Human Rights Law Centre

The University of Nottingham

UNITED KINGDOM · CHINA · MALAYSIA

Expert Workshop on the United Nations Special Procedures System
Executive Summary

I   THE WORKSHOP

1   From 6 to 7 November 2014, the Human Rights Law Centre at the University of Nottingham hosted an Expert Workshop on 'The United Nations Special Procedures System'. The invitation-only workshop was convened by Professor Aoife Nolan, Professor Thérèse Murphy (Joint Heads of the Economic and Social Rights Unit) and Dr Rosa Freedman of the University of Birmingham Law School. The workshop was attended by 21 experts on Special Procedures (SP), including current and former special rapporteurs, representatives from the Office of the High Commissioner for Human Rights (OHCHR), members of United Nations (UN) treaty bodies, academics and members of civil society.

2   The aim of the Expert Workshop was to encourage participants to explore some of the strengths and weaknesses in the SP system and to consider proposals for reform. It is a crucial time for the development of the SP system, which is facing challenges both externally from States and internally from within the UN system. As the profile and effectiveness of SP has grown, the attention given to SP by States has also increased, but not always in a positive way.

3   There is a full Report on the detailed discussions at the Workshop, which is confidential to those attending the Expert Workshop. The three Workshop convenors are, however, co-ordinating a collection of essays that builds on the event.

4   During the Expert Workshop, discussion centred on the key challenges and proposals to address these. Thirteen challenges were explored in detail, and a range of proposals were made.

II   BACKGROUND

5   The Workshop heard that SP were not part of the original architecture of the UN human rights system. The first SP, the *ad hoc* working group of experts on South Africa and a Special Rapporteur on Apartheid, were established in 1967 following

pressure from a group of Asian, African and Caribbean States on the UN to respond to widespread human rights violations in a number of States, including South Africa. The SP system evolved as a consequence of UN Economic and Social Council (ECOSOC) Resolution 1235 (XLII) (UN Doc E/4393 (1967), which was ECOSOC's response to the situation in South Africa, South West Africa and Southern Rhodesia. Today, the role of SP has developed to include reporting and advising on human rights, receiving individual communications (the means by which victims and witnesses can report human rights violations), country visits and producing guidelines and handbooks on the implementation of human rights.

6   Each SP has a single mandate holder (MH), sometimes known as a Special Rapporteur or Independent Expert, or a Working Group (who are also mandate holders). Each MH is an independent human rights expert with either a thematic or a country mandate. Currently there are 53 SP; 39 thematic and 14 country mandates. For further information on SP: see http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

7   Country visits are an opportunity for SP to provide direct support to victims and to human rights defenders and to raise and discuss human rights concerns at the highest level of government. Country visits by a MH allow principles to be translated into practice, give voice to the victims of human rights abuses, verify facts, provide reports to the HRC and shape recommendations for appropriate remedial policies that can be adopted.

8   A Code of Conduct (Code) (http://www.ohchr.org/Documents/HRBodies/SP/CodeofConduct_EN.pdf) for MH, designed to regulate the work of SP, was adopted in 2007 by the Human Rights Council (HRC) in Resolution 5/2. The Code is reflective of different factors such as the practice of MH, States' concerns and political concerns. Initially the Code was controversial: some SP suggested that there should be a corresponding set of State duties regulated in similar fashion. Subsequently however, the Code has proved not to have curtailed the work of the SP and it has become a useful defence mechanism for SP.

9   A Coordination Committee for SP was created in 2005, with the support of the OHCHR, to act as a bridge between the UN and civil society and to strengthen the SP system. It has six members and has become an important forum for sharing experience, information, good practice, identifying issues of concern to groups of mandates, dealing with urgent appeals and facilitating joint actions, joint statements and (if required) joint visits.

III CHALLENGES

10 There has been a lack of planning and strategy surrounding the creation of SP. Concern was expressed that the proliferation of new mandates, particularly thematic ones, potentially undermines the impact and effectiveness of SP.

11 In relation to the development of new mandates, some of these are a result of States wishing to show commitment to human rights during, for example, the Universal Periodic Review (UPR). Some participants considered that any new initiatives or new mandates should be seen as a complement to the existing UN human rights protection framework, as this indicates that States are willing to engage with the system.

12 A minimum standard of financial support is necessary for each SP to function and the OHCHR is seeking to ensure that funding is constant and consistent for all mandates. MH are able to seek other sources of financial support outside of the UN, but external funding for SP should be independent and transparent.

13 The selection and recruitment of MH is a key issue of concern from a civil society perspective. Recruitment is how the HRC approach potential candidates to try to ensure sufficient gender and geographic representation in terms of who applies, whereas selection is when the HRC draws up lists, interviews and then selects the MH. There is a worry among non-governmental organisations (NGOs) about the increasing politicisation of the selection of MH, especially with regard to ensuring geographical balance.

14 A number of workshop participants observed that a key characteristic of SP is their flexibility, but the independence of MH has to be circumscribed by the terms of the SP mandate; the MH should not go beyond it, otherwise the MH risks undermining the credibility of the SP. MH also need discipline within a framework of rules that will not undermine the SP system.

15 The adoption of the Code of Conduct in 2007 did not end the debate on SP working practices and how to regulate the relationship between the HRC and SP. Additionally, it was noted that the accountability and responsibility of States was not addressed in the Code, except in the preamble. Criticism of SP by States continues and the underlying tension and political disagreement between States and SP over working practices remains unresolved.

16 The working practices of MH can create problems affecting the operationalisation of SP and the willingness of a State to engage with SP. Differences in working

practices are generally attributable to the personality of MH, rather than the differing nature of the mandates.

17 MH have experienced difficulties in their interaction with some UN agencies. Some MH at the workshop had experienced a lack of support with certain UN bodies. It was observed that it was up to the specific MH to build links with the various UN bodies. It was also observed that the HRC does not always take the views of MH into account and does not always perceive SP as an important part of the UN human rights system.

18 The limited interaction between SP and treaty bodies may make the exchange of information between them difficult and may lead to fragmentation. MH no longer formally meet with the Chairs of treaty bodies and no other opportunity has been created to allow such interaction between treaty bodies and SP.

19 The lack of State cooperation is a significant problem for SP. States cannot be forced to accept a visit; MH must be invited by the State. One issue highlighted is the lack of a platform within the HRC to embarrass States who are not cooperating with SP.

20 Sometimes there are also competing demands between the mandates, which do not help the reputation of SP with States. However, States may also invite SP who are less likely to challenge them, while not allowing SP working on human rights issues that are of greater concern in that country to visit. Some States also tend to try and micromanage the mandate, specifying what a MH should achieve on their visit.

21   The issue of which country to visit is an important question for thematic SP. There is a need to rationalise, coordinate and enhance the process of country visits and for MH to be more strategic about where they visit. Country rapporteurs only visit the country of their mandate, or, when a visit is not possible, neighbouring states where they can meet refugees or others who can provide information on human rights violations.

22 One of the challenges for MH is to prioritise their work to ensure maximum impact on the ground. The effectiveness of responding to individual communications depends on the strength of the civil society in a State. There are significant problems in dealing with communications where civil society is non-existent or where there are difficulties faced by civil society in corresponding with the MH due to a lack of experience, lack of resources or fear of reprisals. The SP system needs to respond more effectively to victims and ensure that

people are not subject to intimidation and reprisals as a consequence of engaging with MH. SP have the ability to be powerful actors and leaders for change and have an impact on a human rights system, which is often slow to change.

IV PROPOSALS FOR REFORM

23 Over the course of the Workshop a range of proposals was put forward. Those set out below are not exhaustive, but reflect what was discussed at the Workshop. Not all met with unanimous agreement.

24 Workshop participants emphasised the importance of SP building strong working relationships, particularly with the OHCHR, which maintains the credibility of the SP system, fosters the trust of States and supports the work of SP. The OHCHR should also provide MH with links between the OHCHR and NGOs, identify important partners for SP and establish networks with other UN agencies.

25 The relationship between the HRC and SP needs to be improved and strengthened, with a mechanism to support the follow-up of State reports and a platform within the HRC to challenge States which are not cooperating. There was discussion about whether a new resolution needs to be proposed to address these issues.

26 In order to address issues around funding, it was suggested that a central fund should be created to provide funds to SP. However, it was recognised that some States may not wish to contribute to a fund, if the money would be used for SP that they do not support.

27 SP should provide a joint annual report to the HRC and an annual meeting between the Chair of the Coordinating Committee and the Chairs of treaty bodies should be facilitated.

28 Strategies for improving coordination between MH need to be considered and the Coordinating Committee should play a role in prioritising the most important issues for SP.

29 There should be clearer criteria for triggering a mandate and for terminating one. It was suggested that all States should have a country mandate, but as the current system is already perceived to pose challenges in terms of sustainability, this did not receive widespread support.