
*“the advent of a world in which human beings shall enjoy freedom
of speech and belief and freedom from fear and want has been
proclaimed as the highest aspiration of the common people”*

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS—PREAMBLE

INTRODUCTION

Millions of people around the world look to the United Nations to resolve problems that affect their daily lives. They expect the United Nations to work towards the improvement of their standard of living and enhance their enjoyment of fundamental rights and freedoms. The challenge of achieving universal respect for all human rights remains as daunting as ever.

The denial of human rights has been at the root of many conflicts. The change in the nature of conflicts—from international to internal—during the past decade has made the link between peace and security, economic and social affairs, democratization, development, good governance and humanitarian issues more obvious. In order to prevent internal conflicts, greater emphasis should be placed on early warning mechanisms in the human rights area as well as on strengthening national institutional capacities to address human rights concerns.

The United Nations human rights mechanisms contribute to the United Nations early warning system. Since its creation in 1945, the United Nations has worked diligently and systematically to promote and protect human rights. It has enabled the international community to organize its response to human rights violations. Since 1979, special mechanisms have been created by the United Nations to examine specific country situations or themes from a human rights perspective. The United Nations Commission on Human Rights has mandated experts to study particular human rights issues. These experts now constitute what are known as the United Nations human rights mechanisms or mandates, or the system of special procedures. Although the mandate-holders have different titles, such as special rapporteur, special representative or independent expert, each is considered as an “expert on mission” within the meaning of the 1946 Convention on Privileges and Immunities of the United Nations. This is why they are all referred to here as “experts”.

The United Nations special procedures system has been able to bring the intergovernmental debate on human rights closer to the reality on the ground. During recent years, the United Nations human rights experts have brought to the attention of the international community many issues of concern, such as police brutality, summary executions,

the killing of women in the name of honour, the suffering of street children, the persecution of ethnic minorities in many societies, the role of non-State actors in human rights violations, the link between extreme poverty and respect for human rights, and the impact of human rights violations on civil society.

Questions have recently been asked in various quarters regarding the nature and methods of work of the experts. Such interest is a positive signal and can be attributed to the increasing visibility of the work of the experts. This document provides answers to 17 frequently asked questions about the work of these experts. These questions include some on the work of the Commission on Human Rights and its Sub-Commission. They also address such issues as who the experts are and what they do, how are they selected, their legal status and their term of office.

1. *What is the Commission on Human Rights?*

The Commission on Human Rights (hereafter “The Commission”) is a subsidiary body of the Economic and Social Council. The Charter of the United Nations specifies that the Council “shall set up Commissions in the economic and social field and for the promotion of human rights”.¹ In its first meeting in 1946, the Economic and Social Council established two functional commissions, one on human rights and the other on the status of women. It was decided that these commissions would be composed of State representatives. The Commission on Human Rights is now composed of 53 States elected by the Economic and Social Council.²

¹ Article 68 of the Charter of the United Nations.

² The following States are members of the Commission on Human Rights at its fifty-seventh session in March-April 2001: Algeria (until 2003), Argentina (2002), Belgium (2003), Brazil (2002), Burundi (2002), Cameroon (2003), Canada (2003), China (2002), Colombia (2001), Costa Rica (2003), Cuba (2003), Czech Republic (2002), Democratic Republic of the Congo (2003), Djibouti (2003), Ecuador (2002), France (2001), Germany (2002), Guatemala (2003), India (2003), Indonesia (2002), Italy (2002), Japan (2002), Latvia (2001), Liberia (2001), Libyan Arab Jamahiriya (2003), Madagascar (2001), Malaysia (2003), Mauritius (2001), Mexico (2001), Niger (2001), Nigeria (2002), Norway (2001), Pakistan (2001), Peru (2003), Poland (2003), Portugal (2002), Qatar (2001), Republic of Korea (2001), Romania (2001), Russian Federation (2003), Saudi Arabia (2003), Senegal (2003), South Africa (2003), Spain (2002), Swaziland (2002), Syria (2003), Thailand (2003), United Kingdom of Great Britain and Northern Ireland (2003), Uruguay (2003), United States of America (2001), Venezuela (2003), Viet Nam (2003) and Zambia (2002).

Immediately following its creation, the Commission established a subsidiary body that is now known as the Sub-Commission on the Promotion and Protection of Human Rights (hereafter “the Sub-Commission”). The Sub-Commission, which is composed of 26 experts who are elected by the States members of the Commission, has *inter alia* a mandate to undertake studies authorized by the Commission and to make recommendations.

The Commission meets annually for six weeks in Geneva in March-April. The Sub-Commission meets for three weeks in August, also in Geneva. The Office of the High Commissioner for Human Rights acts as secretariat to the Commission and the Sub-Commission.

2. *What does the Commission do?*

Over the years, the work of the Commission has changed substantially. Very early on the Commission focused on elaborating various human rights standards. It drafted the Universal Declaration of Human Rights and the two Covenants, on civil and political rights, and on economic, social and cultural rights. Soon, the main challenge before the Commission came to be how to respond to human rights violations. In 1947, the Economic and Social Council passed a resolution stating that the Commission had “no power to take any action in regard to any complaints concerning human rights”.³

In 1965, however, the Commission was faced with a number of individual petitions from South Africa and came under considerable pressure to deal with them. This forced it to grapple with the elaboration of procedures to deal with issues connected to racism. A taboo was broken in 1967 when the Commission established an ad hoc working group of experts to investigate the situation of human rights in southern Africa.⁴ The demand to act on the situation in southern Africa led to recognition of the need for public debate on specific countries.⁵

³ The Economic and Social Council resolution 75(V) (1947) and decision of the Commission on Human Rights at its first session, in January 1947.

⁴ Resolution 2 (XXIII), document E/259, 1947, para. 22.

⁵ In response to a request by the Commission on Human Rights, the Economic and Social Council adopted resolution 1236 (XLII) in 1967, allowing the examination of cases revealing a consistent pattern of human rights violations. In its resolution 1503 (XLVIII), adopted in 1970, the Council established a procedure to deal confidentially with complaints relating to a consistent pattern of gross violations of human rights.

It took until 1975 before the Commission was able to deal with another situation, however. Following the 1973 coup in Chile against President Allende by General Augusto Pinochet, the Commission established in 1975 an ad hoc working group to inquire into the situation of human rights in Chile. In 1979, this working group was replaced by a special rapporteur and two experts to study the fate of the disappeared in Chile. In 1980, the Commission established the Working Group on Disappearances to deal with the question of enforced disappearances throughout the world. Since then, there has been less reluctance to establish expert mechanisms to deal with human rights challenges in various parts of the world. Such mechanisms were progressively applied in a more innovative manner and adapted to an increasing range of violations.

The Commission solicits the help of human rights experts to assist it in the task of examining specific situations. Over the years, the work of these experts has provided a much needed analysis on how human rights principles are applied in reality. It has formed the basis for an informed and substantive debate at the intergovernmental level. It has given a voice to the often silenced victims and offered a basis for dialogue with Governments on the concrete measures to be taken to enhance protection.

The work of the experts is debated during the annual session of the Commission on Human Rights. About one third of the experts also reports to the United Nations General Assembly in New York. Some experts have informally briefed the United Nations Security Council.

3. What do the mandates currently cover?

Over the years since they were first created, the United Nations human rights mechanisms have been expanded considerably. As of November 2000, 43 men and women are serving as United Nations experts in the field of human rights. They cover 36 mandates on a wide range of issues relating to civil, cultural, economic, political and social rights. All the mandates, except one, were created by the Commission on Human Rights. The General Assembly created the mandate on children in armed conflict.

Since its action on South Africa in 1967, the Commission has established a long tradition of dealing with specific country situations.

Experts are currently in charge of 14 other country mandates.⁶ These country mandates are complemented by the thematic mandates. They cover 22 themes concerning a wide range of civil, political, economic, cultural and social rights. As was stated earlier, the oldest of the existing mandates is that on enforced disappearances, which was established in 1980. Thereafter, the Commission first focused on issues relating to civil and political rights. More recently, attention has been paid to economic, social and cultural rights. In fact, most mandates created since 1995 have been in the area of economic, social and cultural rights.⁷

The mandates are usually entrusted to an individual expert. In some cases, however, because of the nature of the issue under consideration, the Commission establishes a working group of experts. Such working groups are commonly composed of five individuals, one from each of the five United Nations regional groupings: Africa, Asia, Latin America and the Caribbean, Eastern Europe, and the Western group. Two such working groups are currently in operation, one on enforced disappearances and the other on arbitrary detention.

In recent years, several countries have been trying to focus human rights action on issues relating to development. Consequently, the right to development and structural adjustment issues are now receiving additional attention. In each of these cases there is a two-tiered mechanism comprising an independent expert and an intergovernmental working group. These working groups are open to all States, observers and non-governmental organizations.

⁶ They are: Afghanistan (in operation since 1984), Iran (1984), Iraq (1991), the former Yugoslavia (1992), Myanmar (1992), Cambodia (1993), Equatorial Guinea (1993), the Palestinian Occupied Territories (1993), Somalia (1993), Sudan (1993), Democratic Republic of the Congo (1994), Burundi (1995), Haiti (1995) and Rwanda (1997).

⁷ The thematic mandates that are currently in operation are: enforced disappearances (1980), extrajudicial, summary or arbitrary executions (1982), torture (1985), religious intolerance (1986), mercenaries (1987), sale of children, child prostitution and pornography (1990), arbitrary detention (1991), internally-displaced persons (1992), contemporary forms of racism and xenophobia (1993), freedom of opinion and expression (1993), children in armed conflict (1993), the independence of judges and lawyers (1994), violence against women (1994), toxic waste (1995), extreme poverty (1998), the right to development (1998), the right to education (1998), the rights of migrants (1999), the right to adequate housing (2000), the right to food (2000), human rights defenders (2000) and structural adjustment policies and foreign debt (merged in 2000).

4. *Who are the experts?*

The 43 experts are prominent human rights figures from various walks of life. They include current and former holders of high judicial office, academics, lawyers and economists, former and current members of non-governmental organizations, and former senior staff members of the United Nations. They come from all regions. In more recent years, more effort has been made to select women experts. There are currently 10 women experts.

Although the emphasis of each mandate is different, what all the experts have in common is that they are selected on the basis that they are individuals of high standing who are willing to provide quality services to the United Nations without remuneration. They all enjoy the same legal status and fall within the same structure. Although their action may differ as it is tailored to respond to the specific issue under consideration, they mostly apply the same approach, as will be discussed below.

5. *Why are the experts given different titles?*

As was stated earlier, the Commission bestows varying titles on the experts. These include special rapporteurs, independent experts, representatives of the Secretary-General or representatives of the Commission. These different titles neither reflect a hierarchy, nor are they an indication of the powers entrusted to the expert. They are simply the result of political negotiations. The most important issue is the mandate given to the expert as it is formulated in the resolutions of the Commission on Human Rights. These mandates could focus on reporting on violations, or on analysing a problem, or on assisting in the provision of technical assistance or on a combination of one or more of these features.

6. *Who selects the experts?*

The intergovernmental resolution creating each mandate determines who selects the expert. Special rapporteurs and representatives of the Commission are typically selected by the Chairperson of the Commission. Although there is a tradition that the Chairperson consults with the Bureau of the Commission, the decision is ultimately that of the

Chairperson. The Chairperson is normally a diplomat at the ambassadorial level. The chairmanship of the Commission rotates between the regional groups, which are all represented on its Bureau.

The representatives of the Secretary-General and some independent experts are selected by the United Nations Secretary-General upon the recommendation of the High Commissioner for Human Rights.

The choice of the expert is crucial to the credibility of the mandate. The experts are expected to be individuals of high standing and deep knowledge of human rights. In the selection of experts, it has been determined that consideration should be given to the professional and personal qualities of the individual “expertise and experience in the area of the mandate, integrity, independence and impartiality”.⁸

7. Is there a time limit on experts’ term of office?

The country-specific mandates are reviewed annually by the Commission and the thematic mandates are reviewed every three years. For the mandate to be continued, the Commission must adopt a resolution specifically renewing the mandate and identifying its scope.

Occasionally, there is some pressure from certain States to remove from office experts that they perceive as overcritical of their human rights record. There is no precedent of the Chairperson of the Commission removing any expert. In fact, until 1999, an individual expert could serve indefinitely on a mandate as long as the mandate was in operation.

In April 1999, the Commission decided that experts should serve a maximum term of six years. An extension of three additional years was provided as a transitional measure, for those experts whose six-year term had yet to end. The Commission also decided that there should be a turnover in the experts serving on working groups as well,

⁸ See for instance, paragraph 7 of the report of the Inter-sessional Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights (E/CN.4/2000/112).

to “be accomplished in incremental steps over a three-year transition period”.⁹

8. *Do the experts receive remuneration for their efforts?*

The human rights experts mandated and appointed by the United Nations do not receive salaries or any other financial reward for carrying out their tasks. They take on their functions out of a commitment to human rights and a conviction that the United Nations work in this field could make a difference.

9. *What is the experts’ method of work?*

There is some uniformity in the methods of work for all mandates, although the resolutions establishing the mandates use different language to describe them. Over the years, the experts have developed specific approaches and methodologies to carry out their mandates. In 1999, the sixth annual meeting of the experts approved a manual¹⁰ that spells out in detail the methods of work, *inter alia*.

All experts report to intergovernmental bodies, such as the Commission, or the United Nations General Assembly on their findings, conclusions and recommendations. The mandate of some experts requires them to carry out mainly conceptual studies while others take a more practical approach.

Most experts research and study issues of concern, carry out country visits, receive and consider complaints from victims of human rights violations, and intervene with Governments on their behalf. In some cases, the experts also recommend programmes of technical cooperation.

⁹ “A replacement of two members in year one, two in year two and one in year three would provide continuity during the transitional period.” (E/CN.4/2000/112, para.20.)

¹⁰ *Manual for Special Rapporteurs/Representatives/Experts and Chairpersons of Working Groups of the Special Procedures of the Commission on Human Rights and of the Advisory Services Programme*. See E/CN.4/2000/4, dated 18 December 1999.

(a) *Urgent appeals*

Intervening on behalf of victims of human rights violations is an essential element of human rights work. An indication that a violation has reached the attention of the United Nations or a mere inquiry by the United Nations about the circumstances of a case may often be sufficient to halt abuses.

Most experts receive information on specific allegations of human rights violations. In some cases, they send urgent appeals to a Government if a serious human rights violation appears to be imminent. Some experts send around one hundred interventions and appeals per year. They commonly report these communications to the Commission. In doing so, they follow principles of transparency and consistency. They attempt to provide equal opportunities to the sources of information and to the Government concerned. Some cases involve various types of violations relating to the mandates of several experts. In such cases, the experts are encouraged to coordinate their actions.

(b) *Country visits*

It is a priority for experts with country mandates to visit the particular country concerned. Sometimes they are denied access, in which case they travel to other countries, including the neighbouring countries, to interview refugees and other relevant actors. The budget of the United Nations allows the experts to visit a country once or twice a year. Extrabudgetary arrangements are sometimes also made to allow for more frequent visits.

Experts with thematic mandates may decide to carry out visits to countries relevant to those mandates, on the basis of information received. The United Nations budget normally allows for two country visits for each expert. Experts charged with thematic mandates attempt to visit countries in all regions of the world. The requests for visits are either initiated by the experts themselves or by the Commission on Human Rights in specific resolutions.¹¹

¹¹ During the past two years, the thematic experts have reported to the Commission on their missions to at least the following 35 countries in all regions of the world concerning specific issues relating to their mandates: Afghanistan, Albania, Belgium, Cameroon, Chile, Colombia, Cuba, the Czech Republic, East Timor, Fiji, Germany, Guatemala, Haiti, Hungary, Indonesia, Ireland, Kenya, Malaysia, Mexico, the Netherlands, Pakistan, Peru, Romania, South Africa, Sri Lanka, Sudan, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, the United Kingdom, the United States of America, Venezuela, Viet Nam and Yemen. Some of these countries received visits from more than one expert.

The experts only carry out official missions. They do not go on mission to any country without the approval of the relevant authorities. The visits are normally organized in coordination with the United Nations team in the country concerned, led by the United Nations Resident Coordinator or the United Nations Information Office.

During these visits, the experts interact with both governmental and non-governmental actors. They require freedom of inquiry, including access to relevant facilities, such as prisons and detention centres, and contacts with representatives of non-governmental organizations. It is standard procedure for the experts to request assurances from the Government that no persons, official or private, who have been in contact with them will be subjected to threats, harassment, punishment or judicial proceedings. Indeed, planned visits have been called off when Governments were not ready to provide the experts with free access to places or to respect the independent nature of the expert's work. Media coverage of the country visits often places the human rights issue at the centre of the public debate.

Sometimes experts are requested by the Commission to carry out joint visits when the human rights problems in a specific situation are multidimensional. Such joint visits have been made in the context of the conflicts in East Timor and in the former Yugoslavia. Sometimes the experts themselves consider it useful to carry out joint missions. This form of coordination amongst the experts is to be welcomed.

(c) *Normative work*

Some experts attempt to develop authoritative norms and standards for their work. The Representative of the Secretary-General on internally displaced persons worked with a team of international legal experts to prepare a compilation and analysis of the legal norms pertaining to internal displacement, on the basis of which he then developed Guiding Principles for the protection of the internally displaced. In April 1998, the Commission took note of these principles and of the decision of the Inter-Agency Standing Committee welcoming the Guiding Principles and encouraging its members to share them with their executive boards. These Principles are designed to provide guidance to the Representative, States, all other authorities, groups and persons, and intergovernmental and non-governmental organizations when addressing the issue of internal displacement.

The Working Group on Arbitrary Detention, which is composed of five experts, has also developed a framework for action. In its Deliberation No. 5 adopted in December 1999, for instance, the Group estab-

lished criteria to govern cases of arbitrary detention of asylum-seekers. The work, which was undertaken in coordination with the Office of the United Nations High Commissioner for Refugees, was welcomed by a number of States and NGOs.

(d) *Follow-up*

The experts hold dialogues with Governments on their findings and recommendations. The dialogue becomes more meaningful when Governments demonstrate the will to approach the concerns raised by an expert in a serious manner. For instance, during the September 1999 visit of the Special Rapporteur on the question of torture to Kenya, the Government assigned a high-ranking police officer to liaise with the Rapporteur. The officer accompanied the Rapporteur during the mission and, on several occasions, ordered immediate corrective action to redress a violation, such as immediate medical attention for certain detainees or the release of one individual who was arbitrarily detained. The Special Rapporteur publicly acknowledged this effective follow-up action.

The effectiveness of the system rests on adequate follow-up of the experts' conclusions and recommendations. The Special Rapporteur on religious intolerance, for instance, developed a matrix containing the recommendations formulated in his report. He routinely transmits these to Governments requesting them to provide him with their comments, as well as to indicate the measures they have taken or intend to take to implement, even progressively, the recommendations. Other experts have started to use similar techniques. The responses they receive from Governments are included in their reports.

(e) *Non-State actors*

The experts do not only address States. Several mandates require their holders to deal with non-State entities. Between 1996 and 2000, the independent expert on the situation of human rights in Somalia reported on the violations committed by warlords and militia leaders in that country. She also addressed the actions taken by the United Nations agencies in the absence of a central government in Somalia. She devoted a major part of her 1998 report to allegations of violations committed by the international troops while in Somalia.

A growing number of mandates now address international institutions. Some of the mandates, particularly those on development and on structural adjustment and foreign debt, aim at considering the impact of

the financial institutions' policies, such as those of the World Bank and the International Monetary Fund, on human rights. Their value is in generating a debate about such issues.

(f) *The role of NGOs*

International, regional and national non-governmental organizations provide invaluable support to the special procedures system. Human rights NGOs have been at the forefront of the advocacy for the creation of specific mandates. They provide essential analysis and information on the human rights situation in many countries and with regard to many thematic issues. Such information is verified by the experts and often transmitted to Governments for their views. The NGOs disseminate the work of the experts to their local constituencies. The significant contribution that NGOs make to enhancing the system is widely recognized by Governments, the experts and the United Nations. The establishment of a mandate on human rights defenders in 2000 constitutes a recognition not only of the indispensable contribution of NGOs, but also of the fact that many human rights defenders are harassed and intimidated for carrying out their human rights work and of their need for protection.

10. *Does the work of experts have impact?*

Through their reports to the Commission, the experts highlight situations of concern. Their reports often provide an invaluable analysis of the human rights situation in a specific country or on a specific theme. Some reports bring to the attention of the international community issues that are not adequately on the international agenda.¹² Many reports name victims and describe the allegations of violations of their human rights. Throughout the year, many experts intervene on behalf of

¹² For instance, the Special Rapporteur on extrajudicial, summary or arbitrary executions has recently placed the issue of the killing of women in the name of honour on the international agenda. In November 2000, the United Nations General Assembly adopted its first resolution condemning this crime, which has for decades been practised with impunity against thousands of women in many parts of the world. On 15 November 2000, *The New York Times* published an editorial on the subject, which was reproduced in the *International Herald Tribune*. It stated "Thousands of times each year, a woman is murdered somewhere in the world by her father or brothers for acts that are seen as besmirching the family's honor, including committing adultery, defying a parental order to marry, being seen in public with a man or becoming a victim of rape—a crime that many people still believe could not happen without the victim's consent. A United Nations special investigator this year named 12 countries where she had received reports of honor killings, in the Middle East, South Asia, Europe, Latin America, and Africa".

victims. While the work of experts is often a major driving force contributing to change, it is difficult to attribute concrete results in the field of human rights to one factor. Much depends on how Governments, the civil society in a particular country and the international community react to the violations and to the findings, conclusions and recommendations of experts.

The continuous examination of a particular situation, however, signals to victims that their plight is not forgotten by the international community and provides them with the opportunity to voice their grievances. The perpetrators of human rights violations know that they are being watched. The authorities concerned know that the assessment of their human rights record will have an impact on political, developmental and humanitarian considerations. This sometimes brings improved accountability and therefore change for the better.

The experts' reports often serve as an important early warning. For instance, before the genocide in Rwanda took place, the Special Rapporteur on extrajudicial, summary or arbitrary executions visited the country and reported on the serious ethnic violence that was occurring. The international community did not provide an adequate response to this significant early warning.

There are many examples of concrete results being achieved by the experts. During their country visits, many of them succeed in obtaining relief for victims. In January 1992, for example, the Special Rapporteur on the situation of human rights in Afghanistan succeeded in obtaining a presidential decision from then President Najibullah to commute the death sentences of some 114 persons into 20-year prison terms.

11. *What is the relationship between the experts and the various United Nations bodies?*

The experts are asked to fulfil specific tasks that are outlined in specific United Nations resolutions. They are expected to remain within their mandate and carry out their duties with full independence from any governmental or non-governmental influence. This independence is highly prized by victims, Governments and NGOs.¹³ It is a sine qua

¹³ See for instance, paragraph 10 of the report of the Inter-sessional Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights (E/CN.4/2000/112).

non for the successful fulfilment of the mandates. As was stated on behalf of the United Nations Secretary-General before the International Court of Justice, “in the absence of complete independence, human rights mandate holders and special rapporteurs would hesitate to speak out against and report violations of international human rights standards”.¹⁴

This independence does not, however, militate against coordination and dialogue with other actors, particularly within the United Nations system. Dialogue is very much encouraged by United Nations resolutions, as well as tradition. In resolutions establishing mandates the Secretary-General is typically requested to provide support for the work of the experts. This is mainly viewed as political support as well as financial support from the regular budget of the United Nations and the assistance provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR). The various United Nations agencies are also requested to provide support for the work of the experts.

The work of the experts is facilitated by OHCHR and, while they are on mission, by the senior United Nations official in the country. Many experts also hold regular consultations with the United Nations Secretariat in New York and with the various specialized agencies. Without the support of the United Nations country teams, the work of the United Nations human rights experts would suffer seriously. For instance, on 4 March 1998 OHCHR concluded a Memorandum of Understanding with the United Nations Development Programme (UNDP), according to which UNDP and OHCHR shall cooperate closely “with a view to implementing aspects of mandates of country and thematic special procedures and working groups”. The cooperation between UNDP and OHCHR endeavours to enhance the effectiveness and efficiency of human rights fact-finding missions. Local UNDP offices extend both substantive and logistical support before and during missions. UNDP also makes available relevant UNDP reports and evaluation papers regarding countries to be visited.

¹⁴ Paragraph 55 of “Written statement submitted to the International Court of Justice on behalf of the Secretary-General of the United Nations” in the *Advisory Opinion on Difference Relating to the Immunity From Legal Process of a Special Rapporteur of the United Nations Commission on Human Rights*.

12. *What is the experts' legal status?*

The experts carrying out United Nations human rights mandates are legally classified as “experts on mission” in the meaning of the 1946 Convention on Privileges and Immunities of the United Nations. While they are working on their mandates, the experts enjoy functional privileges and immunities that are specified *inter alia* in article VI, section 22 of the Convention. These include:

- “a) Immunity from personal arrest and detention and from seizure of their personal baggage;
- b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity is to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- c) Inviolability for all papers and documents;
- d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.”

The privileges and immunities of the Commission’s experts recently became the subject of a binding advisory opinion by the International Court of Justice (ICJ). On 29 April 1999, ICJ gave its opinion in the case of Dato’ Param Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers. Dato’ Cumaraswamy has been the subject of several defamation suits in Malaysia for damages amounting to US\$ 112,000.

ICJ held that article VI, section 22, of the Convention on Privileges and Immunities of the United Nations was “applicable” in the case of Mr. Cumaraswamy¹⁵ and stated that he was “entitled to immunity from legal process of every kind” for the words spoken by him during an interview published in the November 1995 issue of *International Commercial Litigation*. The Court also stated that Mr. Cumaraswamy

¹⁵ *Advisory Opinion on Difference Relating to the Immunity From Legal Process of a Special Rapporteur of the United Nations Commission on Human Rights*, issued on 29 April 1999.

should be “held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs”. The Court found that the Government of Malaysia was under “the obligation to communicate the advisory opinion to the Malaysian courts, in order that Malaysia’s international obligations be given effect and Mr. Cumaraswamy’s immunity be respected”.¹⁶

13. *Is there any oversight on the work of the experts?*

Human rights experts deal with issues that have a political dimension. It is thus hardly surprising that the objectivity and the quality of the work of some experts are sometimes questioned.

The Commission on Human Rights exercises oversight over the work of the experts while keeping in mind that the experts are irremovable, independent and are immune from legal process. It examines their reports and passes resolutions either welcoming or criticizing the work of the expert, or simply takes note of their action. During 1999-2000, the Commission undertook a general review of the work of the experts. As a result, it adopted a number of resolutions in April 2000 aimed at enhancing the effectiveness of the work of the experts. The adopted measures included the establishment of the above-mentioned time limit for mandate holders and reaffirmation that the independence of the experts constitutes a main criterion for their selection.

Moreover, the United Nations General Assembly is also currently debating a draft code of conduct that will apply to all experts on mission, including the United Nations human rights experts.¹⁷ The experts’ main concern with respect to the draft code is that it does not adequately take into account that they are unpaid independent actors, rather than paid consultants who receive instructions. Their function requires them to act in accordance with the mandate entrusted to them, their conscience, and on the basis of facts and human rights law.

The experts also exercise a degree of self-regulation. Since 1993, they meet annually to deliberate amongst themselves on issues relating to their mandates. During these meetings, they consider matters of

¹⁶ See the report of the Inter-sessional Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights (E/CN.4/2000/112).

¹⁷ *Proposed Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission* (A/54/695).

common interest, such as their methods of work. They also have discussions with the High Commissioner for Human Rights, the Bureau of the Commission on Human Rights, the Chairpersons of the United Nations human rights treaty bodies established under the six core United Nations human rights treaties¹⁸ and NGOs. The meetings provide a forum for airing problems in an effort to find solutions.

14. *What resources are available to experts?*

As the experts are professionals with full-time jobs who render their services to the United Nations on a part-time basis, the quality of their output depends to a large extent on the quality of support they receive from OHCHR and the amount of time staff invest in this work. Currently, the Office can provide a staff member to assist each mandate for an equivalent of approximately three full-time months a year only.

Most States are conscious of the need not to overload the system. However, human rights situations sometimes dictate the creation of new mandates. The increase in the number of mandates, without a corresponding increase in resources to support them, places additional burdens on OHCHR.

In 1999, the High Commissioner requested two experts to prepare the study, with the assistance of two staff members, on the pressing needs of the experts and how they might be addressed. The study recommended five measures to strengthen the system: measures to enhance the effectiveness of urgent appeals; the development of a more effective response to emergencies; the improvement of follow-up methods; increasing support through the allocation of additional staff and the development of a database.¹⁹ For these measures to be implemented, an increase in the resources currently available to OHCHR is needed.

¹⁸ These are: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.

¹⁹ See *Capacity-building to strengthen the special procedures system of the United Nations human rights programme*, Thomas Hammarberg and Mona Rishmawi, 30 June 1999.

15. *Is there an overlap between the work of the experts and the functions of the United Nations High Commissioner for Human Rights?*

On 20 December 1993, the General Assembly created the post of United Nations High Commissioner for Human Rights. Unlike the experts, the High Commissioner is a high-level official of the United Nations appointed by the Secretary-General and approved by the General Assembly. The High Commissioner heads the Office of the High Commissioner for Human Rights, which supports the work of the experts. The current High Commissioner for Human Rights is Mary Robinson, the former President of Ireland. She took office in September 1997. José Ayala-Lasso, who was High Commissioner from April 1994 until March 1997, preceded her.

There is much interaction between the High Commissioner and the experts. While the mandates of the experts are specific, focusing on a country or a theme, the High Commissioner's mandate however, is broad and includes the promotion and protection of all human rights, civil, cultural, economic, political, and social in all parts of the world. As such, there is a possibility for overlap between the mandates of the High Commissioner and the special procedures mechanisms. This overlap is avoided through coordination.

16. *What is the Sub-Commission and how does it function?*

The Sub-Commission is a think-tank created by the Commission to assist it by undertaking in-depth thinking into particular phenomena. Amongst the main tasks of the Sub-Commission in the past was the preparation of draft standards and norms for the Commission's consideration. A number of those were eventually adopted by the United Nations General Assembly.

The Sub-Commission is composed of 26 independent experts. They meet annually for three weeks in August in Geneva to deliberate on human rights issues. State and NGO representatives also make statements before the Sub-Commission, whose meetings are generally open

to the public. The Sub-Commission recommends to the Commission topics that require further consideration.²⁰

The Sub-Commission studies are aimed at enhancing the understanding of a topic and recommending to the Commission how to address it. Some of these studies may lead to a standard-setting exercise. Others may lead to the establishment of new mechanisms.

17. Does the work of the Sub-Commission's experts differ from the work of the Commission's experts?

Like the experts of the Commission, the experts of the Sub-Commission are "experts on mission" within the meaning of the 1946 Convention on Privileges and Immunities of the United Nations. This was affirmed by the International Court of Justice in an advisory opinion rendered on 15 December 1989 in a case known as the *Mazilu* case.

The Sub-Commission experts mainly conduct studies. They do not usually take up individual cases and do not send urgent appeals to Governments. They do not carry out fact-finding missions. The work of experts is publicly and extensively debated during the three-week session of the Sub-Commission. Every topic is usually studied by one or more special rapporteurs of the Sub-Commission for at least three years. The expert entrusted with the study normally submits a working paper, a preliminary report, a progress report and a final report.

²⁰ The Sub-Commission is currently studying a wide range of issues. These are studies by special rapporteurs on the rights of non-citizens; the concept and practice of affirmative action; globalization and its impact on the full enjoyment of human rights; the elimination of traditional practices affecting the health of women and girls; indigenous peoples and their relationship to land; and terrorism and human rights; as well as the preparation of working papers on discrimination based on work and descent; measures provided in the various international human rights instruments for the promotion and consolidation of democracy; the consequences of the working methods and activities of transnational corporations (TNCs) as well as the responsibility of States and TNCs with regard to violations of all human rights; procedures for the implementation of standards on the human rights conduct of companies; the administration of justice through military tribunals and exceptional jurisdiction; domestic implementation in practice of the obligation to provide effective remedies; discrimination in the criminal justice system; and the privatization of prisons. In addition, the Sub-Commission requested the Commission in 2000 to approve four new studies. These are: the human rights problems and protections of the Roma; the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water; human rights and human responsibilities; and reservations to human rights treaties.

The experts of the Sub-Commission are often academics, lawyers, judges or, in some cases, representatives of their Governments. They are expected to conduct their work on the Sub-Commission, however, independently of any governmental or non-governmental influence.

As independent experts, the experts are not subject to the oversight of the United Nations Secretariat. While they are assisted by OHCHR, the experts carry out their research independently of the Secretariat. Owing to the limited Secretariat resources available, as mentioned above, the experts often rely on their own resources to support their research.

CONCLUSION

The United Nations human rights experts play a vital role in working towards the universal achievement of freedom from fear and want. They are not paid. Their reward is the satisfaction of working towards the realization of human rights, as “the highest aspiration of the common people” as the Universal Declaration of Human Rights proclaimed.

The system remains seriously under-resourced and has yet to achieve its full potential, however. Efforts are continuing to be made to strengthen the system to enable it to achieve the goal of universal respect for all human rights. With the cooperation of various actors, in particular Governments, United Nations bodies, and the non-governmental sector, its effectiveness could be considerably enhanced.

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