there is no culture of investigating crimes and protecting victims and witnesses. We don't have victim and witnesses protection plans, be it on the field or in Geneva. I am hopeful that a focal point would be set up in the UN that could impulse the necessary reforms so as to protect but also provide the necessary assistance to victims and other sources of information.

What about promotion? This is a huge part of our work.

*First* we promote the development of international law. A number of mandates have been key in identifying legal concepts and regimes, in making a progressive interpretation of existing standards and in developing new standards. The drafting of the 1992 Declaration on disappearances, for instance, is partly the result of the work done during more than 10 years by the WGEID. And now the WGEID continues to develop the standards through its general comments and its thematic studies.

*Second* we promote the implementation of norms and we do that at a different level, and with different methods than the treaty bodies. Our work is far less formal than the treaty bodies, it is more on the diplomatic side. For me, the goal of a special procedure should be to build processes with States. It starts with bilateral contacts with the mission in Geneva. It continues with a meeting with a delegation coming from the capital. It can go on with a visit on the spot, which results in the formulation of conclusions and recommendations. And the cooperation goes on with a process of follow-up on the implementation of the recommendations. Building such a cooperation is essential if we want to achieve results.

Now what are the *obstacles* to promotion? Well I don't see any in terms of promotion of norms, as long as the States don't give us too many instructions, but they rarely do. In terms of promotion of the implementation of norms, again only two short points:

- First what I have just said is the ideal process but it rarely happens, I would say mainly because we lack time and means to focus on the situation of one country. We can do it with a few countries, but not with tens of them as we should.

- Second, we don't have a proper conception of a follow-up procedure, and this is not a problem of one special procedure in particular, this is of problem that concerns the "system" as a whole...

*b) How do Working Groups differ from single expert mandates, and to what extent does having a Working Group with a related mandate enable or hinder mandate holders in terms of fulfilling their duties?*

Working groups do differ greatly from single experts mandate.

- First, it is a truism but as we are five, we have to deliberate in order to take decisions, whereas the single expert mandate deliberates with himself or herself! On this, I cannot but insist on the major importance of adopting of procedure based on consensus and on the need to enforce mutual respect among the members of the working group, whatever their personal feelings. In my opinion, the role of the Chair-Rapporteur is mainly related to this: building consensus among members, facilitating the adoption of decisions, ensuring that there is mutual respect among members and also between the members and the secretariat.

- Second, does a working group hinder or on the opposite enable the mandate? I would say it relates to my first point: a well-chaired working group, working in harmony and consensus, is a great strength to the mandate. Not only you have five persons instead of one to do the work, but you can take the advantage of the plurality of views, approaches, cultures, and competence. It is especially useful when you deal with countries from all continents: it is clear that some experts have more knowledge when it comes to a particular region or a group of countries than others. And this greatly facilitates the contacts and cooperation. On the contrary, a ill-chaired working group can become hell. When a Working Group comes down to a collection of oversized egos, who do not want to make any effort to listen to the point of view of others, it can rapidly become impossible to work out.

*c) Despite their role as independent experts, should mandate holders be directed as to their roles and functions? Does streamlining the system impact on mandate holders' independence and ability to carry out their functions?*

My response to that is twofold. First it is of major importance to preserve the capacity of *innovation* of special procedures. Creative thinking has been key to the success of special procedures from the very beginning. Thematic special procedures are generally given a broad and not very well defined mandate, so it keeps the mandate holders free to define and frame their own topic of research. And most importantly, *no rules* of procedures are imposed on them, so they have remained free to develop what we call “methods of work”. This has been and is still the key to procedural innovation and to avoid the bureaucratization of special procedures. If we keep control on our methods of work, we remain alive. If we lose that control, we die.

*Second*, preserving this power of innovation does not mean that we have to work in an uncoordinated way, as we continue to do right now. Coordination between us, and coordination with other parts of the system does not mean that we are going to lose our creativeness or our independence. As far as independence is concerned, we need to preserve our independence towards states and other stakeholders, so that we remain perceived as “third parties”. But saying that we are independent does not mean that we are a world by ourselves and that we can remain isolated and ignorant of what goes on around us!

And this opens the way to dealing with the next and final question:

*d) What are the key challenges in terms of the system’s relationship with other parts of the UN Human Rights Machinery, particularly the OHCHR, the Human Rights Council, and the treaty-monitoring bodies?*

We have been doing great progresses in terms of coordination, since the first annual meeting of special procedures took place in 1993. But the system has grown wildly as you know, and new challenges appeared in the practices of states: so the progresses that we have made were not sufficient to respond to the challenges. The coordination committee is certainly now a key institution to improve coordination among special procedures. But in order to fulfil its role, it should be composed of mandate holders who are dedicated to the “system” as a whole. It should also have more authority than it has currently, but this means finding the right processes and procedures so as to improve its legitimacy that would ground this authority; that is what we have started to do with the procedure the Coordination Committee adopted in 2013 with regard to joint statements. The CC should from now on be

in charge of moving forward issues which are of common concern for all mandate holders, along with a plan agreed every year during the annual meetings.

Finally, I would say two things about the relationship with the OHCHR and with the HRC and I would leave the treaty bodies aside, because of lack of time:

- The relationship with the Office of the High Commissioner has never been easy and we are far from having found the right balance. This is mainly due to the fact that the OHCHR has a double and in some way contradictory nature: it is the secretariat of the UN in the field of human rights, tasked with supporting, among others, mandate holders; it is also the office of an independent personality, with her or his own agenda, tactics and politics. This creates on going structural problems in the relationship. I am of the opinion that these problems can be solved if we agree on proper procedures and processes in order to define our respective roles and the modalities of our cooperation. I am confident that Mr Al Hussein will understand the need to launch a process of consultation with special procedures on these issues in order to come up with concrete solutions to concrete issues.

- Problems in the relation with the HRC have been identified for a long time, but I must say not only it has not improved, but it is rather getting worse for several reasons. The main problem is that the HRC may listen to what the special procedures are saying, but there is no way to ensure that it will draw any consequence from what it has heard. Special procedures and the HRC do not form a "system" if you mean by that that there is a kind of functional link between them. An efficient system would require a more systematic follow up by the Council of the recommendations made by the special procedures, so that the Council would fulfil a kind of executive function in relation to the decisions and recommendations of special procedures. This could have been done through the UPR, but it is not the case and this is why I have always thought that the UPR was ill-conceived and could not lead to satisfactory results in terms of protection and promotion.

Let me just say in conclusion that I am very thankful to the organizers of this meeting, I think it's very useful and timely and that academics but also civil society organisations should follow your example (and the one of the Universal Rights Group) and get more interested in the future of special procedures, because I still think that they play a key role in safeguarding human rights at the global level.