



POLICY REPORT

REFORM OF THE UN HUMAN RIGHTS PETITIONS SYSTEM

**An assessment of the UN human
rights communications procedures
and proposals for a single integrated
system**

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PREFACE

This report on the UN’s system of individual human rights communications is the result of a two-year project led by the Universal Rights Group (URG). It reflects primary and secondary research, a policy dialogue in Geneva, and nearly 50 interviews with key policy-makers and civil society representatives, including UN Special Procedures mandate-holders and Treaty Body experts, staff of the Office of the High Commissioner for Human Rights (OHCHR), diplomats from all regions, national, regional and international human rights NGOs, and human rights defenders.

The report analyses the historical underpinnings of the UN human rights petitions system (comprised of the Special Procedures communications, Treaty Body communications, and the Human Rights Council’s Confidential Complaint Procedure); assesses the visibility, accessibility, responsiveness, and effectiveness of the current system; and makes recommendations for strengthening this vital protection tool in the future.

The conclusions in the report are entirely the author’s own, and do not necessarily reflect the views of any institutions, donors, or partners.

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EXECUTIVE SUMMARY

The United Nations human rights communications procedures are central to the purpose, effectiveness, and credibility of the United Nations – representing the only direct link between the victims of human rights violations and the international human rights protection system. However, over the past half-century, what was once a vibrant part of the UN’s human rights work (the sheer number and gravity of petitions received in the early decades of the UN was such that it catalysed many of the human rights pillar’s most important reforms), has become increasingly neglected and discredited – the victim of its own complexity and distance from ‘the Peoples’ of the UN.

Today, there are three main avenues open to individuals wishing to communicate with the UN’s human rights bodies and mechanisms. First, a number of international human rights Treaty Bodies maintain procedures under which an individual may bring a human rights complaint (concerning a State that has ratified the relevant convention, and has accepted the Treaty Body’s competence to deal with communications) to the attention of the UN. Second, Special Procedures mandate-holders intervene directly with governments on specific allegations of violations of human rights (that fall within their mandates), following the receipt of a complaint by a concerned individual or group of individuals. Third, in 2007 the Human Rights Council established a new Confidential Complaint Procedure to address ‘consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.’¹

A detailed assessment of these three procedures conducted by the Universal Rights Group drew a number of conclusions.

First, each of the three main communications procedures plays a distinct and crucial role in the overall UN human rights petitions system. Each has its own strengths when viewed from a victim’s perspective.

Second, the challenges faced by, and the weaknesses of, each procedure, especially when viewed from a victim’s perspective, show significant overlap. For example, all three suffer from:

- A lack of on-the-ground visibility;
- A lack of awareness and understanding, among the general public, about how they operate and how to access them;
- A complicated and often confusing user-interface, that serves (broadly speaking) to restrict access only to those victims who enjoy expert legal or NGO support;
- Severe human and technical (e.g. linguistic) capacity constraints across a fragmented Secretariat;
- Inconsistent responsiveness (in terms of, for example, providing updates to victims);
- Data management issues, including constraints on the sharing of data between the procedures; and
- A lack of public transparency and thus accountability, which serves to reduce incentives for State cooperation.

Third, these weaknesses or challenges cannot be addressed, within existing resources, by focusing on each procedure in isolation. Rather, States and the UN Secretariat must once again (as was the case in the late 1970s when the then Secretary-General published a ground-breaking analysis of contemporary communications procedures and their interaction) look at the procedures as three interconnected and complementary parts of a single coherent UN petitions system – with a single user interface and, perhaps, a single Secretariat.

Fourth, modern technology presents enormous opportunities to finally put in place such a ‘fully coordinated approach’ within ‘a fully automated system’ (as called for by the Chair of the Commission in 2000).

With these conclusions in mind, this policy report makes a number of recommendations. In particular, the report argues that reforming and re-energising the UN human rights petitions system should be a priority for States as they look towards the 2021-2026 review of the Human Rights Council by the General Assembly. In considering those reforms, States should adopt a victim’s perspective, viewing the current system – and possible changes thereto – through the lens of those people who need to use it. Reforms should aim, *inter alia*, to:

- Make the system more visible and understandable, for all people in all countries and regions;
- Make the system more easily accessible and user-friendly;
- Increase financial and human resource allocations to the overall human rights petitions system, as part of a package of reforms designed to rationalize, rationalise, harmonise, and simplify that system – thus bringing system-wide efficiencies;

- Make the system more responsive to the needs and situation of victims; and
- Strengthen the system’s effectiveness in protecting human rights around the world.

In the opinion of the Universal Rights Group, such reforms, in order to be successful, must be based on the overarching objective of establishing a single, coherent UN human rights petitions system comprising a single user interface and single UN petitions Secretariat, responsible for channelling petitions to the most appropriate communications procedure(s) and following up on each and every case. To make this possible, the UN will need to leverage the power of modern information technology to, *inter alia*:

- Provide a single secure and user-friendly interface;
- Manage big data and information flows;
- Ensure that the three communications procedures interact and interconnect in a coherent manner;
- Ensure that the CCP has access to sufficient information to identify emerging and actual patterns of concern; and
- Ensure that the UN is able to deliver individual remedy and redress.

INTRODUCTION

The ability of individuals to petition the United Nations (UN) to seek remedy and redress for alleged violations of their human rights is central to what the international human rights protection system is and what it seeks to be. The UN's communications procedures are therefore one of the human rights system's most important tools, not least because they represent a direct interface between individuals – the 'Peoples' in whose name the UN Charter was signed – and the UN itself, thereby giving real meaning to the rights contained in the International Bill of Human Rights.

The system of submitting communications to the international human rights system has evolved gradually since the time of the League of Nations, and is now both multifaceted and highly complex.

Today, there are three main avenues open to individuals wishing to communicate with the UN's human rights bodies and mechanisms.

First, in 2007 the Human Rights Council (the Council) established a new **Confidential Complaint Procedure** to address 'consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.'² This procedure addresses communications submitted by individuals groups, or NGO representatives, who claim to be victims of human rights violations or who have direct, reliable knowledge of such violations. Like its predecessor, the '1503 Procedure,' it is confidential (with the intention that confidentially will enhance the likelihood of State cooperation). The Confidential Complaint Procedure purports to

be 'impartial, objective, efficient, victims-oriented and conducted in a timely manner.'³

Second, a number of international **human rights Treaty Bodies** maintain procedures under which an individual may bring a human rights complaint (concerning a State that has ratified the relevant convention, and has accepted the Treaty Body's competence to deal with communications) to the attention of the UN. For example, under Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR) and (since May 2013) to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Treaty Bodies under those conventions may consider individual communications relating to alleged human rights violations committed by States Parties.

Similarly, the Treaty Bodies established to monitor State compliance with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment (CAT), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD), may consider individual communications relating to States Parties who have made the necessary declaration(s) under relevant articles of those conventions.

Third, **Special Procedures** mechanisms intervene directly with governments on specific allegations of violations of human rights (that fall within their mandates), following the receipt of a complaint by a concerned individual or group of individuals. The intervention can relate to human rights violations that have al-

ready occurred or are on-going, or to situations where there is a high risk that violations may occur. Importantly, mandate-holders can take up petitions relating to alleged violations by a State even where that State is not Party to the relevant human rights convention (for example, the Special Rapporteur on torture may accept and act upon a petition that alleges country A committed an act of torture even when country A is not a Party to the [CAT]. Once a complaint has been received, if it is deemed admissible, the Special Procedures mandate-holder will send a letter to the concerned State requesting information and comments on the allegation(s) and, where necessary, asking that preventive, investigatory or remedial action be taken.

Between these three procedures, the UN human rights system receives tens of thousands of communications each year. And yet there is great uncertainty as to the overall accessibility of the system for individuals on-the-ground who may find themselves the victim of a human rights violation, or as to the ability and capacity of the system to process and respond effectively to all complaints received (i.e. to help secure remedy and redress).

Understanding whether the UN human rights communications procedures are delivering effective remedy – or indeed are capable of delivering effective remedy – for those who need and seek international level support is extremely important, not least because the communications system is the main portal through which victims can reach out to, and be heard by, the international human rights protection system.

Considering the central importance to the UN human rights system (and the legitimacy thereof) of receiving and acting upon individual communications and complaints, it is vitally important to understand and assess the degree to which the communications procedures are delivering on their crucial protection mandate. Yet to-date, no such comprehensive assessment has been undertaken. The present policy report aims to fill this gap, thereby providing an analytical basis for international policymakers to understand the challenges facing the system, and a basis for developing and presenting recommendations for its future reform.

PART I

THE HISTORICAL DEVELOPMENT OF A UN PETITIONS SYSTEM

To understand the UN's current system for dealing with individual complaints concerning human rights, it is instructive to look back in time at the conditions and politics that shaped its emergence and evolution.

The idea that individuals have the right to petition their rulers or government is as old as, and intricately linked with, the idea of representative government itself. Indeed, historically, the earliest basic means through which people sought to assert what we now understand as 'human rights,' was to petition the king, queen, or parliament.

For example, in England, petitioning the Crown (and later the Parliament) for redress of a grievance originated in the 13th century during the reign of Edward I. Petitioners had recourse to the Crown's prerogative power, which was above the law.

In medieval times, Crown officials known as 'receivers' and 'triers' travelled the country to receive petitions and hear complaints. Certain matters would be referred to the local courts, while other, more serious, matters would be brought to the attention of the Parliament. Indeed, some have argued that the English Parliament itself originated in meetings of the King's Council where petitions were considered.

As Parliament evolved from a primarily judicial to a predominantly legislative body, the character of petitions changed. By the end of the 14th century, legislative remedy was sought by individuals and corporations who petitioned Parliament or the House of Commons. At the same time, petitions from the Commons to the Crown - these being of a general nature and

expressing national grievances - became frequent. Indeed, the English Parliament's first legislative acts occurred in the context of the Commons petitioning the King for certain amendments to the law (the precursor of legislation by bill). The 17th century saw the development of what might be considered the 'modern' form of petition - complaints by individual people who believed that their rights had been infringed, and addressed to Parliament.⁴

In England, as in other countries, including France (where the right to petition parliament for redress of grievances has existed almost permanently since the French Revolution) and the United States of America (US), petitioning parliament became such an important - and popular - means for people to assert their rights that legislatures had to set up specialised committees to cope. As Ingeborg Schwartz has noted, these committees can be considered the 'first human rights committees, as their aim was - and still is - to redress injustice.'⁵ These domestic mechanisms had, in effect, become the key interface between rights-holders and duty-bearers.

When the League of Nations was established after the First World War, individuals who became subjects of new international laws covering the welfare of religious, ethnic, national, and racial minorities, were also, for the first time, given the right to submit international petitions (or communications) directly to the League.⁶ At the beginning 'several hundred petitions' were sent, but because the League took little - if any - action, the numbers dwindled over time. From 1935 onwards, as the League lost credibility over its failure to protect Jewish minorities in Europe,⁷ 'only a handful were submitted.'⁸

PETITIONING THE UNITED NATIONS

From the moment the UN was established in 1945, the 'Peoples of the United Nations,' in whose name the Charter was signed, began to send in complaints concerning alleged human rights violations, seemingly convinced of the UN's duty to act thereon.⁹ It would take over 20 years, however, 'for this aspiration to be translated into procedural [reality] by the United Nations.'¹⁰

When the newly established Commission on Human Rights (the Commission) met for the first time in 1947, one of its most urgent tasks was to decide what to do - or, as it turned out, what not to do - with the thousands of unsolicited individual petitions that the UN had already begun to receive.

In the post-war period, there were relatively few issues upon which the world's new superpowers, the US and the Union of Soviet Socialist Republic (USSR), agreed; yet they were united in their determination that the UN should not have the mandate or the capacity to receive individual complaints concerning alleged human rights violations.¹¹ The USSR argued that any petition mechanism would constitute a direct violation of article

2 (7) of the UN Charter (regarding national sovereignty). The US, represented by Eleanor Roosevelt, took a less aggressive but no less determined approach. Roosevelt, under strict instructions from the US Government to avoid, at all costs, the creation of individual complaints system,¹² argued that any such 'implementation measures' must be postponed until after the adoption of an International Bill of Rights. In a later article for Foreign Affairs magazine, dated April 1948, Roosevelt explained that 'since we were not a court, we could do nothing actually to solve the problems that the petitions presented.'¹³

On 7 February 1947, under the influence of the post-war superpowers, the Commission took the position that it had 'no power to take any action in regard to any complaints concerning human rights.'¹⁴ René Cassin (France), who had been one of the few voices strongly advocating for the Commission to play a more active - and protective - *role vis-à-vis* communications, urged his colleagues to officially draw the UN Economic and Social Council's (ECOSOC) attention to the 'serious [protection] gap'¹⁵ 'resulting from the Commission's absence of power to deal with communications.'¹⁶ Roosevelt later convinced him, however, that an oral explanation to the ECOSOC would be sufficient.¹⁷



Representatives of the National Negro Congress present a petition for the elimination of political, economic and social discrimination in the United States, to P.J. Schmidt, secretary of the Commission on Human Rights of the UN Economic and Social Council, 6 June 1946.



Eleanor Roosevelt, during the first session of the Commission on Human Rights, 1 July 1947.

1946-1966 – ‘NO POWER TO ACT’ DOCTRINE

The Commission’s stance that the UN had ‘no power to take any action [with] regard to [...] complaints concerning human rights’ (the ‘no power to act’ doctrine) was subsequently rubber-stamped by the ECOSOC with resolution 75 (V) (5 August 1947). This put in place a largely symbolic procedure for handling any communications received. Not only did the ECOSOC confirm the Commission’s rejection of the notion that it had any power to take action on the basis of any communications received, it even ‘decided that the members should not review the original text of specific complaints by individuals.’¹⁸

Under the symbolic procedure now put in place (the 75 (V) procedure), the UN Secretary-General was asked to ‘compile a confidential list of communications received concerning human rights,’ which would be shared with ‘the Commission, in private meeting, without divulging the identity of the authors of the communications.’¹⁹ At best, this new procedure was an elaborate filing system. At worst, as later described by the first Director of the UN’s Human Rights Division, John P. Humphrey, it was ‘the most elaborate wastepaper basket ever invented.’²⁰ Humphrey subsequently explained how ‘at every session, the Commission went through the farce of clearing the conference room for a secret meeting which lasted only a few minutes, time enough for the Commission to adopt a resolution taking note of the list.’²¹

Any reference to a ‘right to petition’ the UN was also excluded from the Universal Declaration of Human Rights. In its draft ‘International Declaration of Human Rights,’ submitted to the ECOSOC in May 1948, the Commission had included an article on the right of ‘everyone [...] either individually or in association with others, to petition or to communicate with [...] the United Nations.’²² The ECOSOC did not consider the draft Declaration in detail, but decided to transmit it to the General Assembly (GA) along with the records of the relevant proceedings of the ECOSOC. At the GA, the United Kingdom (UK), with support from Byelorussian SSR, Mexico, the Philippines, Syria, the US, and the USSR, among others, proposed to refer the ‘problem of petitions’ back to the Commission for ‘further examination.’ This proposal was passed as GA resolution 217 B (III).²³ Consequently, when the Universal Declaration was adopted, there was no mention in the text of the right of the ‘Peoples of the United Nations’ to petition or to communicate with the international community.

Despite the failure to assert the right of individuals to petition the international community, people nonetheless continued to send their human rights grievances to the UN. Between 3 April 1951 and the end of 1958, the UN is said to have received over 61,000 communications (under the 75 (V) procedure).²⁴ As Roosevelt correctly recognised: ‘while the Commission was free to decide how to treat the communications, it could not prevent them from being sent.’²⁵

Things began to shift in the early 1960s, when a significant influx of new members from Africa and Asia profoundly altered the geopolitical profile of the UN, and, consequently, its willingness to address specific human rights violations, including those alleged in individual communications. In 1955, 28% of UN member States were from the Western Europe and Others Group (WEOG), while just seven per cent were from the African Group (AG). By 1962, this ‘balance of power’ had been reversed: 30% of member States were now from the AG, and just 19% from the WEOG. A primary concern for many of these new members – most of which were newly independent former colonies – was to put in place more robust human rights protection measures to help combat colonialism, apartheid, and racism.

Under the influence of the new member States in the early 1960s, the GA²⁶ established two ‘Special Committees’: one on ‘the situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples’ (the ‘Committee on Colonialism’) – in 1961;²⁷ and another on ‘the Policies of Apartheid of the Government of South Africa’²⁸ (the ‘Committee on Apartheid’) – in 1962. Both committees interpreted their mandates to allow them to receive written and oral testimonies from individuals concerning the violation of human rights (interpretations that were later confirmed by the GA).²⁹ For the first time, original petitions concerning alleged human rights violations were ‘mimeographed and circulated as an official UN document,’ under the auspices of the two committees.³⁰ While the ‘Committee on Colonialism’ could receive and consider communications from non self-governing territories, the ‘Committee on Apartheid’ received and considered petitions against ‘a government which, however much hated, was locally selected rather than foreign.’³¹ As John Carey has recognised, the UN was therefore ‘doing to one State what ECOSOC had explicitly prevented the Commission from doing to States in general.’³²

It is not known how many people benefited from these procedures, but they nonetheless provided an important step towards the development of a broader petitions/communications mechanism. In an early example of this new reality, in 1963 a UN Mission to Viet-Nam mandated by the GA, received and considered 116 written petitions ‘from individuals, groups of individuals and non-governmental organisations.’³³



Miriam Makeba, a well-known South African singer and anti-Apartheid campaigner, is seen as she exchanged views with Karseno Sasmojo of Indonesia’s Permanent Mission to the UN, shortly before the meeting of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa opened, 16 July 1963.

1965-1980 – CREATION OF THREE AVENUES FOR INDIVIDUAL COMPLAINTS

In the second half of the 1960s, carried along on a wave of anti-colonial and anti-racism initiatives driven by the new member States, the UN began to lay the foundations of what would become the three main individual human rights communications procedures.

TREATY-BASED COMPLAINTS PROCEDURES

First, an optional petitions procedure was successfully included in the draft International Convention on the Elimination of All Forms of Racial Discrimination during negotiations in the GA’s Third Committee (1966). Under this procedure, individuals would be able to write to the Committee (that would be established by the new Convention) to complain about the violation of any of the rights enumerated in the treaty – provided that the State concerned had ratified it and accepted the additional, optional complaint procedure (by making a declaration under article 14).

The inclusion of this optional petitions procedure was made possible by the interplay of a range of different, often competing, interests. Many in the African-Asian bloc saw it as an opportunity to criticise the West. For instance, a Tanzanian diplomat, Waldo Waldron-Ramsey, used debates over the issue of petitions ‘to make a series of anti-colonial speeches.’³⁴ Others, including representatives from Ghana, the Philippines, and Nigeria, felt the exceptional gravity of the issue of racism warranted outside (i.e. UN) interference in the sovereign affairs of States. In other words, racism was such a serious human rights violation that the subject merited an exemption from the Charter’s domestic jurisdiction clause.³⁵ Conversely, the Soviet bloc together with other States from the African-Asian bloc, such as India and the Islamic Republic of Iran, were opposed to the inclusion of such a procedure, arguing that it constituted a violation of national sovereignty. They also expressed concern (quite prescient, as it turned out) that it would set a dangerous precedent, potentially leading to the creation of other communications procedures with a wider scope.³⁶

Seeking to take advantage of this apparent split, Western States, for the first time, expressed strong support for the right to petition – almost unanimously backing the inclusion of a communications procedure under the CERD. This new Western position was driven by two principal considerations. First, there was a general desire to put several States ‘on the spot, by pressing for strong implementation clauses.’³⁷ Second, and perhaps more importantly, Western States wanted to include strong compliance mechanisms – including a petitions procedure – in the draft International Covenant on Civil and Political Rights (ICCPR). They understood

that if African States decided against including such a procedure in ‘its’ convention on racial discrimination, ‘then the battle [would] have been lost’ to have one included under the ICCPR.³⁸

The final piece in the puzzle was the energetic diplomacy of George Lamptey of Ghana, a ‘leading moderate in the African-Asian bloc’ and ‘the most effective champion for the convention’s right to petition.’³⁹ Lamptey reprimanded those, most notably representatives of the United Arab Republic and the Soviet bloc, who wished to restrict the right to petition solely to those people living in colonial territories. He argued that ‘such a blatantly one-sided gesture’ would simply prevent Western States from signing the new convention.⁴⁰ He therefore worked to reconcile competing drafts and find common ground.

The CERD, with the optional petitions procedure included, was eventually adopted by the GA on 21 December 1965. John P. Humphrey and Theo Van Boven, Directors of the UN’s Human Rights Division from 1946 to 1966 and 1977 to 1982 respectively, have both recognised the crucial importance of this moment.⁴¹ As Humphrey said at the time, it would now ‘be difficult for the majority not to follow a similar pattern in [future] covenants and [...] other human rights conventions.’⁴²

This prediction was proved correct when, one year later, the GA renewed its consideration of the draft ICCPR. During the talks, the US Ambassador Patricia Roberts Harris argued that the CERD had now set a precedent for including communications procedures in future human rights treaties, starting with the ICCPR. Importantly, a range of developing countries from Africa, Asia, and Latin America supported this new Western position. However, other developing countries, including some that had supported the inclusion of a communications procedure in the CERD, now objected to its inclusion in the ICCPR.⁴³ For its part, the Soviet bloc remained resolutely opposed to any UN consideration of individual communications.⁴⁴ Against this background, a proposal to remove the petition article from the draft Covenant was successful (through a close vote of 41⁴⁵ to 39,⁴⁶ with 16⁴⁷ abstentions). As a result, the optional communications procedure was removed to a separate ‘Optional Protocol,’ rather than being included within the treaty itself. The GA adopted the Optional Protocol on 16 December 1966, by 66⁴⁸ votes to 2,⁴⁹ with 38⁵⁰ abstentions. Both the Covenant and its Optional Protocol entered into force on 23 March 1976. Interestingly, today, half a century after its adoption by the GA, 17 of the 66 States that voted in favour of the procedure are still not Party to the Optional Protocol.⁵¹

DEVELOPMENT OF TREATY BODY COMPLAINTS PROCEDURES

Treaty Bodies are ‘committees of independent experts’ that monitor the implementation of the core international human rights treaties. All core human rights treaties and/or their optional protocols provide for the possibility for individuals to submit individual complaints.⁵²

With the adoption of the ICCPR and its (first) Optional Protocol, the Human Rights Committee was the first Treaty Body to begin handling individual complaints of rights violations (in 1976).⁵³

Although the CERD had been adopted one year before the ICCPR, its article 14 procedure only became operative in 1982 when the required ten States Parties declared that they accepted it.⁵⁴ Theo Van Boven has claimed that the CERD communications procedure ‘did more to serve as a break-through and a precedent in connection with other international legal instruments than [it did] as an international recourse procedure for victims of racial discrimination.’ He has called the article 14 procedure ‘one of the most under-utilised provisions of CERD.’⁵⁵ Indeed, to date (35 years after the article 14 procedure entered into force), the Committee on the Elimination of Racial Discrimination has considered just 60 communications (see Part II).

Similar optional individual communications procedures were included in: article 22 of the CAT, which became operational in June 1987; and article 31 of the Convention for the protection of all persons from Enforced Disappearance (CED), which became operational in December 2010. A procedure was also included under article 77 of the International Convention on the protection of the Rights of all Migrant Workers (ICRMW) – not considered a core convention – but this is not yet operational.

Communications procedures for the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Rights of the Child (CRC) and the CEDAW, have been established through optional protocols. The OP-CRPD entered into force at the same time as the Convention (2008), while the OP-CEDAW and the OP-CRC became operational 21 years and 25 years (respectively) after the adoption of the CEDAW (1979) and the CRC (1989).

Although the ICESCR was adopted by the GA on the same day as the ICCPR (16 December 1966), it would take the UN over 40 years to establish a corresponding complaint procedure. In 1966, economic, social and cultural rights were not considered well suited to an individual complaints process.

Thinking at the time is well summed up by a 1966 statement of a Uruguayan diplomat, Gros Espiell, who argued that ‘the objective of the [ICESCR] is that the State should take positive action to satisfy the economic, social and cultural rights of the individual, whereas the objective of the other Covenant is that the State should avoid certain action.’⁵⁶

By the time of the 1993 World Conference on Human rights in Vienna, State thinking had moved on, with governments declaring the indivisibility and interdependence of all human rights. In the Vienna Declaration and Programme of Action, States pledged to develop a communications procedure for the ICESCR. 15 years later (2008), member States finally adopted an Optional Protocol for the ICESCR. This entered into force on 5 May 2013.⁵⁷

Since the establishment of the first Treaty Body complaints procedures, there have been a number of efforts to improve them, mainly in the context of wider Treaty Body reform exercises. The most recent of those was the Treaty Body strengthening process (2009-2014), which resulted in the adoption of the GA resolution 68/268.⁵⁸ However, States were not able to agree on any significant changes to the complaints procedures. For example, proposals to more closely align the different procedures, or to develop common guidelines, failed to generate much support. Even those reforms that were agreed do not appear to have resulted in improvements in the petitions system. For example, the decision to increase Treaty Body meeting time from 75 to 96 weeks per year has had no significant impact on the large backlog of individual complaints (see Part II of this report).⁵⁹

CHARTER-BASED COMPLAINT PROCEDURES

The debates over the creation of communications procedures under the early human rights treaties mirrored similar discussions among States about how the Commission itself should deal with petitions. These discussions led, eventually, to the creation of two Charter-based (as opposed to treaty-based) complaints procedures: the Special Procedures communications system; and the Commission’s ‘1503 procedure’ (later replaced by the Human Rights Council’s ‘Confidential Complaint Procedure’).

In June 1965, the UN Committee on Decolonisation called on the Commission ‘to consider individual petitions concerning human rights violations in the territories under Portuguese administration, South Africa and South Rhodesia.’⁶⁰ Pursuant to this request, the ECOSOC invited the Commission ‘to consider as a matter of importance and urgency the question of the violation of human rights and fundamental freedoms [...] in all countries.’⁶¹ In response to this question, the Commission passed resolution 2 (XXII),⁶² informing the ECOSOC that in order to deal with human rights violations in all countries, it needed the appropriate tools so as to be ‘more fully informed of violations of human rights.’⁶³ The authorisation to create such tools was subsequently provided by the ECOSOC in resolution 1164 (XLI)⁶⁴ and by the GA in resolution 2144 A (XXI), which invited the Commission ‘to give urgent consideration to ways and means of improving the capacity of the UN to put a stop to violations of human rights wherever they may occur.’⁶⁵

The following year (1967), the Commission not only gave urgent consideration to such ‘ways and means’ but actually put them in place. In March, a cross-regional group of States from Africa, Asia, the Middle East, and the Caribbean, secured the adoption of two resolutions establishing the first two **Special Procedures** mandates: *an Ad-Hoc* Working Group of Experts on South Africa and a Special Rapporteur on Apartheid.

Immediately after establishing these first-ever Special Procedures mandates, member States adopted resolution 8 (XXIII), which decided to ‘give annual consideration to the item entitled question of violations of human rights.’ In that context, it requested authority from the ECOSOC (for itself and its Sub-Commission) to, inter alia, examine information relevant to gross violations of human rights contained in the communications listed in the annual confidential list of communications.⁶⁶

With resolution 1235 (XLII) of 6 June 1967, the ECOSOC conferred authority on the Commission and its Sub-Commission, as requested, to ‘examine information relevant to gross violations of human rights and fundamental freedoms [...] contained in the communications listed by the Secretary-General pursuant to Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959.’⁶⁷ Although it was focused primarily on the question of human rights violations in the context of racial discrimination and apartheid, ECOSOC resolution 1235 (XLII) nonetheless welcomed ‘the decision of the Commission to consider the question of the violation of human rights [...] in all countries.’

In 1970, three years after the Commission had been granted permission (through resolution 1235 (XLII)) to do so, the ECOSOC established the UN’s first universal human rights communications procedure (universal in terms of both geographic coverage and thematic scope), with the adoption of ECOSOC resolution 1503 (XLVIII).⁶⁸ This new ‘**1503 procedure**’ was mandated to deal with any individual communications addressed to the UN that ‘appear[ed] to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.’⁶⁹

Two distinct Charter-based communications procedures were thus developed on the basis of the authority conferred on the Commission by resolution 1235 (XLII): one public (communications procedures under the ‘Special Procedures’), and the other private or confidential (the Commission’s ‘1503 procedure’). The development of these two procedures represented a revolution for the international human rights system. With the treaty-based complaints procedures, States were able to, in effect, opt in or opt out – depending on whether they chose to become Party to a given treaty and accept the communications procedure thereunder. Yet with the new Charter-based procedures, States no longer had this luxury. The UN could now receive information from individuals living in any country, about alleged violations of any human rights.



UN diplomats sign up to speak during the 15th session of the Human Rights Council

DEVELOPMENT OF THE SPECIAL PROCEDURES COMPLAINTS PROCEDURE

The Commission established the first two 'Special Procedures' mandates three months prior to the passing of resolution 1235 (XLII), citing GA resolution 2144 (XXI) and ECOSOC resolution 9 (III) as the legal basis. Both mandates were established by a vote, with most Western countries abstaining.⁷⁰ Commission resolution 9 (XXIII), however, specifically requested post-facto authorisation from the ECOSOC to include 'the power to recommend and adopt general and specific measures to deal with violations of human rights' in its terms of reference. This request led to ECOSOC resolution 1235 (XLII), which constituted the legal basis for the establishment of future apcing Special Procedures mandates.

The Working Group on South Africa and the Special Rapporteur on Apartheid were soon followed by the creation of other country-specific mandates: on the Occupied Palestinian Territories (1969), Chile (1975) and Equatorial Guinea (1979). In 1980, the Commission established the first thematic mandate: the Working Group on enforced or involuntary disappearances. This was soon followed by other thematic mandates, including the Special Rapporteur on extrajudicial, summary or arbitrary executions (1982) and the Special Rapporteur on torture (1985).

While the early country-mandates did consider both written and oral testimonies from individuals as key sources of information, it was the early thematic mandate-holders (on enforced disappearances, summary executions and torture) who took the initiative to construct a true individual communications procedure – originally known as the 'urgent messages procedure' (UMP). Under the UMP, mandate-holders would, on the basis of communications received from individuals, transmit letters to the relevant government – via fax or telex – asking them to clarify the details of specific cases and suggesting appropriate remedial action. Though there was an initial push back from some member States of the Commission (Bertie Ramcharan recalls a 'firestorm' erupting when the Special Rapporteur on summary executions published a report including individual communications⁷¹), mandate-holders continued to develop and expand their individual communications procedures, largely at their own initiative.

With the rapid quantitative expansion of the Special Procedures system from the 1990s onwards, several steps were taken to better coordinate, harmonise, and streamline the methodologies employed by mandate-holders to receive and process petitions, and to communicate with governments.

Since 1994, there has been an annual meeting of Special Procedures, allowing them to 'discuss issues of common interest, coordinate their work and meet with a range of stakeholders, including States and civil society organizations.'⁷² At the 12th such annual meeting in 2005, a 'Coordination Committee' was established and tasked with, inter alia: enhancing the effectiveness of mandate-holders and facilitating their work; facilitating joint action; facilitating the sharing of experience concerning methods of work; and encouraging States to cooperate with Special Procedures.⁷³

Importantly, in 2000 joint action on communications was enhanced by the creation of a 'Quick Response Desk' (QRD) at the OHCHR, through which petitions to Special Procedures could be channelled. The QRD was mandated to 'evaluate and analyse the information received and coordinate appropriate responses and action.'⁷⁴

In 2011, the OHCHR began publishing a triennial 'joint communications report.' Previously, information on communications sent to governments and responses thereto, had been published as an addendum to each mandate-holder's annual report. This frequently led to delays in providing updates on progress to individual petitioners. As noted by Philip Alston, the pre-2011 process 'might involve a delay of as little as two months or closer to two years, depending entirely on the fortuitous timing of the report and the communication.'⁷⁵ Since September 2011, however, those delays have been significantly reduced, and information on all communications to and from governments is compiled in one – albeit rather obscure – place.⁷⁶ In 2017, further progress was made when information on Special Procedures communications began to be provided via a new fully searchable web portal (see below). Notwithstanding these systemic innovations, some mandate-holders continue to include more detailed analyses of communications in annex to their own annual reports.⁷⁷

Over the past 20 years, member States of the Commission (1998) and then the Council (2006 and 2011) have undertaken a number of reviews of the operation of the Special Procedures. Those reviews have seen a number of interesting proposals put forward to strengthen the accessibility and effectiveness of the communications procedure. These have focused, inter alia, on finding ways to improve the availability and transparency of information (including the use of new technology), as well as government responsiveness and cooperation. However, these reviews largely failed to secure improvements to the system. Rather – as with the development of the overall Special Procedures system – reforms have mainly been driven by individual mandate-holders or by the OHCHR's Special Procedures branch.

In May 2016, the Special Procedures and the OHCHR launched a new online submission system.⁸⁰ The new system, developed in consultation with civil society, responds to repeated calls (including by the Universal Rights Group and Brookings Institution in a 2014 policy report)⁸¹ for the Special Procedures to make better use of new technology to improve accessibility, responsiveness and transparency.⁸² The online system provides – for the first time – a centralised guidance tool for individuals wishing to submit a complaint. It also allows – again for the first time – individual petitioners to track the progress of their submission. Importantly, the new online system is secure (information is encrypted and not maintained online for more

than 24 hours). Initially it will operate alongside the existing traditional methods of submission, but eventually it is expected to become the sole means of submitting complaints.

Most recently, in February 2017, OHCHR launched a new 'Communications Report and Search' portal (<https://spcommreports.ohchr.org/>), which provides information contained in the triennial 'joint communications reports' – but now makes it accessible and more easily searchable in real time. This, again, is a significant step forward in the development of a more victim-orientated communications procedure.



DEVELOPMENT OF THE '1503 PROCEDURE'

Under the '1503 procedure,' individuals or groups with 'direct and reliable knowledge' of human rights violations could submit a complaint directly to the Commission (i.e. member States) without an independent mechanism acting as an intermediary. Complaints were expected to contain factual information and demonstrate the existence of a consistent pattern of gross human rights violations. In order to be admissible, submissions were expected to meet a number of requirements: (a) the complainant was required to have exhausted domestic remedy and to have submitted the complaint within a reasonable period of time; (b) the concerned State must not already be under

examination by a public procedure (i.e. '1235 procedure') of the Commission, or by a Treaty Body; (c) the complaint must not to be politically motivated or manifestly unfounded or insulting; and (d) the complaint must not to be anonymous and should not rely exclusively on media reports. Complaints meeting these requirements were forwarded to the State(s) concerned, with a request that it/they respond to the allegations within 12 weeks. The complaint, together with any response received by the State(s) concerned, would then be reviewed by the Commission through a four-stage procedure:

1. The complaint was first reviewed by a **Working Group on Communications** (WGC), composed of five independent experts (members of the Sub-Commission) - one from each regional group. The WGC would review the substance of the complaint to ensure procedural requirements had been met - i.e. that it revealed 'a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.'⁸³ Where these requirements were met, the WGC would forward the complaint to the Sub-Commission's plenary. If more information was required, complaints could be kept pending until the following session (a year later).

2. **The Sub-Commission plenary** would then consider the communication, and government replies thereto, to determine whether the situation merited referral to the full Commission - i.e. whether the information received may 'reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission.'⁸⁴

3. Though not foreseen in the original resolution, from 1974 the Commission established a second screening group - **the Working Group on Situations** (WGS) - composed of representatives of member States of the Commission.'⁸⁵ The WGS was charged with examining the material referred to the Commission by the Sub-Commission and any written government observations thereto, and deciding which country situations the Commission should take up and what course of action it might take

4. Finally, the **Commission** would then consider the situations referred to it by the WGS during its annual session (in closed meeting). The concerned State could participate in the meeting, and enter into a discussion with the Commission. The Commission could take one of four courses of action: (a) discontinue consideration; (b) keep the situation under review, and wait for further information from the State concerned; (c) keep the situation under review and appoint a country-specific Special Procedures mandate to monitor the situation and report back;⁸⁶ or (d) move the matter to the 1235 public procedure, under which it could take a further range of actions (e.g. adopt a resolution).

At the time of its creation, NGOs hailed the 1503 procedure as a major breakthrough. It appeared to offer the first truly universal procedure through which individuals and civil society could submit complaints concerning violations of human rights in any State.

It did not take long however for frustrations to emerge. It soon became evident that the confidential nature of the procedure made it particularly vulnerable to political manipulation.'⁸⁷ As they became familiar with the four-stage process outlined above, States were able to exert an increasing degree of influence over the outcome.

For example, despite the fact that the WGC was supposed to be composed of independent experts, government officials (e.g. from Ethiopia, Nigeria, the US, and the USSR) frequently succeeded in being appointed (in some instances, government representatives even represented a majority of WGC members).'⁸⁸ Indeed, the appointment process became so politicised that on one occasion a Soviet official was able to 'consistently [represent] the Eastern bloc, even in 1980 when the Chairman [of the Sub-Commission] designated a Bulgarian alternate.'⁸⁹ Once in place, these officials were able to help allies avoid scrutiny. For example, according to a 1978 article in the French newspaper *Le Monde*, representatives of Pakistan and the USSR on the WGC were instrumental in blocking UN action on the situation in Argentina.'⁹⁰ It was a similar story with the WGS: certain States repeatedly used their position on the Working Group to protect friends from criticism; while in other cases the concerned States themselves (e.g. Argentina, Ethiopia, Uganda, and Uruguay) were able to secure places on the Working Group, and thereby be in a position to review information on their own human rights situation and decide, on behalf of the UN, what action should, or (more likely) should not, be taken.'⁹¹

For States keen to avoid international attention and criticism, the 1503 procedure also had the advantage of precluding public scrutiny at the UN. By keeping situations under confidential consideration, States could in effect kick them into the 'political long grass,' thus providing 'a useful shield' against public criticism. Concerned States merely had to keep up the appearance of 'entering into a dialogue' with the Commission, 'no matter how remote from the substance of the allegations'⁹² that dialogue might be. Philip Alston has observed that the 'dialogue' in the Commission was generally characterised by 'political horse-trading rather than a probing inquiry into the facts and a quest for the most effective potential response.'⁹³ For example, in 1977 a draft resolution on the human rights situation in Uganda was tabled by the UK and Canada during a (public) meeting of the Commission, but was blocked by Cuba on the grounds that a resolution on the same situation was already pending under the 1503 procedure.'⁹⁴ Argentina was another State that successfully avoided public scrutiny (between 1976 and 1980) by cooperating - procedurally at least - with the 1503 procedure.

Linked with this political manipulation of the process, the review of situations of concern could be - and frequently was - excruciatingly slow. Even in best-case scenarios, situations might not reach the Commission for at least a year after they were originally reported.'⁹⁵ Furthermore, if updated information was sent, it was dealt with as a new submission'⁹⁶ and thus again filtered through the Sub-Commission.'⁹⁷ Nicole Questiaux (France), a member of the Sub-Commission at the time, has said 'confidential deliberations' under the 1503 procedure frequently continued 'for years', when the situation usually 'demanded an immediate public response.'⁹⁸ From the perspective of victims and NGOs, frustration at the slow and halting nature of progress under the 1503 procedure was further exacerbated by the secretive character of the process, meaning that it was difficult to access updates on progress.

The Commission did take some steps to respond to these concerns and challenges. For example, in 1978 its Chairman began the practice of announcing the names of States being considered under the 1503 procedure (though without providing any further details), while in 1979 the Commission decided, for the first time, to transfer consideration of a particular human rights situation, Equatorial Guinea, from the confidential 1503 procedure to the public 1235 procedure. The latter development led to the creation of a country-specific Special Rapporteur on Equatorial Guinea, which in turn 'marked the beginning of a relatively rapid expansion of country-specific mechanisms under the 1235 procedure'⁹⁹ following (and catalysed by) earlier consideration under the 1503 procedure.

Notwithstanding these improvements, in 1999, the Commission's Bureau concluded that the 1503 procedure had 'come to be regarded as an increasingly ineffectual, highly cumbersome means for addressing situations warranting the Commission's attention,' particularly in light of 'the emergence over the past three decades of a wide range of other processes' (i.e. the Treaty Body and Special Procedures communications systems).'¹⁰⁰ In a report to the Commission, the Bureau suggested that 'significant reform of the existing procedure'¹⁰¹ was required, and made a number of proposals in that regard (including removing the WGS - i.e. States - from the screening process). The Commission largely rejected these proposals.

In 2005, the Commission (together with its 1503 procedure) was abolished (to be replaced by a new Human Rights Council - see below). Over the course of three and a half decades, the Commission had leveraged its confidential procedure to address situations in at least 86 countries. In 19 of those cases (across 17 countries), the situation was considered serious enough to merit public scrutiny by the Commission and was therefore

transferred to the 1235 public procedure. In 12 cases, this led to the establishment of a country-specific Special Procedures mandate: Afghanistan (1984), Bolivia (1981), Chad (2004), Democratic Republic of Congo - former Zaire (1994), El Salvador (1981), Equatorial Guinea (1979), Guatemala (1982), Haiti (1987), Liberia (2003), Myanmar (1992), Rwanda (1994), and Sudan (1993).'¹⁰² With the establishment of the Human Rights Council in 2006, the 1503 procedure was replaced with a new 'Confidential Complaint Procedure.' As part of the Institution Building Package (IBP) of the Council, States agreed to three principle changes (as compared to the 1503 procedure). Firstly, it was agreed that the overall complaints process should be concluded within two years. With this in mind, both the WGC and the WGS were mandated to meet at least twice a year for five working days. Together with more frequent meetings of the Council (which would meet for three regular sessions per year - compared to the Commission's single annual session), this would, in theory, allow States to respond to urgent situations in a timelier manner. Secondly, in order to improve transparency, especially for victims and/or their representatives, complainants would receive progress updates at each stage of the process (e.g. after consideration by the WGC, after consideration by the WGS, and after consideration by the Council itself). Thirdly, as a further possible course of action at the end of the process, the Council could now recommend that the OHCHR offer technical assistance to the concerned State.

During negotiations on the IBP, a number of other interesting proposals were put forward, including: to enhance the preventative or early warning capacity of the Confidential Complaint Procedure; to remove the need for complainants to have exhausted domestic remedy before submitting information; and to remove the non-duplication (with the Treaty Body and Special Procedures communications procedures) requirement. Supporters of these proposals argued that the Confidential Complaint Procedure is different from, and complementary to, the other communications procedures in that it is designed to identify emerging situations of concern - rather than to deal specifically with individual complaints. These proposals were, however, rejected by the African Group, the Non-Aligned Movement (NAM), and the Organisation of Islamic Cooperation (OIC).

1980-2016 – DEVELOPMENT, COORDINATION AND RATIONALISATION?

In 1976, a few months after the OP-ICCPR had entered into force, the Sub-Commission¹⁰³ invoked a clause contained in ECOSOC resolution 1503 which stipulated that the confidential procedure ‘should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement.’¹⁰⁴ In response, the Commission asked the then UN Secretary-General, Kurt Waldheim, to prepare an ‘analysis of existing United Nations procedures for dealing with communications concerning violations of human rights, to assist the Commission in studying measures to avoid possible duplication and overlapping of work in the implementation of these measures.’¹⁰⁵ This analysis was published in 1979.¹⁰⁶

In his report, the Secretary-General recognised that ‘the fundamental difference [between the 1503 and the ICCPR procedure] is that the former is concerned with the examination of situations, whereas the latter is concerned with the examination of individual complaints, i.e. isolated instances of alleged violations of human rights.’¹⁰⁷ This important distinction was also recognised by the Human Rights Committee in its second report to the GA, in which it argued that ‘a situation is not the same matter as an individual complaint.’¹⁰⁸ In 1980, Maxime Tardu proposed a lexicology to better understand and clarify this distinction. Treaty Bodies, it was argued, represented a ‘petition-recourse system,’ while the 1503 Procedure might be defined as a ‘petition-information system.’¹⁰⁹

From a historical perspective, the main contribution of the Secretary-General’s report was to introduce the idea that as more communications procedures are established, it would become increasingly important, in order to retain coherence and ease-of-access for victims, to provide a single initial point of contact (or interface) between petitioners and the UN. For the Secretary-General, this initial point of contact (or interface) was ‘the Secretariat,’ which should ‘not only assist authors, as appropriate’ but also ‘sort out mail at the initial [...] stage, with a view to ensuring proper channelling of material into each procedure.’¹¹⁰ In other words, individual victims of human rights violations are unlikely to be experts on the intricacies of the UN human rights protection system, or ‘to have prior knowledge of the existing [communications] procedures or the functions of the bodies implementing them.’¹¹¹ Nor, by extension, should they be expected to know which of the procedures would be best placed to help them secure remedy or redress.

15 years later (1994), a further report by Secretary-General Boutros Boutros-Ghali, reaffirmed this vision of a single petition system made up of three complementary parts, while adding two further layers of analysis. First, the Secretary-General reflected on the important distinction between the public and the confidential parts of the system, welcoming the long-standing ‘practice of the Commission not to take any action under the 1503 procedure if the country concerned [was being] dealt with under a public procedure’ or to ‘discontinue consideration of a country situation under the 1503 procedure, in order to take up consideration of the same matter under a public country mandate.’¹¹² Second, he reflected on the emergence of the communications procedures of thematic Special Procedures (an increasingly important ‘public’ part of the system).¹¹³

The 1994 report remains the last official UN attempt to review the operation of the international human rights petition system as a single coherent whole, made up of three complementary parts. It was also the last time the UN gave serious consideration as to how to better leverage the synergies between the three parts of the system, as opposed to focusing on improving the performance of each in isolation.



Office of the United Nations High Commissioner for Human Rights in Geneva

PART II WHERE ARE WE TODAY?

Today, individual complaints can be addressed to eight Treaty Bodies with communications procedures, the Special Procedures mandates that accept communications (almost all of them), and/or the Human Rights Council’s Confidential Complaints system.¹¹⁴

As section I of this report makes clear, whilst each of these three procedures was created for the same broad purpose – to offer the victims of alleged domestic human rights violations direct recourse to the international human rights protection system – since their establishment they have developed along parallel tracks; each identifying, understanding and seeking to overcome the challenges they face in isolation.

Part II of this report will therefore consider each of the three procedures in turn, to understand their contemporary situation, the challenges they face, and the reforms they have put in place to strengthen performance. The analysis will adopt a victim’s perspective, with each procedure considered against a three-point framework of:

- **VISIBILITY AND ACCESSIBILITY**
- **RESPONSIVENESS**
- **EFFECTIVENESS**

TREATY BODIES

The communications procedures under the eight core Treaty Bodies are widely considered to be the most robust of the three UN human rights petitions systems. Described as ‘quasi-judicial,’ they reach decisions – known as ‘Views’¹¹⁵ – on each and every case that meets the basic requirements for registration.

TREATY BODY COMMUNICATIONS PROCEDURE IN A NUTSHELL

Once a Treaty Body has received a complaint, there are basic requirements that determine whether the complaint will be registered - including whether the State concerned has ratified the relevant treaty and whether the allegations appears to concern the violation of one or more of the rights listed in the treaty. If the complaint meets these basic requirements, it will be registered for consideration and subsequently transmitted to the relevant State for comment. If the State responds, the individual submitting the complaint can reply to their comments. The Treaty Body will then be in a position to make a decision on the basis of all the information received. If the State does not take the opportunity to respond within a set timeframe (despite reminders), the Treaty Body will make its decision based solely on the individual’s complaints.¹¹⁶

As the Human Rights Committee has recognised in its General Comment 33, while it, in common with other Treaty Bodies, is not a judicial body, its Views ‘exhibit some important characteristics of a judicial decision,’ namely: ‘[that] they are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions.’¹²⁰ Thus while not binding in a strict legal sense, these Views ‘represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument.’¹²¹

There are two stages to this decision-making process: ‘admissibility’ – i.e. the determination of whether the complaint is suitable for assessment; and ‘merits’ – i.e. the determination of whether the complaint is justified. At the ‘admissibility’ stage, the relevant Treaty Body will determine whether the complaint complies with the necessary procedural requirements, such as whether all domestic remedies have been exhausted. If it does comply, the Treaty Body will then consider the substance (or ‘merit’) of the complaint and decide whether a violation has taken place. Often, these stages happen simultaneously; however the concerned State can object to this. Treaty Body meetings to consider individual petitions are held behind closed doors. Once a decision is finalised, both the claimant and the State concerned are informed.¹¹⁷

If a Treaty Body establishes that a human rights violation has occurred, it will decide what remedial action is required, and will ask the State to report back within a certain period of time (e.g. six months) on what action has been taken to comply with its decision.¹¹⁸ Final decisions, or ‘Views,’ on the admissibility and merits of cases are available on OHCHR’s website, and form the human rights Treaty Body jurisprudence.¹¹⁹

VISIBILITY AND ACCESSIBILITY

It is one thing for a State to accept a communications procedure under one of the human rights treaties, opening up the possibility for individuals within its jurisdiction to submit petitions to relevant Treaty Bodies; but it is quite another thing for those individuals to know they have this option – that they can seek protection and redress from the UN - and, where they do know, that they have the capacity to access the relevant procedure(s).

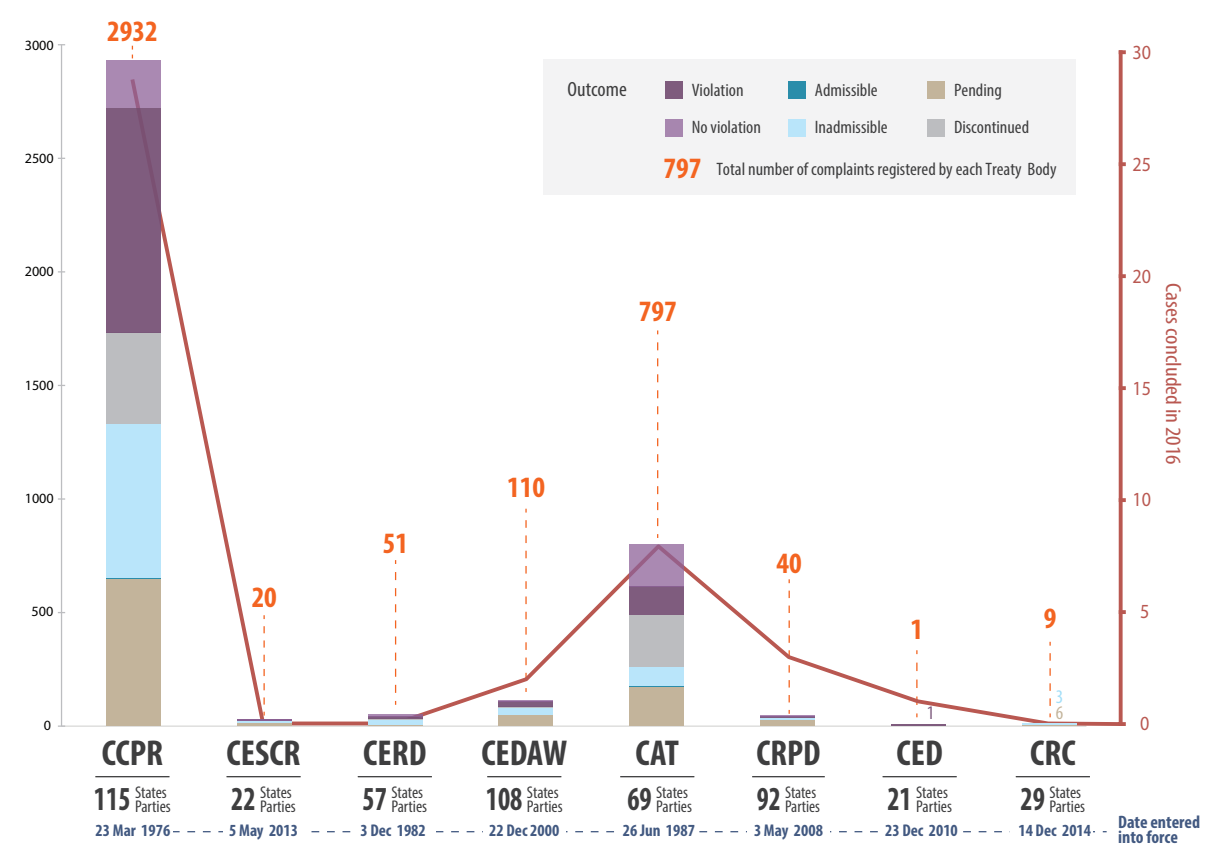
In order to inform consideration of these important issues, over the course of 2015 and 2016, the Universal Rights Group (URG) undertook a major quantitative analysis of the Treaty Body

communications procedures.¹²² The results of that analysis are presented below.

URG’s analysis found that, since their establishment, the various committees have registered a total of 3,960 communications.¹²³ When one considers that the first communications procedure (for the ICCPR) entered into force in 1976, this overall number appears very small.

What is more, that overall figure is dominated by petitions received by just two Treaty Bodies: the Human Rights Committee and the Committee Against Torture (see Figure 1). As of the end of 2016, the Human Rights Committee had received 2,932 petitions,

FIGURE 1. OVERVIEW OF COMMUNICATIONS RECEIVED BY THE UN HUMAN RIGHTS TREATY BODIES



Source: Data from the OHCHR’s ‘Statistical Survey on individual complaints’, the OHCHR’s jurisprudence database and the UN Treaty collection website. For methodology please see endnote.

representing 74% of all communications; and the Committee Against Torture 797, representing a further 20% of the total. This means that just two Treaty Bodies have received 94% of all individual complaints transmitted to the UN Treaty Body system.

What is more, that predominance shows little sign of abating: in 2016, the Human Rights Committee considered 67% of all Treaty Body communications, and the Committee against Torture 19%.

Meanwhile, the Committee on the Elimination of Discrimination Against Women, despite the fact that there are around 40 more States Parties to the CEDAW than to the CAT, accounted for less than five per cent of cases concluded in 2016, and, over more than 16 years of operation has registered just 110 complaints in total. Even more strikingly, the CERD has registered just 51 communications across more than 33 years of operation. The Committee did not conclude consideration of any communications in 2016.

Over eight years of operation, the CRPD has registered just 40 complaints. Given that 92 States are Party to the CRPD communications procedure, this is - again - a surprisingly small number.

Finally, the three most recent procedures to become operational – under the ICESCR, the CRC, and the CED – have, to date, dealt with only 20, nine and one communication(s), respectively.

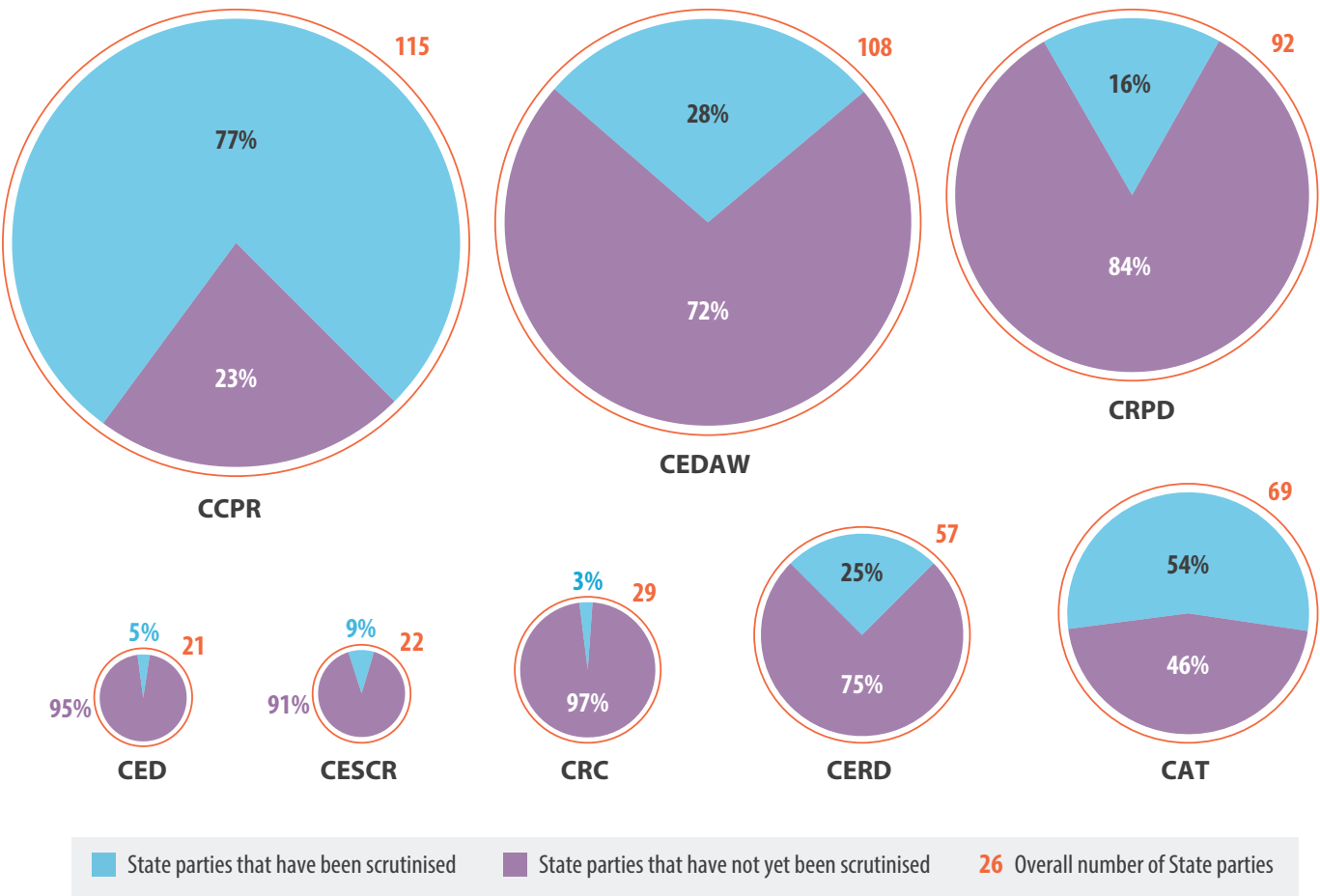
When set against the number of States that have accepted the individual complaints procedures under the different human rights treaties (as of the end of 2016, 197 States have accepted around 513 procedures), and, more importantly, the huge number of human rights violations that take place around the world each and every day, the fact that there have been less than 4,000 petitions received and that those complaints relate to alleged violations of only a limited number of civil and political rights; it becomes evident that something is wrong.

In addition to these overall totals, it is also instructive to look at the geographic spread (countries of origin) of petitions received (see Figure 2).

For those Treaty Bodies that receive the most individual petitions, namely the Human Rights Committee and the Committee Against Torture, URG’s data analysis found that 23% of all States Parties to the ICCPR have never been the subject of an admissible petition, while for the CAT that figure rises to 46%.

Turning to other committees, a staggering 72% of the 108 CEDAW States Parties that accept the treaty’s communications procedure have never been the subject of an admissible complaint. That figure rises to 84% for the CRPD (of the 92 States that accept the procedure), and 97% for the CRC (of the 29 States that accept the procedure).

FIGURE 2. SCRUTINY OF STATE PARTIES TO TREATY BODY COMMUNICATIONS PROCEDURES



Source: Data from the OHCHR's 'Statistical Survey on individual complaints', the OHCHR's jurisprudence database and the UN Treaty collection website. For methodology please see endnote.

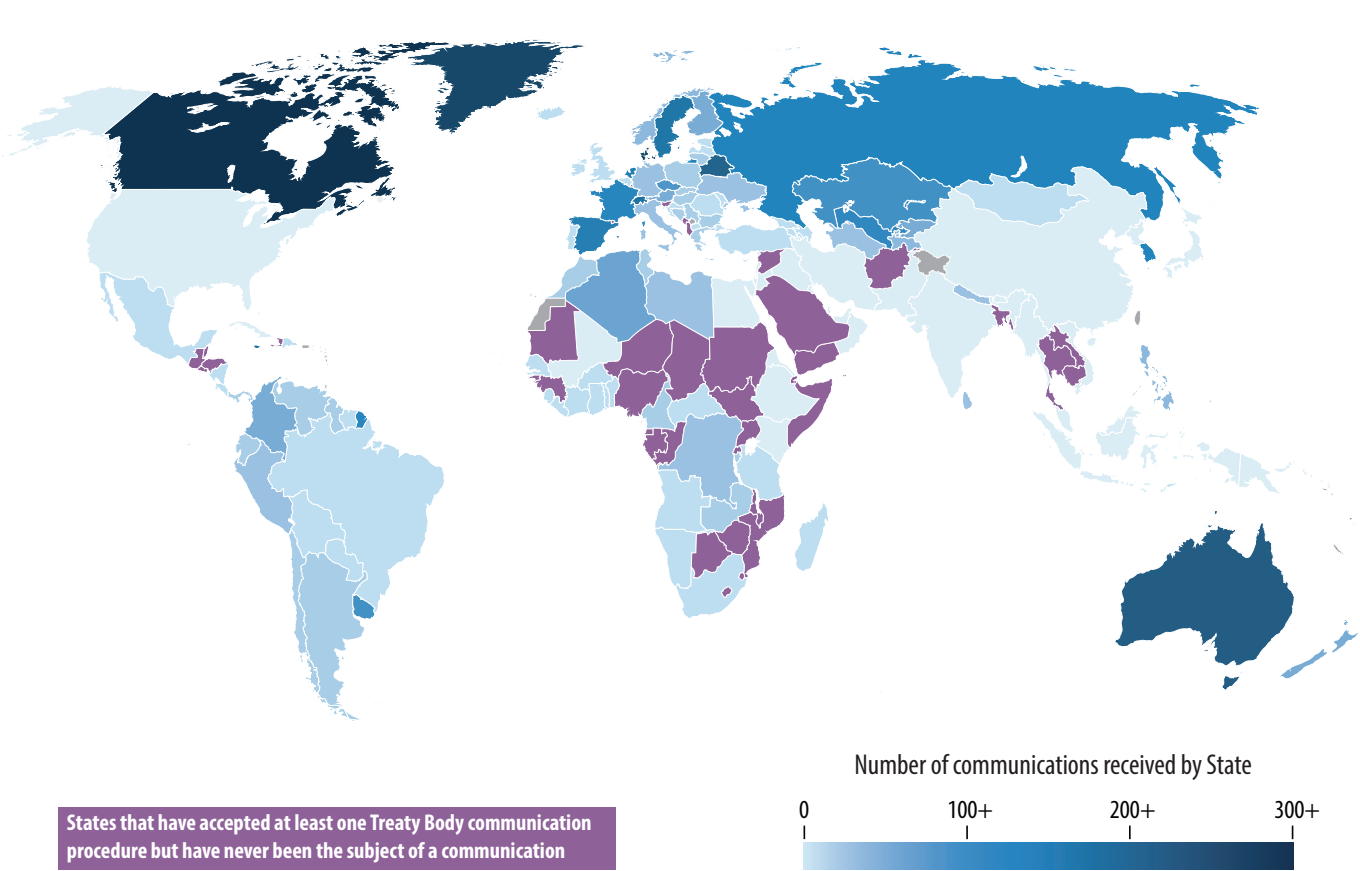
Breaking down these figures by UN regional group reveals that the African Group, despite having the most States that are Party to the ICCPR communications procedure (33), has only been the subject (as a region) of six per cent of all individual complaints to the Human Rights Committee.¹²⁴ If one compares that with complaints received about violations in countries of the Western Europe and Others Group, then the 24 WEOG States that have accepted the ICCPR procedure account for 39% of cases considered by the Committee.¹²⁵ A very similar pattern also holds true for other treaty procedures. For example, the CEDAW received only one individual complaint regarding alleged violations across the 24 African States that have accepted the relevant communications procedure, compared with the 71 complaints related to alleged violations in 12 of the 25 WEOG States that have accepted the same procedure. If one looks at the use of the communications procedure under the CAT, these figures become even more extreme and unbalanced. Since the CAT procedure was established, a staggering 88% of all cases scrutinised by the Committee have been in relation to alleged violations in just 17 (out of 25 that accept the procedure) WEOG States. By comparison, only two per cent of all cases relate to alleged violations in the Asia-Pacific region, and one per cent to alleged violations in Latin America.

Breaking down these regional variations even further – to the level of individual States – highlights even more significant – and worrying – imbalances. For example, three Western democracies, Canada, Sweden, and Switzerland, account for 61% of all cases considered by the Committee Against Torture. According to a Treaty Body member interviewed for this report, this is because Western lawyers have started to use the Committee as a 'last court of appeal' in asylum cases. Denmark, meanwhile, accounts for an astonishing 34% of all cases registered under the CEDAW, and 19% of all Treaty Body petition cases concluded in 2016.

In stark contrast, 51 States (34% of the total) that have accepted one or more communications procedure have never been the subject of an individual complaint. Of these States, nearly half are from the African region and one-fifth from the Asia-Pacific.

Based on interviews conducted for this report, it appears that there are a number of explanations for these geographic imbalances and, at a macro-level, for the overall low number of petitions scrutinised under the Treaty Body communications procedures.

FIGURE 3. MAP SHOWING THE NUMBER OF TREATY BODY COMMUNICATIONS RECEIVED CONCERNING EACH STATE



Source: Data from the OHCHR's 'Statistical Survey on individual complaints', the OHCHR's jurisprudence database and the UN Treaty collection website. For methodology please see endnote.

First, it appears that the vast majority of victims and/or their representatives are completely unaware that the procedures exist, and/or have little or no understanding of how they work in practice. This lack of visibility is especially stark in developing countries, particularly amongst people in Africa and Asia.

In these and other countries, the key to making the Treaty Body communications procedures more visible, and increasing general public awareness about this important channel of remedy and redress, appears to be the victim's ability to gain access to domestic support networks made up of, for example, lawyers, local human rights NGOs or, in some cases, trusted national human rights institutions (NHRIs). These domestic actors, often with the support of international NGOs, are then able to advise victims on the relative merits of all available channels of redress (including regional human rights procedures where present), and help them access those channels. The central importance, from a victim's perspective, of receiving help from such expert support networks is reflected in the fact that in 77% of cases concluded by Treaty Bodies in 2015, and in 62% of cases concluded in 2016, the alleged victim was represented by a lawyer and/or an NGO.¹²⁶

The importance of these lawyer-NGO support networks for the visibility of the Treaty Body complaints procedures (and for their subsequent ability to access those procedures – see below) also helps to explain the severe regional imbalances described above. In brief, people living in more developed countries with strong, independent civil society sectors, robust legal professions, and generous legal aid systems, are far more likely to know or learn about the opportunities provided by the Treaty Body communications procedures, than are their peers in the developing world. They are also far more likely to receive expert legal support in submitting complaints.

As noted above, one outward expression of the strong role of Western lawyers in preparing and submitting cases to UN Treaty Bodies is that fact that many of those cases focus not on human rights violations 'at home' (e.g. in Canada, Denmark, or Sweden) but rather on using human rights situations in third countries to argue in favour of or 'non-refoulement' – i.e. to block the deportation of an individual to a country where he/she may have their human rights violated. Between 2015 and 2016, 30% of all complaints dealt with by the UN Treaty Bodies related to 'non-refoulement'.¹²⁷ For the Committee Against Torture that figure was 81%. Seen the other way round, over the past two years, less

than 20% of individual complaints dealt with by the Committee Against Torture related to actual allegations of torture within the territory of the country concerned. The rest concerned the risk of torture in a third country, with the objective of blocking deportation to that country.

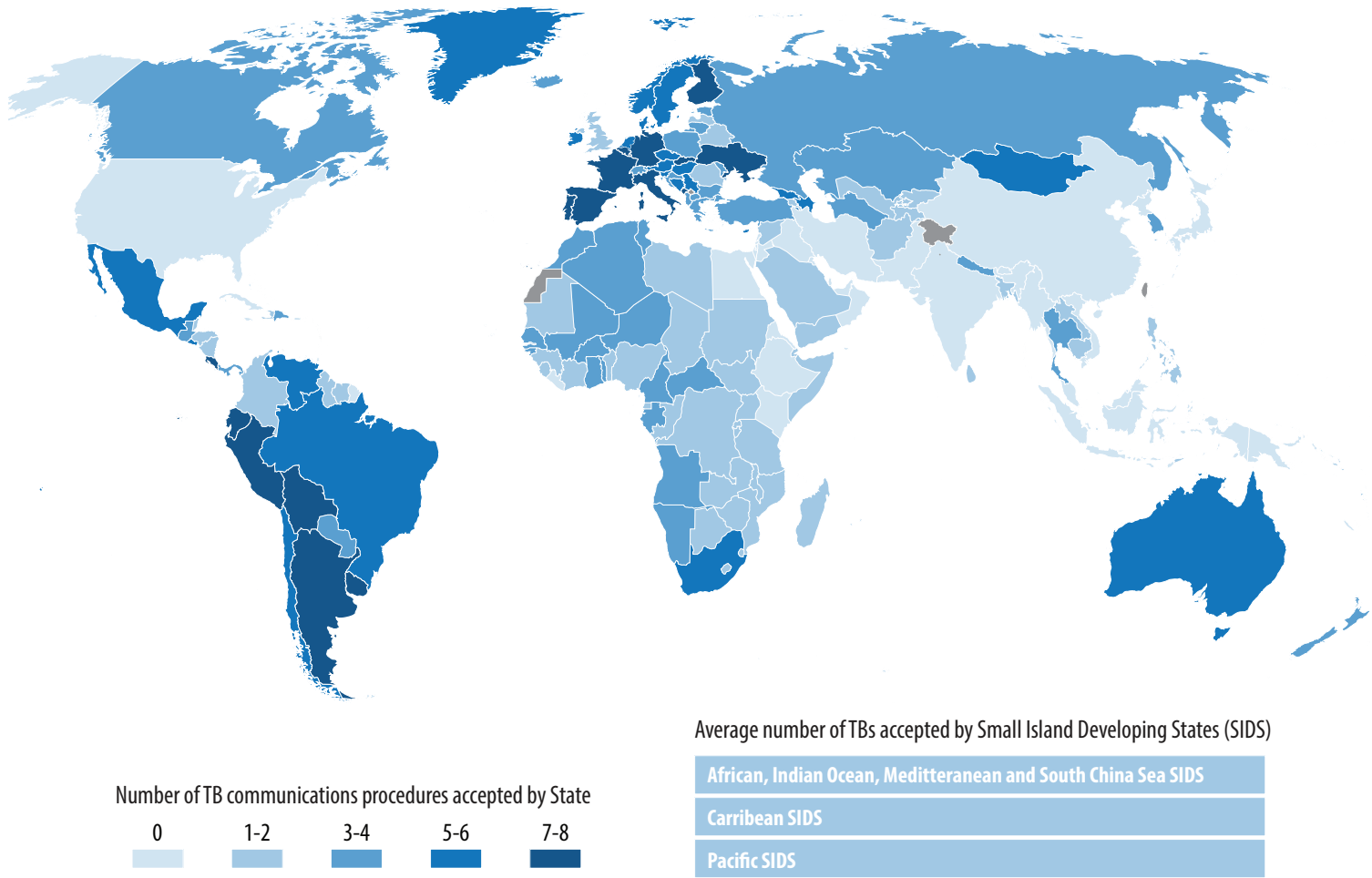
Second, from the interviews conducted, it appears that even where individual victims do know of the existence of the Treaty Body complaints procedures, they are not always able to access them. There are a number of factors affecting the **accessibility** of the Treaty Body complaints procedures including: legal access; user-friendliness of the victim interface; and admissibility requirements.

On the issue of legal access, under human rights treaty law individuals can only seek remedy from a Treaty Body if the State in which they live is Party to the relevant treaty and has accepted the relevant communications procedure. In practice, this legal consideration represents a significant barrier to access,

especially for people living in countries with poor human rights records, which, as one NGO representative noted during the interviews, ‘tend not to be Party to the key conventions or to the relevant communications procedures.’¹²⁸ As an illustration of this point, nearly 50 UN member States are yet to accept a single Treaty Body communications procedure, while many others have accepted only one or two. This includes great swathes of Africa and Asia, as well as the United States (see Figure 4).

Related to this point, many victims and/or their families do not appear to know whether their State is Party to relevant treaties and procedures or not. This is perhaps not surprising when one considers how difficult it is to find out this information (via numerous clicks on the OHCHR website) - even for human rights researchers.¹²⁹

FIGURE 4. LEVELS OF STATE ACCEPTANCE OF TREATY BODY COMMUNICATIONS PROCEDURES



Source: Data from the UN treaty collection website. For methodology please see endnote.

On the important issue of the ‘victim-friendliness’ of the user interface with the Treaty Body communications procedures, where an individual wishes to make a complaint, he or she needs access to the internet, and in particular, the website of OHCHR (www.ohchr.org). The user then needs to scroll down to the bottom of the homepage (the ‘Quick selection’ segment), and click on ‘Individuals’ and the ‘Human rights Treaty Bodies.’ The other – more intuitive – option would be to click on ‘Human rights bodies’ in the top menu and then ‘Treaty Bodies.’ However, this takes the user to a general information page, with no direct access to a complaints submission platform. Nor is such a platform accessible via the ‘Contact’ button in the top menu of the homepage.

Once a victim arrives at the webpage ‘Human rights Treaty Bodies – individual communications,’ he or she is faced with an overwhelming amount and variety of information. Indeed, a quick analysis of this ‘launch’ page reveals that it contains over 11,000 words (in total), 23 frequently asked question (FAQ) sheets, an overview of the eight Treaty Body communications procedures, links to more detailed information on each of those individual procedures, and 9,500 words of general guidance to victims or their representatives (i.e. common guidelines for all treaties), as well as treaty-specific guidance. Perhaps the most important information for victims, on ‘How to direct complaints to Treaty Bodies,’ is found at the very bottom of the page. However, the information specifies that individuals can only use the contact details provided (a mail address, a fax number, and an email address) to submit complaints to six of the eight complaints procedures (the procedures under the ICESCR and the CRC are missing). In terms of the amount and type of information that should be included in any submission, this varies between procedures, with each Treaty Body publishing their own factsheets, guidelines and model forms. Some of these documents are available directly from the general ‘Human rights Treaty Bodies – individual communications’ page; others are only accessible from the webpages of the separate Treaty Bodies.

On a positive note, the above information is available in multiple (though not all) UN languages, notably Arabic, Chinese, English, and Russian. French- and Spanish-speaking users are directed to the English language page. Submissions can in principle be made in any of the official UN languages, though from the interviews conducted for this report it appears that complaints made in Arabic, Chinese, or Russian are likely to face delays. In short, it appears very difficult for non-experts with no prior knowledge of the system to locate the interface for the submission of individual complaints, identify the correct procedure for the violation and the country in question, and then understand (and eventually compile) all the information necessary to make an admissible submission. Moreover, whereas these determinations are already difficult for expert or highly educated users, they are likely to be impossible for

less educated individuals or for people in urgent or even life-threatening situations (as will often be the case with the victims of violations and/or their families).

The third issue and potential barrier to access is admissibility. Treaty Bodies will only consider the substantive merits of a complaint once relevant procedural criteria have been met. These admissibility criteria include: does the complaint concern the alleged violation of a human rights covered by the convention in question; can the petitioner demonstrate that he or she has exhausted domestic remedy; and is the complaint already under active consideration by another international or regional adjudicative complaints procedures (e.g. by another UN Treaty Body, by the European Court of Human Rights, or by the Inter-American Court of Human Rights)?¹³⁰

Treaty Body data shows that these admissibility criteria form a significant barrier to access for many individual complainants.¹³¹ Since the establishment of the various communications procedures, a total of 21% of all petitions received by the Treaty Bodies have been deemed inadmissible (on one or more of the above grounds). Moreover, this overall figure masks variations between committees, with some, such as the Committee on the Elimination of Discrimination Against Women finding over 30% of all complaints received to be inadmissible.

The significance of these legal and admissibility barriers to access helps explain, again, the importance for individual victims or their families, of receiving external support from lawyers or human rights NGOs. To know which international and regional communications procedures are open or available to an individual victim, and which offer the best chance of success; to avoid duplication of claims between mechanisms; and to demonstrate the exhaustion of domestic remedy; all clearly require a good knowledge of domestic, regional and international legal procedures.

RESPONSIVENESS

Unlike the other two UN human rights petitions procedures (Special Procedures and the Council’s Confidential Complaints Procedure), every single person who submits a genuine (i.e. admissible) human rights complaint to a Treaty Body will receive some sort of response (even if that is only to advise the petitioner that the State is not Party to the convention, and that they should instead contact the Special Procedures).¹³²

One key challenge for victims, however, is that it can take a very long time to receive that response. For cases concluded in 2016, for example, it took the relevant committees, on average, three and a half years to reach their final Views. For a number of particularly complicated cases, and/or cases where the States concerned refused to cooperate, the timeframe for completion might increase to more than seven years. It goes without saying

that from the perspective of individuals who have suffered or are suffering serious human rights violations, a delay of three and a half years (let alone seven years) in finalising the UN's response greatly diminishes the utility of the procedure. When considering this issue, one NGO representative quoted the well-known legal maxim 'justice delayed is justice denied,' while another asked the rhetorical question: 'how can I recommend to someone who has been tortured and who is still at risk to spend time petitioning a mechanism that will take around three years to respond?' Indeed, the significant delays involved in formulating and finalising Views was highlighted by many of the interviewees for this report as one of the key contemporary challenges facing the Treaty Body system.¹³³

Although some level of delay in processing claims is unavoidable due to the need to allow time for the State concerned and the complainant to respond to information provided, the main cause of the backlog of cases is a lack of human resources in the Secretariat. There are currently only around a dozen OHCHR professionals responsible for processing thousands of petitions per year – placing enormous strain on staff members. Largely as a result of such capacity constraints, as of the end of 2016 the Treaty Body system was facing a backlog of over 900 cases (where a decision is pending). This represents a 97% increase over 2011.¹³⁴ In reality, the actual number of petitions awaiting attention will be far higher – because the figure of 900 does not include all the cases received but not yet registered.¹³⁵

To provide a sense of how long it will take to clear this backlog, it is useful to note that a member of the Committee on the

Elimination of Discrimination Against Women, interviewed for this report, estimated that her Committee is usually able to conclude three to four cases per session, meaning nine to 12 cases per year. Thus, at current resource levels (which are unlikely to improve any time soon – the net gain for the petitions unit from the recent Treaty Body strengthening process was just one extra member of staff), it would take around five years to clear the existing CEDAW backlog – assuming no new complaints are received in the meantime. When one considers that the Committee Against Torture has a backlog of around 170 cases, and the Human Rights Committee a backlog of over 640 (as of the end of 2016), the scale of the challenge becomes clear. Meanwhile, new communications procedures are coming into force (e.g. under the CRPD, ICESCR, and CRC) and more States are accepting those procedures.

In order to circumvent these potentially critical delays, especially in the most serious and urgent cases, Treaty Bodies are able to adopt 'interim measures.' These measures, addressed to the State concerned, are designed to prevent irreparable harm from being done in the time it takes for a committee to reach a final decision on the case in question. According to NGO representatives: 'interim measures can be highly effective and can mean the difference, literally, between life and death.' They must be explicitly requested by the complainant (though this is not indicated on the OHCHR submission form) and 'in most cases are dealt with within 24-48 hours,' though in some instances 'the whole process has been concluded in just a few hours.'¹³⁶

INTERIM MEASURES

Whether or not 'interim measures' are legally binding has been subject of intense debate for a number of years, not least because of what is at stake (people's rights and, in some cases, their lives) and because there is no reference to such procedures in the early treaties and optional protocols (e.g. the OP-ICCPR and the CAT). Many of the later conventions and optional protocols do make reference to interim measures, but these are explicitly framed as a request to be considered by the State concerned (emphasis added).¹³⁷

Notwithstanding, the Human Rights Committee's General Comment 33 states that 'failure to implement [...] interim or provisional measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the Optional Protocol.'¹³⁸ Manfred Nowak has argued, along similar lines, that while interim measures are not strictly legally binding, the failure of a State Party to respect

such measures constitutes a violation of their obligation to cooperate with the Committee (under article 22).¹³⁹ Other experts, and a number of States, argue, on the contrary, that interim measures carry no legal weight, being merely 'requests' rather than 'demands.'

Interim measures were requested in 55 out of 143 cases concluded by all committees in 2015 and 2016.¹⁴⁰ States complied with these measures in 69% of cases. In 31% of cases States simply ignored them. For example, an interim measure calling on Belarus to halt the executions of two individuals was rejected by the State concerned (on the grounds that interim measures have no legal status).¹⁴¹

As noted above, the possibility of requesting interim measures is not immediately evident to individual petitioners, (it is not mentioned on the complaint forms). As a consequence, this option is mainly used in cases where the alleged victim is represented by a lawyer. For example, of all the interim measures requested and adopted in 2016, in only 12% of cases did the individual complainant not have legal representation.

The use of interim measures in asylum cases is a particularly controversial issue, especially amongst Western States. URG data shows that interim measures were requested in 78% of cases relating to immigration claims between 2015 and 2016. As noted earlier in this report, this is usually part of a

strategy on the part of lawyers to use the Treaty Body communications procedure as a 'court of last appeal' – to delay and/or block deportation. The use of interim measures to prevent imminent deportation is an important part of this strategy. Where a committee adopts an interim measure, then takes a long time to arrive at its final Views on the case, this can serve to delay deportation for many years – during which time the concerned individual's situation may change (e.g. he or she may get married, or have children). Western governments are increasingly frustrated by this situation, questioning why international quasi-judicial committees should have the power to suspend due process overseen by respected domestic courts.

EFFECTIVENESS

The overall effectiveness of the Treaty Body communications system ultimately depends on States' willingness to respond to allegations of violations, and their willingness and ability to implement the final Views / recommendations of the committees.

On the first point, committees often find it challenging to secure a meaningful and timely response from States. Officially, States are given six months to provide a response, after which they are issued with three reminders. This already lengthy period of time comes, of course, on top of the time it takes OHCHR and the committee in question to process the initial petition or complaint, and prepare and send the initial communication to a government. A URG analysis of a sample of 100 communications has found that the average 'lag time' between the receipt of a complaint by the UN Treaty Body system, and the receipt of an initial response (to the allegations) from the State concerned, is 354 days – very nearly one year.

Such delays notwithstanding, the overall State response rate to the Treaty Bodies is far higher than for Special Procedures. In just 13% of cases analysed by URG, did the Treaty Body not receive a response from the State (to inform its deliberations on the merits of the case). This compares with around 50% for Special Procedures communications. This is presumably explained by the fact, recognised in Human Rights Committee General Comment 33, that 'in failing to respond to a communication, or responding incompletely, a State which is the object of a communication puts itself at a disadvantage, because the Committee is then compelled to consider the communication in the absence of full information relating to the communication. In such circumstances, the Committee may conclude that the allegations contained in the

communication are true, if they appear from all the circumstances to be substantiated.'¹⁴²

While Treaty Body's generally enjoy high levels of cooperation from States in terms of overall response rates, the quality of those responses varies considerably from State to State. A URG analysis of a sample of 100 communications sent by Treaty Bodies, and responses thereto from States Parties, found that just 19% of replies were 'fully substantive' i.e. detailing steps being taken by the State to address the violation. In 23% of cases the State's response was 'substantive but incomplete,' while in nearly half of all cases the State either rejected the allegation out of hand without offering any substantive justification for that rejection (22%) or failed to address the alleged violation(s) at all (23%).

Turning to State implementation of the Views or conclusions of Treaty Bodies, overall this appears to be very poor.¹⁴³ In its latest report, the Human Rights Committee deemed that just 22% of the responses it received from States contained evidence that the State was implementing the Committee's views to a 'satisfactory' degree.¹⁴⁴ A further 32% were deemed to be 'partly satisfactory.'¹⁴⁵ Notably, the Committee found that five responses contained evidence that 'measures taken [by the State were] contrary to [the Committee's] recommendations.'¹⁴⁶ Furthermore, in only one of 20 cases where the Committee called for the State to deliver compensation or effective reparation, did the State provide 'satisfactory' evidence that it had implemented the Committee's demand.¹⁴⁷ As one indicator of the largely unsatisfactory nature of State responses to Treaty Body communications, the Human Rights Committee (in its latest report) states that 28 of the 37 cases covered by communications remain 'open' – i.e. there has not yet been remedy or redress.

Similarly, in its latest report the Committee Against Torture concluded that in just six per cent of the cases it assessed between July 2015 and May 2016 (concerning 87 recommendations in 23 countries) had it received information from the relevant State indicating ‘full implementation.’ In another 24% of cases, the Committee found that the some ‘substantive steps’ had been taken by the State concerned.

Such low levels of implementation are disappointing and, more importantly, deeply worrying for victims and/or their representatives. From interviews conducted with State representatives for this report, it appears that the reasons for non-cooperation are manifold, though two explanations stand out. First, at an extreme level, some States argue that they are under no legal obligation to respond to communications and, because the Treaty Bodies are not courts, they are under no obligation to accept or act upon their decisions (in fact, they note, these are not even ‘decisions’ they are ‘Views’).

Others, while recognising that by signing an optional protocol or accepting a communications procedure they are legally obliged to cooperate with that procedure, nevertheless argue that Treaty Body Views are not legally binding.¹⁴⁸ Treaty Bodies are only ‘quasi-judicial organs’¹⁴⁹ and, as such, cannot force States to comply with their conclusions. One Western diplomat explained this point further, saying that while democratic States welcome the Views of committees as providing a kind of international, objective ‘second opinion’ on sometimes-difficult cases, in the end those committees are ‘not courts that we have ceded power to.’¹⁵⁰ Another Western diplomat noted that even this ‘quasi judicial utility’ is called into question where Treaty Bodies ‘fail to reach legally sound conclusions or act in ways that undermine their credibility in the eyes of governments.’¹⁵¹

Without the authority to force State to respond to communications or to comply with their views, Treaty Bodies’ most powerful weapon may be to publicly embarrass or shame States that do not cooperate. Unfortunately, as already noted in this report, Treaty Body petitions procedures do not enjoy high levels of public visibility. Even in Geneva there are very few people who have access to information on which States are cooperating with Treaty Body communications procedures, and which are not.

SPECIAL PROCEDURES

The Special Procedures’ communications system has developed over time in an *ad hoc*, incremental fashion. As explained in part I of this report, the system has been built by Special Procedures mandate-holders themselves, often in the face of State resistance – rather than by States through intergovernmental negotiation.

Since the first thematic Special Procedures mandate-holders began to construct a communications system in the early 1980s, through various twists and turns, and numerous innovations, the system has developed into a flexible, responsive and increasingly coordinated mechanism. Between them, the Special Procedures are today able to deal with individual and group complaints concerning most human rights, in all countries.

According to the Special Procedures’ own Manual of Operations, ‘communications may deal with cases concerning individuals, groups or communities, with general trends and patterns of human rights violations in a particular country or more generally, or with the content of existing or draft legislation considered to be a matter of concern.’¹⁵² The Manual states that ‘the main purpose of the communications is to obtain clarification in response to allegations and to promote measures designed to protect human rights.’¹⁵³ Special Procedures communications do not, according to the Manual, ‘imply any kind of value judgment on the part of the Special Procedure concerned and are thus not per se accusatory’ moreover, ‘[they] are not intended as a substitute for judicial or other proceedings at the national level,’ but rather ‘their main purpose is to obtain clarification in response to allegations of violations and to promote measures designed to protect human rights.’¹⁵⁴

SPECIAL PROCEDURES COMMUNICATIONS PROCEDURE IN A NUTSHELL

Previously, there were two principal ways for victim(s) of an alleged human rights violation (or their representatives) to submit individual petitions¹⁵⁵ to Special Procedures. They could either communicate directly with a relevant mandate-holder (for example to the Special Rapporteur on torture in the case of allegations involving torture), or communicate indirectly via an email address - urgent-action@ohchr.org (a team in the OHCHR - called the Quick Response Desk – would then forward submissions to relevant mandate-holders). Today, in an effort to simplify and harmonise the communications procedure (making it easier, in principle, for victims to access it), Special Procedures and the OHCHR have developed a new single submission portal (see below). This new online submission portal (and its launch page) has been designed to replace the 50 or so individual submission procedures (as set and managed by each mandate-holder) with a single procedure / user interface. Notwithstanding, individual submissions are – as previously – still ultimately directed to the relevant mandate-holder(s), who then addresses the allegations contained therein.

Notwithstanding these changes, for the moment, victims or their representatives still have the option of submitting information via the urgent-action@ohchr.org email address and/or, in some cases, directly to specific mandate-holders (some of whom appear to have retained their own specific channels for submission). Notwithstanding, it appears likely that these alternative submission channels will eventually be removed entirely.

Upon receipt of a submission, a mandate-holder will review it and transmit a communication (either a Letter of Allegation (AL) if it concerns a past violation or an Urgent Appeal (UA) if it concerns time-sensitive, on-going or imminent grave violations)¹⁵⁶ to the concerned State.¹⁵⁷ Alternatively, a communication may

focus more broadly on domestic legislation, policies, programmes or other measures affecting individuals or groups in a particular country or territory – known as Other Letters (OL). Mandate-holders sometimes (indeed increasingly) send these communications together with other concerned mandates – these are known as joint communications (either JUAs or JALs).

The communication may ask the concerned government to clarify the facts of the case (e.g. AL,) or ‘where necessary’ (e.g. UA) may ‘request that the concerned authorities take action to prevent or stop the violation, investigate it, bring to justice those responsible and make sure that remedies are available to the victim(s) or their families.’¹⁵⁸

In theory, if the mandate-holder(s) is satisfied with the government’s response (where it receives one) he/she will discontinue the case (for example, if the mandate-holder deems there has not been a violation or if the matter has already been resolved). If not, he/she will revert once more to the government with a view to securing remedy/redress.

Information on all letters sent by mandate-holders, together with any government (or other) responses thereto, is regularly published in triannual ‘joint communications reports,’¹⁵⁹ and in a new ‘Communication Report and Search’ portal (see below). Some mandate-holders also provide further observations on petitions received and government responses thereto in their own individual annual reports.

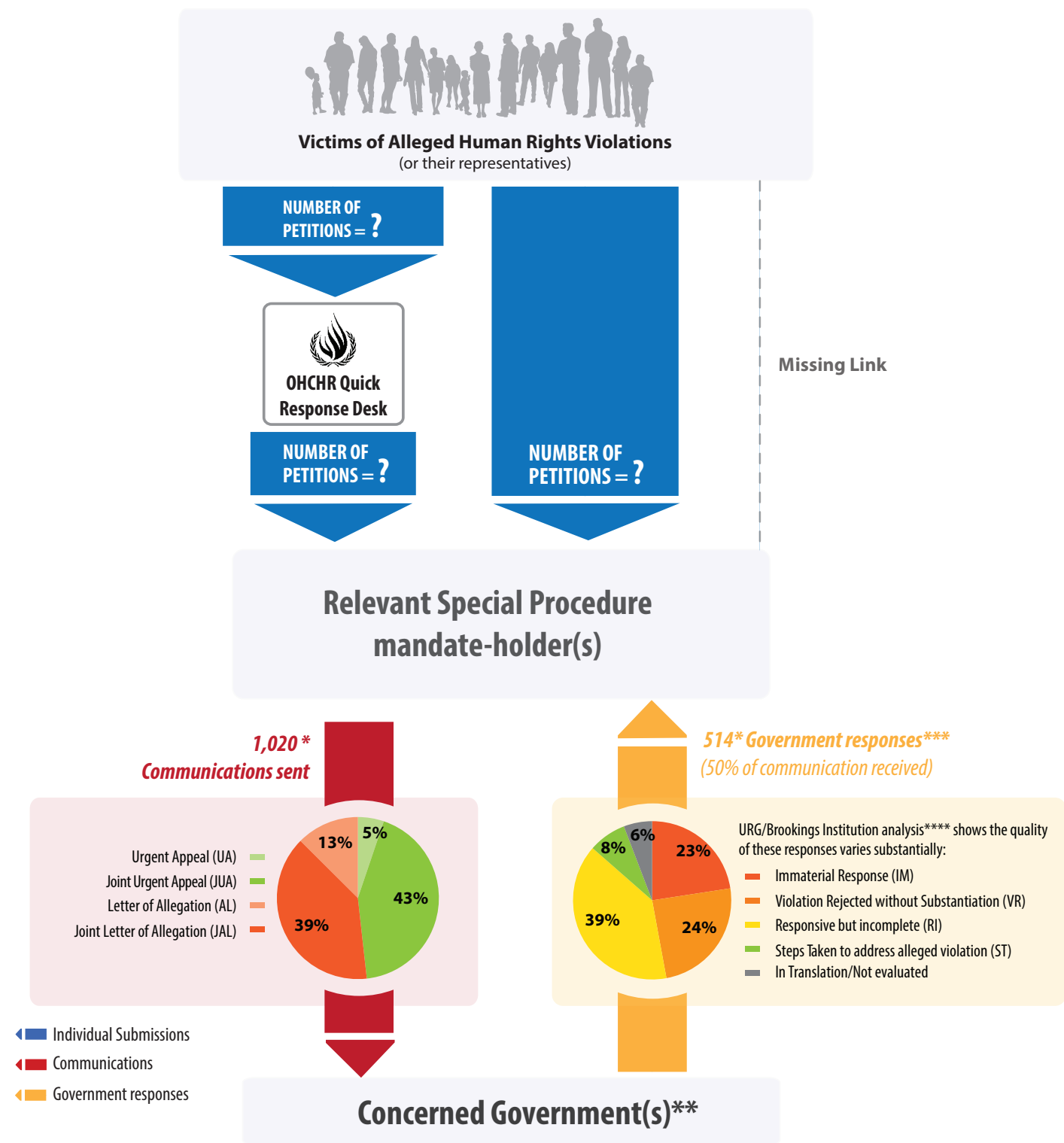
A final point of note is that while considerable efforts have been and are being made to streamline and harmonise the Special Procedures individual complaints procedures, two mandates – the Working Group on arbitrary detention (WGAD) and the Working Group on enforced or involuntary disappearances (WGEID) – have retained quite distinct and specialised communications procedures, due to nature of their mandates and work.¹⁶⁰

VISIBILITY AND ACCESSIBILITY

In 2014, the URG and the Brookings Institution published the results of an in-depth analysis of the visibility, accessibility, responsiveness, and effectiveness of the Special Procedures petitions system. The analysis involved surveys of victims and/or their representatives, interviews with mandate-holders, diplomats, and NGOs; and a statistical analysis of petitions

submitted, communications sent and responses received. On the last point, importantly, the URG and Brookings also undertook a qualitative assessment of the content of government responses to Special Procedures communications. Figure 5 provides a schematic overview of the overall petitions system, incorporating the results of some of those quantitative and qualitative analyses.

FIGURE 5. SCHEMATIC OVERVIEW OF THE SPECIAL PROCEDURES COMMUNICATIONS PROCEDURE (2014-2015)



* Data for reporting period 2014-2015; Communications report of Special Procedures, available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>. ** The vast majority of communications are sent to governments. Mandate-holders can also send communications to non-state actors however, such as corporations and inter-governmental organisations (in the form of an "Other Letter"). These communications are included Note: The number of individual submissions received by OHCHR and the mandate-holders is unknown in the overall figures above, but are very few in number. ***

This figure includes a small number of responses from non-state actors, as explained above. **** Qualitative assessment of responses from a geographically representative sample of 15 States conducted by URG and Brookings Institution on the basis of communications sent between 1 June 2011 and 31 May 2013, and replies received between 1 August 2011 and 31 July 2013. For full results and methodology see Special Procedures Communications Analysis research document at www.universal-rights.org/research/special-procedures.

In terms of **visibility** (at the level of the victim), the URG-Brookings analysis found knowledge of the existence of the Special Procedures petitions procedure, and how best to access it, to be very low. The report noted that awareness of this problem was not new. The Bureau of the Commission on Human Rights¹⁶¹ reflected on it in 1999 and acknowledged the 'need for grass roots awareness of the existence, purposes, and basic workings of special procedures.'¹⁶² It appears that little has changed in the meantime. An informal paper prepared to inform a discussion on the issue of communications during the 23rd annual meeting of Special Procedures (June 2016) acknowledged that 'the communications procedure and modalities for using it remain poorly understood' among civil society actors.'¹⁶³

From interviews, URG and Brookings found that (as with the Treaty Body procedure), the key to whether an individual knows of and is able to reach out to the Special Procedures petitions system appears to be whether or not the victim has access to a wider support network including NGO representatives and lawyers, who are aware of the possibility of submitting petitions.

For those who are aware and seek to petition relevant mandates, the next step is to **access** the procedure – i.e. to make a submission. This generally means recourse to the OHCHR's webpage on Special Procedure communications.¹⁶⁴ As with the Treaty Body petitions page, this is most easily accessible by clicking on 'Individuals' and then 'Special Procedures' under the 'Quick selection' box towards the bottom of OHCHR's homepage – though again (as with submitting a petition to Treaty Bodies) this presupposes that petitioners know and understand the difference between the different UN human rights communications systems.

The Special Procedures communications webpage has improved markedly since the publication of, and in line with many of the recommendations contained in, the original URG-Brookings report of 2014. Previously, the page provided huge amounts of information, offering guidance on submitting petitions to individual mandate-holders (including links to different 'questionnaires' prepared by each), as well as on submitting information to the Special Procedures system as a whole via the central Quick Response Desk (QRD) and its urgent-action@ohchr.org email address. Today, the main webpage is far simpler (as an illustration, it contains around 860 words, compared with around 11,000 words on the corresponding Treaty Body page).

Most importantly, as of May 2016, OHCHR has replaced the confusing guidance on how to submit information to multiple different mandates with a link to a single new 'online submission' portal for all Special Procedures mandates that can receive petitions.¹⁶⁵ This was developed in close consultation with civil society organisations and mandate-holders. As noted above, for the moment, individuals or groups of individuals may still submit

petitions via the urgent-action@ohchr.org email address (as an alternative to using the portal). However, this option is expected to be removed in the future. Likewise, individuals may (today) still submit petitions in writing via traditional mail, though the future of this option is also uncertain.

The online submission portal is now the main 'gateway' for human rights petitioners, and represents a significant step forward for the visibility and accessibility of the Special Procedures petitions system. It provides, for the first time, a centralised guidance tool for individuals wishing to submit complaints to the system; also opening up the possibility of progress with those communications to be tracked by victims (using the new individual reference codes / tracking numbers). Unlike the previous system, the tool is secure (information is encrypted and not maintained online for more than 24 hours). Initially it will operate alongside the existing traditional methods of submission, but eventually is intended to be the sole submission platform.

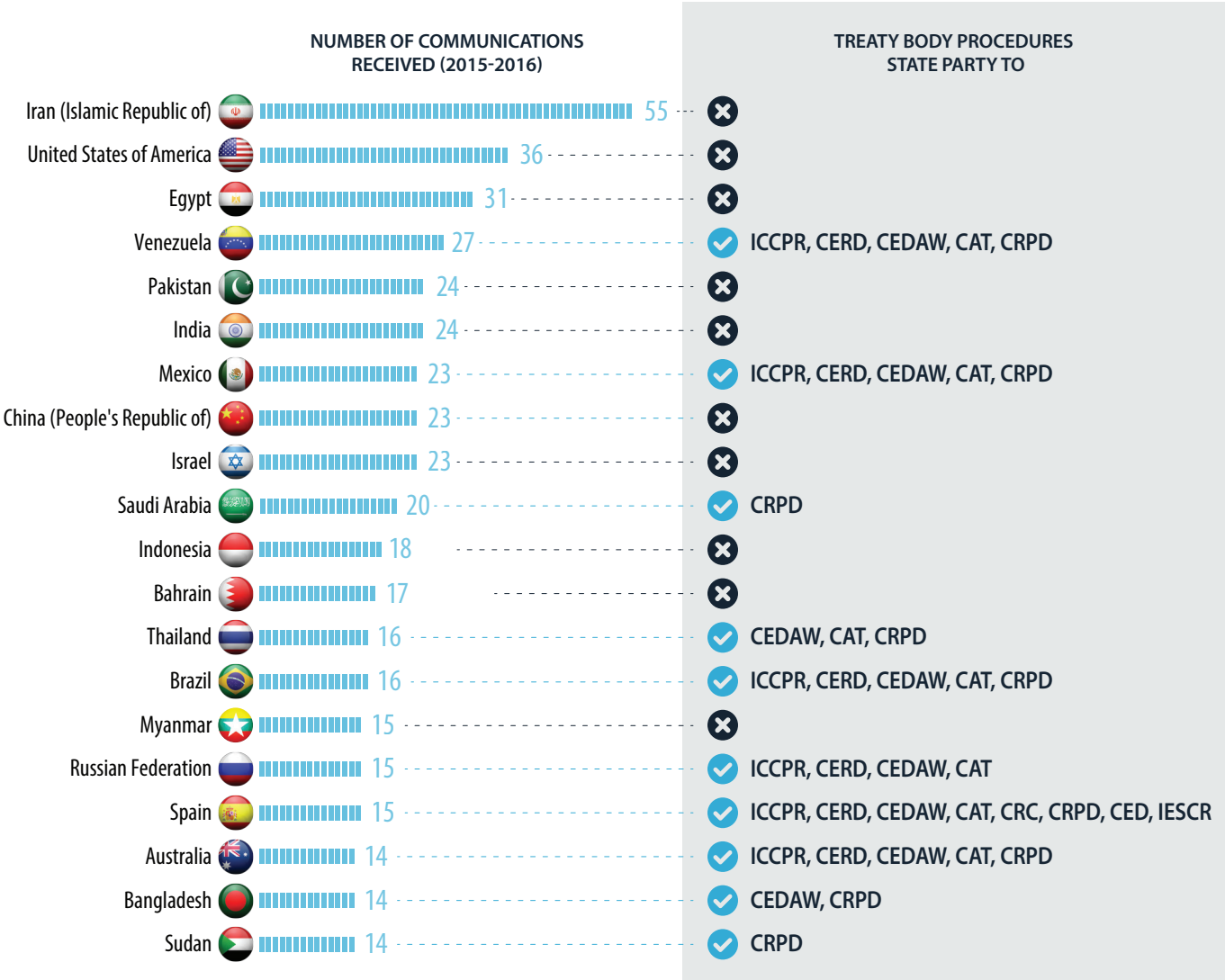
The new system is certainly not flawless. For example, all guidance as well as the portal itself are only available in English, while the fact that victims only have 24 hours to successfully complete a submission (before that data is automatically deleted) can cause difficulties where the individual realises that he/she does not possess all necessary documentation – and thus needs more time. Yet the new gateway nonetheless represents an important step towards a future in which all human petitions to the UN might be submitted easily, conveniently and securely via a single platform or interface.¹⁶⁶

A further glimpse of that future was revealed in February 2017, when OHCHR launched a new 'Communication Report and Search' portal (<https://spcommreports.ohchr.org/>). This provides basic data on each logged petition, including which Special Procedures mandate(s) are responsible, a brief summary of each case, copies of mandate-holder communications with concerned States, and copies of any replies from those States. By improving transparency and making it easier for victims or their representatives to follow progress with their case, the new portal represents a significant improvement on the voluminous 'joint communications reports.'

In other ways too, the Special Procedures system might be considered the most accessible of the three main petition procedures. For example, there is no need for an individual's home State to have accepted the communications system (e.g. by ratifying an optional protocol) before that person can submit a complaint.

Any individual in any country can do so. The system is also less 'legalistic' than its Treaty Body counterpart, meaning in principle it should be easier for non-lawyers to make complaints. Linked with this point there are no formal admissibility criteria (e.g.

FIGURE 6. TOP 20 RECIPIENTS OF SPECIAL PROCEDURES COMMUNICATIONS (2015-2016)

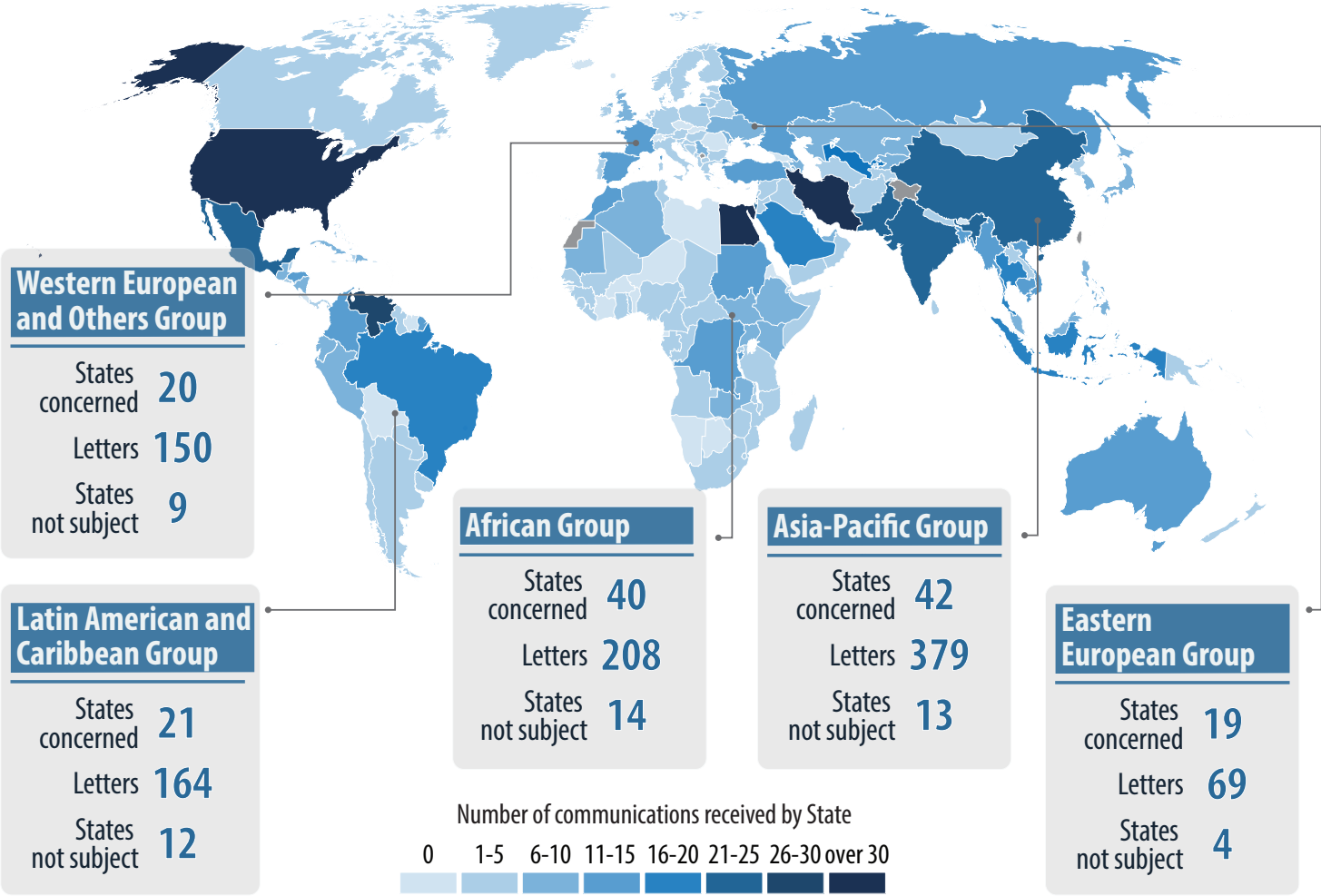


Source: OHCHR Communication Report database, the UN Treaty Collection Database and the Joint Communications Reports of Special Procedures from 2015 to 2016. For methodology please see endnote.

a victim need not have exhausted domestic remedy before submitting).

The system's universal reach means that it fills important protection gaps left by the other two petitions procedures. For example, the Islamic Republic of Iran, the US, Egypt, and Pakistan – four of the five States subject to the most complaints – are not Party to any Treaty Body procedure, and 14 of the top 20 are not Party to the ICCPR procedure (see Figure 6).¹⁶⁷ Nor have any of these States been formally scrutinised under the Confidential Complaints Procedure.

FIGURE 7. GEOGRAPHIC FOCUS OF SPECIAL PROCEDURES COMMUNICATIONS SENT (2015-2016)



Source: Data from the OHCHR Communication Report database and the Joint Communications Reports of Special Procedures from 2015 to 2016. For methodology please see endnote.

Overall, the Special Procedures system also receives complaints from a wider variety of countries and regions than its Treaty Body counterpart. Between 2015 and 2016, approximately 21% of the 970 letters sent by the Special Procedures were to countries from the African Group, 39% were to countries of the Asia-Pacific (APG), seven per cent were to members of the Eastern European Group (EEG), 17% were addressed to countries in Latin America (GRULAC), and 16% were to Western States (WEOG). Moreover, 70% of AG States, 74% of APG States, 82% of EEG States, 64% of GRULAC States and 69% of WEOG States were subject to at least one letter. In total, 72% of all UN member States were subject to at least one letter between 2015-2016¹⁶⁸ (see Figure 7). To put this into perspective, according to available data, only

48% of States have ever been the subject of one of the Treaty Bodies' communications procedures, including just 43% of AG States and 33% of APG States. This greater geographic reach is probably explained by the universal nature of the procedure, and the (general) absence of formal, legal admissibility criteria. Geographic balance could perhaps be even more impressive if the system was presented, and information could be submitted in, all official UN languages. According to some UN officials and NGO representatives, any petitions submitted in Arabic, Chinese, or Russian are unlikely to 'ever see the light of day.'¹⁶⁹

RESPONSIVENESS

As reflected in the URG-Brookings’ 2014 report, before the advent of the new online submission portal, many victims or their representatives submitting complaints to the Quick Response Desk (via the urgent-action@ohchr.org email address) would be unlikely to receive a quick response – in fact they would be lucky to receive a response at all. Severe human resources constraints at OHCHR meant that many petitions went unprocessed (especially if they were submitted in languages other than English, French, or Spanish). Even where cases were taken up (and the complaint given a log number), the victim would not be informed of this and would be given no direct information about progress with the case. According to anecdotal evidence from NGOs, this lack of responsiveness was even more acute where submissions were made directly to individual mandate-holders. In the majority of cases, the only way an individual could know whether his or her case had been taken up, and find out what progress had been made, would be to regularly check the Special Procedures’ triennial joint communications reports.¹⁷⁰ Indeed, the current ‘submission of information to the Special Procedures’ webpage explicitly informs readers that complainants will not be individually notified even if action is taken on the basis of their complaint.¹⁷¹

Again, this is not a new issue. As far back as 1999, the Bureau of the Commission urged the OHCHR ‘to put in place procedures to ensure that the initiators of all communications directed to the Special Procedures receive an appropriate acknowledgement and indication of how their communications are being addressed.’¹⁷²

As noted above, this is, to a large degree, a problem of resources. It is estimated that the small team at OHCHR’s Quick Response Desk must process around 80 ‘genuine’ complaints each day. Individual mandate-holders have traditionally received many more directly.¹⁷³ Moreover, once a petition is directed to the relevant mandate-holder, he/she usually benefits from only one or two assistants. Those staff are expected to review and analyse the petitions, coordinate with mandate-holders on possible courses of action, draft communications to governments, follow-up with victims and concerned States, etc. That is in addition to their other responsibilities (e.g. preparing annual reports, organising country visits, etc.).¹⁷⁴ According to one NGO representative with experience of submitting petitions to the Special Procedures, even those mandate-holders who dedicate the most resources to communications generally ‘pick up’ only around ten per cent of complaints submitted (by that NGO). ‘For victims who do not have access to international NGO support, that percentage is likely to be even lower,’ he concluded.

One mandate-holder interviewed for this report noted that this situation is not only failing the victims of human rights violations, but also places unbearable strain – mental and physical – on

himself and his staff: ‘We are aware, of course, that the petitions we receive could mean the difference between life and death, but we simply don’t have the resources to deal with them all.’ Another explained the moral dilemma she faces when choosing which cases most merit her scarce time and resources: ‘does one choose at random, according to some kind of geographic balance, or based on the gravity of the violation?’¹⁷⁵ A further mandate-holder described coming into the position ‘full of idealism, wanting to respond to and resolve every case I received,’ but then quite soon ‘hitting a wall of realism.’¹⁷⁶ A final powerful point made by one Special Rapporteur is that ‘victims are, of course, completely unaware of these resource constraints’ and ‘are writing to the UN to seek urgent help, and have high expectations of us.’¹⁷⁷

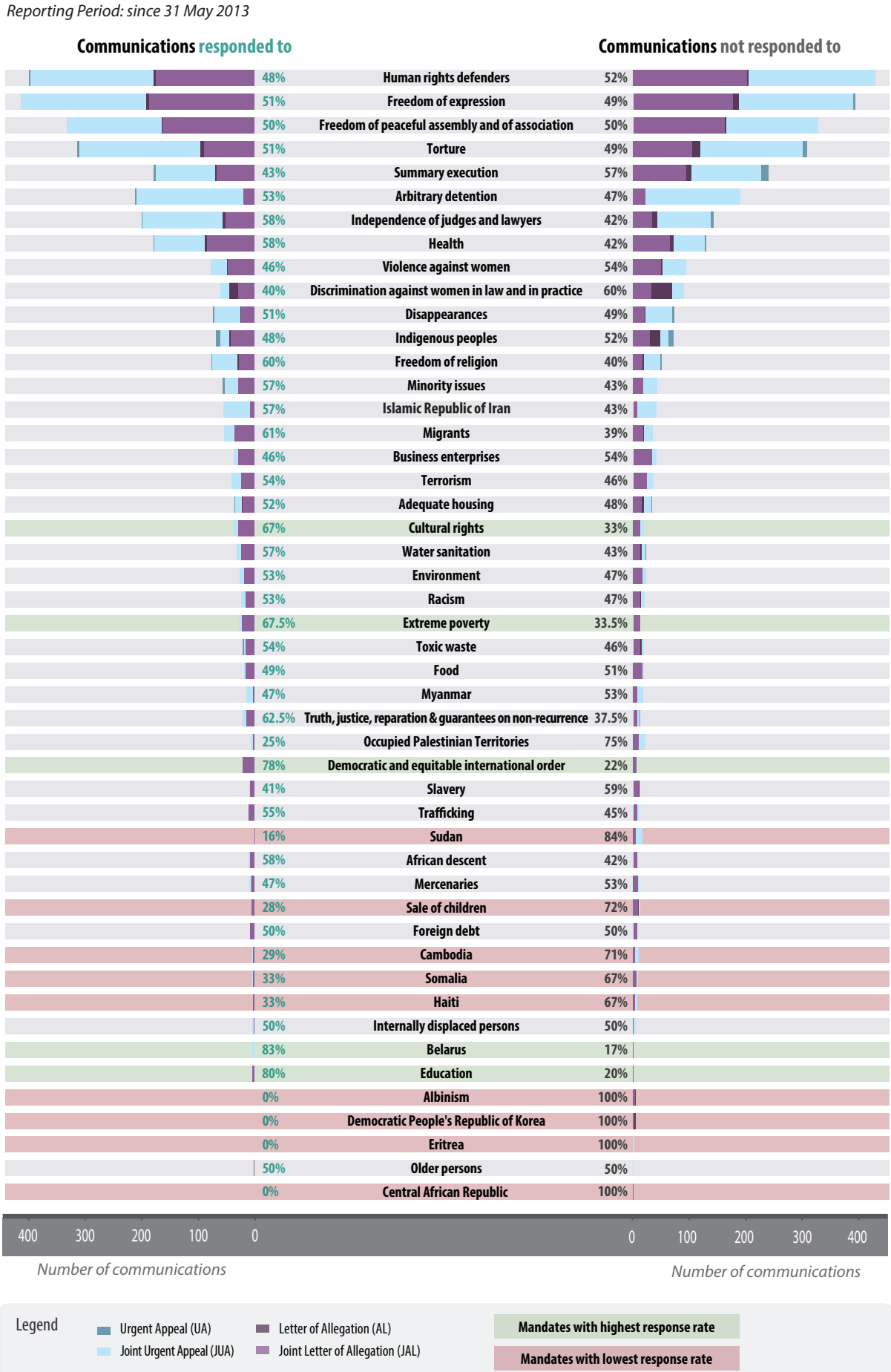
These broad trends should in no way be taken to mean that the response of Special Procedures mandate holders to allegations of violations is in all cases slow. It is not. Indeed, in the course of conducting research for this report and the 2014 URG-Brookings report on Special Procedures, URG heard many inspiring stories of Special Procedures mandate-holders making timely interventions in individual cases. Rather, it is to point out that, mainly due to capacity constraints, the system too often fails to respond to the needs of victims. While the introduction of the online submission portal and the ‘Communication Report and Search’ portal will undoubtedly help alleviate this problem, by rationalising and streamlining the system, it is clear that if it is to fully respond to the needs of victims, the Special Procedures communications procedure will require significant investment and new resources – resources that can only be allocated by UN member States in the General Assembly.

The responsiveness of the system does not, of course, depend only on mandate-holders and the OHCHR. It is also heavily reliant on the willingness of States to respond to the communications sent to them by mandate-holders, and to do so in a timely and substantive manner.

The Special Procedures’ Code of Conduct ‘urges all States to [...] respond to communications transmitted to them by the Special Procedures without undue delay.’¹⁷⁸ The Manual of Operations further stipulates that ‘governments are generally requested to provide a substantive response within thirty days.’¹⁷⁹

An updated URG analysis for this report, covering communications sent between 2014 and 2016, shows that the overall government response rate to communications is around 53%.¹⁸⁰ This is broadly similar to the response rate (50%) reported in URG-Brookings’ 2014 publication. This overall figure masks variations between thematic mandates (55%) and country-specific mandates (48%), between different individual mandates, and between single mandate communications (which received responses in 48% of cases) and joint communications (54%) (see Figure 8).

FIGURE 8. GOVERNMENT RESPONSE RATES TO SPECIAL PROCEDURES COMMUNICATIONS



Source: Data from the OHCHR Communication Report database and the Joint Communications Reports of Special Procedures from 2013 to 2016. For methodology please see endnote.

EFFECTIVENESS

According to the Special Procedures Manual of Operations, ‘the main principle [guiding the operation of the communications procedure] is that of effectiveness, and this will often call for going beyond a straightforward exchange of correspondence.’¹⁸¹

To measure the effectiveness of the Special Procedures communications system in encouraging or pressing States to address (in a timely manner) alleged violations of human rights and, where those allegations prove to be well-founded, to provide remedy and redress to the victims; the 2014 URG-Brookings analysis included a detailed qualitative assessment of State responses to allegations.

The analysis focused on all communications sent to, and response letters received from, 15 countries (a weighted representative sample from all regional groups) between June 2008 and May 2013,¹⁸² and scored each against a framework made up of four categories:

- 1. Steps taken to address violation (ST).
- 2. Responsive but incomplete (RI).
- 3. Violation rejected without substantiation (VR).
- 4. Immaterial response (IM).

For the purpose of the analysis, ST and RI responses were considered to be ‘substantive’ in that they meaningfully addressed the alleged violation contained in the initial communication, while VR and IM responses were considered ‘non-substantive’ in that they failed to do so.

The analysis (the results of which are incorporated into the schematic diagram in Figure 5), found that only eight per cent of assessed responses provided substantive information on steps taken to address the alleged violation (ST).¹⁸³ A further 42% provided information that can be described as substantively responsive but incomplete (RI). Exactly half of all government responses either simply rejected the allegation(s) of violation without substantive evidence to back-up the rejection (VR - 26%), or presented information that was not directly relevant to the alleged violation (IM - 24%).

In terms of timeliness of responses, it is noteworthy that in a majority of cases (60%) States replied within 90 days, but in 17% of cases replies were received over 180 days after the initial communication was sent.

What does this mean in the context of the capacity of the Special Procedure communications procedure to respond to the needs of victims and advocate for the delivery of effective remedy? While it is impossible to provide exact overall numbers (because there is simply no data on the number of submissions received by OHCHR’s QRD, the number passed to mandate-holders, the number received directly by mandate-holders, and the number deemed inadmissible), available data allows us to draw some conclusions. According to one NGO representative, less than ten per cent of the cases they submit to Special Procedures are taken up and, hence, communications sent to the State concerned. Where complaints are taken up and communications sent, governments respond in only around half of all cases, and even where they do respond just eight per cent (of government replies) provide substantive evidence that the State has taken or is taking steps to address the alleged violation. Taken together, these figures suggest that only around 0.4% of ‘genuine’ petitions sent to the Special Procedures system result in some form of remedy or redress.

Such a statistic should, of course, be treated with some caution. For one thing, it is based on a number of assumptions and estimates, albeit from individuals with considerable experience of the Special Procedures communications system. Second, as noted by a mandate-holder, a communication to a State might result in action to address the allegation, but without the State acknowledging this or even sending a reply to the mandate-holder.¹⁸⁴ Nonetheless, and notwithstanding the scale of the capacity challenges facing the Special Procedures mechanism and its communications procedure, it is clear that the system is falling short of the needs and expectations of victims.

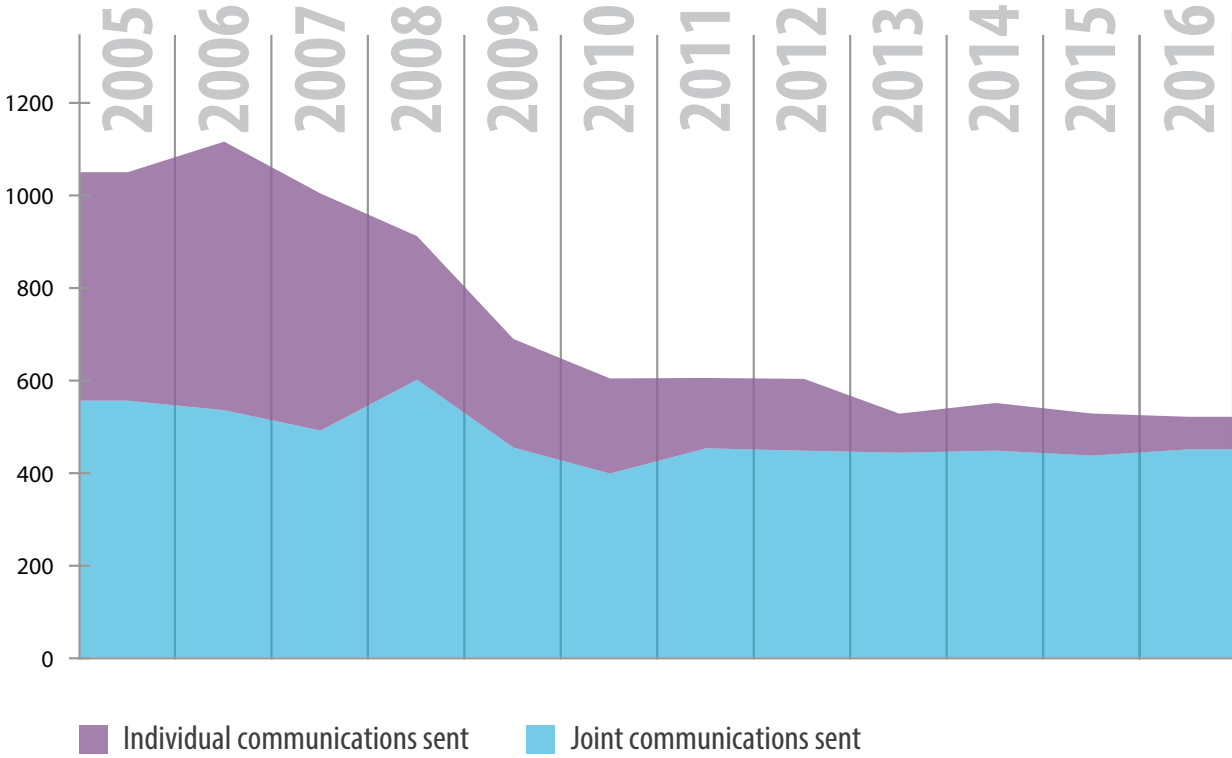
If the procedure is to remain relevant and credible, it seems difficult to avoid the conclusion that systemic reform is necessary. Such reforms have been considered before. For example, a 2000 review for the High Commissioner proposed the centralisation and streamlining of the procedure.¹⁸⁵ However, the proposals were not fully endorsed by Special Procedure mandate-holders, and the Chair pointed out that ‘a fully coordinated approach’ would only be ‘possible in a fully-automated system.’¹⁸⁶ It is clear from the foregoing, that the Special Procedures and OHCHR have made and are making important advances in this direction – for example, with the launch of an online submission portal and online communications monitoring portal. It is important, over the coming years, for the procedure to continue to develop in this way, both in its own regard, and as a key component part of the overall UN human rights petition system.¹⁸⁷

JOINT COMMUNICATIONS

The tendency of mandate-holders to send joint communications has been an increasing trend over the past decade. In 2005, 53% of communications sent were sent jointly, while by 2016 that proportion had increased to 87%. According to the Manual of Operations, mandate-holders ‘are encouraged to send joint communications whenever this seems appropriate.’

In particular it notes that ‘communications by thematic mandate-holders in relation to a State for which a country rapporteur exists shall be prepared in consultation with the latter.’¹⁸⁹

FIGURE 9. INDIVIDUAL AND JOINT COMMUNICATIONS SENT TO THE SPECIAL PROCEDURES (2005-2016)



Source: Data from Facts & Figures reports and the Joint Communications Reports of Special Procedures. For methodology please see endnote.

The above-mentioned informal discussion paper, produced to inform a discussion on communications during the 23rd annual meeting of Special Procedures, explained that ‘joint action can facilitate better coordination at all levels and reduce the burden imposed upon governments in cases in which multiple communications might otherwise be sent.’¹⁹⁰ Furthermore, the paper noted, ‘when violations occur, they often concern multiple rights, and a cross-thematic approach is an efficient way to address this problem.’¹⁹¹

Concerns have been expressed by several mandate-holders, however, over the increasingly automatic recourse to joint action. One concern raised by those interviewed was the ‘potential delay

caused by the need to coordinate with several other mandate-holders.’¹⁹² In light of such delays, ‘Special Procedures were encouraged by NGOs to make use of individual urgent appeals, which could be followed up by joint action by several mandate holders’ in the form of joint allegation letters.’¹⁹³

URG research conducted for this report found that joint communications sent between 2014 and 2016 did have slightly higher government response rates than those sent individually: approximately 54% of the 1,324 joint communications received a response, compared with just 48% of 246 individual communications.

CONFIDENTIAL COMPLAINTS PROCEDURE

According to the Council's institution-building package (IBP),¹⁹⁴ its Confidential Complaints Procedure (largely based on the old 1503 Procedure) should address 'consistent patterns of gross and reliably attested violations.'¹⁹⁵ In other words, unlike the

Treaty Body and Special Procedures petitions systems, it is not designed to focus on individual cases nor to seek individual remedy, but rather to address patterns of serious violations reported to it by individuals or groups on-the-ground.

The Confidential Complaints Procedure (CCP) is also the broadest in scope of the three petitions procedures: it is able to deal with the violation of 'all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.'¹⁹⁶

THE CONFIDENTIAL COMPLAINTS PROCEDURE IN A NUTSHELL

The CCP allows individuals or groups to make submissions regarding alleged human rights violations, where they are the victim of the alleged violation, or where they have 'direct, reliable knowledge' of the matter.'¹⁹⁷

The Procedure follows a three-stage process. First, submissions are screened by the Chair of the Working Group on communications (WGC) and the Office of the High Commissioner for Human Rights (OHCHR) against defined admissibility criteria. The authors of complaints that are determined to be admissible will receive written notification of such, and the relevant State will be sent the complaint and invited to comment.'¹⁹⁸

The complaint is then considered by the whole WGC, composed of five appointed members of the Human Rights Council Advisory Committee. The WGC meets twice a year (for five-days each time) and studies the complaints that have passed

the initial screening process, together with any comments received from the concerned State. It then notifies the Working Group on situations (WGS) of incidences where there appears to be 'a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.'¹⁹⁹

The WGS, composed of five appointed State members of the Human Rights Council, also meets twice a year for five-days and considers the complaints that have been referred to it. Assessing each situation, the WGS decides to either: dismiss the communication; keep it under review and request further information from the State concerned; or, where it decides there is a consistent pattern of gross human rights violations, transmits the case to the Human Rights Council for further consideration. These cases are presented by the WGS in a report to the Council with specific recommendations for possible courses of action.'²⁰⁰



Opening session of the first meeting of the Human Rights Council Advisory Committee, 14 August 2008.

Perhaps more than the other two international communications procedures reviewed in this report, the CCP divides opinion. Many diplomats argue that the procedure is not fit for purpose, and is no better than the old 1503 Procedure, which had repeatedly shown itself to be open to abuse. Others however, especially diplomats that have served on the WGS, believe that though not perfect, the CCP does play an important role, behind the scenes, in encouraging concerned States to address allegations of violations in a meaningful way.

Regarding the former group (i.e. the sceptics), during the five-year review of the Council's operation in 2011, Mexico called for the CCP to be scrapped altogether, suggesting its resources should be reallocated to strengthen the 'other mechanisms,

which deal with victims with transparency, impartiality, equality and efficiency,' noting in particular the Special Procedures.'²⁰¹ Other States, while not calling for the Procedure's abolition, nevertheless voiced concerns that it 'is not at present working' (Ireland), or that it 'has been [to date] entirely ineffective, which has seriously undermined the credibility of the mechanism and the Council itself' (Canada).'²⁰² Poland expressed the view that the Procedure 'requires urgent modifications and improvement,' while Switzerland argued that it should be reformed to make it 'accessible and genuinely operational.'²⁰³ However, such proposals met with strong opposition from the African Group, Cuba, Bangladesh, the Russian Federation, Morocco, the Islamic Republic of Iran, Thailand, and Venezuela, and in the end the CCP was left largely untouched.'²⁰⁴

Notwithstanding that decision, today there remain serious doubts about the Procedure's effectiveness. Many (especially Western and Latin American) diplomats interviewed for this report expressed doubts that it could ever work in its present form: 'this procedure was designed and built in another era, and is unfit to respond to the human rights challenges of the 21st century.' Another diplomat even suggested that 'the CCP probably does more harm than good – giving the victim hope that his or her situation will actually be addressed, when in all likelihood it won't be.'²⁰⁵

That said, other interviews conducted with diplomats who have served on the WGS offered a rather different perspective. According to these people, as a confidential procedure (i.e. distinct from the public Special Procedures and Treaty Body procedures), the CCP does important work 'behind the scenes' to cajole States into addressing alleged violations through 'quiet diplomacy.' By providing a 'safe space' for dialogues between States, it is argued, the CCP allows for emerging patterns of violations to be addressed at an early stage.

Broadly speaking, UN officials interviewed for this report agreed with the latter assessment of the CCP, acknowledging that it is not working as well as it should, but nonetheless drawing attention to its considerable 'untapped potential.' One UN official referred to the CCP as the 'sleeping beauty of the Council.'²⁰⁶

The below sections assess these claims and counter-claims in more detail, though it should be pointed out that the confidential nature of the CCP, and a related lack of hard data, makes an empirical assessment challenging.

VISIBILITY AND ACCESSIBILITY

From interviews conducted with human rights defenders and NGOs, it seems that the on-the-ground **visibility** of the CCP is extremely low – even lower than the Special Procedures and Treaty Body communications procedures. Linked with this point, almost no individual interviewed for this report had a clear

understanding of how the Procedure works, how it differs from the other UN communications procedures, and why it is useful for them. Linked with this last point, it is self-evident that victims of human rights violations, when given the choice of submitting information to procedures explicitly designed to respond to individual complaints (e.g. the Special Procedures and Treaty Body systems), or to a procedure (CCP) designed to identify broad patterns of violations, will normally pursue the former course.

One result of this lack of visibility and the CCP's relative lack of value in the eyes of victims, is that the Procedure receives relatively few submissions. This is particularly problematic for a mechanism that must normally process large amounts of data in order to identify statistically significant patterns of violations.

The CCP also appears to be notably **inaccessible** to victims and/or their representatives.

The issue of accessibility raises an important conundrum at the heart of the CCP: it is a mechanism that is not designed to deal with individual cases nor to secure individual redress and remedy, and yet it relies on receiving information on individual cases in order to determine 'consistent patterns of gross and reliably attested violations.'²⁰⁷ This would be less problematic if the CCP 'borrowed' data from the other two UN communications procedures, as well as from other sources (e.g. UN Country Teams, humanitarian actors, traditional media, and social media). But it does not – indeed it is explicitly precluded from doing so.

From the research conducted by the URG for this policy report, it appears the result of this situation is a petitions procedure in limbo. A procedure that relies on receiving individual complaints, and yet it not supposed to deal with individual cases; and a procedure that is meant to identify patterns of violations yet (according to diplomats) generally fails to attract enough data to make that determination. As a consequence, it appears that the CCP is mainly (indeed almost exclusively) used by large international NGOs (often in coordination with important domestic NGOs) that claim to have 'direct and reliable knowledge' of violations and use this as a hook to feed data into the Procedure.

Beyond these conceptual difficulties, potential petitioners are also faced with a number of procedural challenges. Most importantly (and as is also the case with the Treaty Body communications procedure) petitioners must comply with a number of formal admissibility requirements, including the exhaustion of domestic remedy ('unless it appears that such remedies would be ineffective or unreasonably prolonged'),²⁰⁸ and compliance with the principle of 'non-duplication' – i.e. a communication should 'not refer to a case [...] already being dealt with by a Special Procedure, a Treaty Body [...] or similar regional complaints procedure in the field of human rights.'²⁰⁹

Over recent years efforts have been made, especially by the Procedure's Secretariat, to improve the CCP's visibility and accessibility. Background information of the CCP is now available online, including a FAQ document in all six UN languages, and a list of past cases (though this has not been updated since October 2014).²¹⁰ The Secretariat has also developed a more user-friendly complaint submission form (though this is still a downloadable, non-encrypted Word document rather than an online submission platform), and convenes civil society briefing sessions.

RESPONSIVENESS

A relative strength of the Confidential Complaints Procedure is that petitioners are kept informed about progress with their claim, throughout the process. The Human Rights Council's institution-building package (contained in Council resolution 5/1) stipulates that the author of a communication (as well as the State concerned) should be informed of proceedings at all key stages, i.e.: 'when a communication is deemed inadmissible by the Working Group on Communications or when it is taken up for consideration by the Working Group on Situations;' 'when a communication is kept pending by one of the Working Groups or by the Council;' and 'at the final outcome.'²¹¹

Due to the confidentiality of the procedure, however, these updates are purely procedural in nature. The petitioner will not, for example, be informed of the content of discussions in the Working Groups. The State, on the other hand, is Party to all information submitted by the individual(s) concerned and considered by the Working Groups.

EFFECTIVENESS

There is no available data on the number of petitions received by the CCP, the number that are deemed admissible, the number that are passed from the WGC to the WGS, and the number that are kept under review by the WGS. This lack of transparency is ostensibly due to the 'confidential' nature of the Procedure – although it is difficult to understand how basic numerical data should be considered incompatible with the principle of confidentiality.

This lack of basic data makes it very difficult, if not impossible, to make a robust determination as to the effectiveness of the Procedure. However, the little data that is published – namely data on the number of cases that are transmitted to the full Council for further consideration – suggests that the CCP is failing to fulfil its mandate and is not responding to the needs of victims.

Specifically, that data shows that over the past eleven years (i.e. since the establishment of the Council), the CCP has identified only 11 situations (across eight countries) that may demonstrate a consistent pattern of gross human rights violations (see Figure 10).

When compared against the number of serious human rights situations around the world over the past decade, the inadequacy of this number becomes evident. Indeed, nearly all of the situations of gross and systematic human rights violations dealt with by the Human Rights Council since 2006 – for example in Libya, Sri Lanka, Burundi, and the Syrian Arab Republic – were brought to the body's attention by individual member States (i.e. by the tabling of resolutions) rather than by the CCP.

What is more, of those 11 situations that have reached the Council, in just four cases (in three countries) does there appear to have been a meaningful or tangible outcome. Those cases relate to Iraq and the Democratic Republic of the Congo (DRC), which resulted in the provision of technical assistance to the State to help it address the violations; and to Eritrea, where the State concerned was publicly rebuked. The seven other cases have simply been 'discontinued,' with no further information made publicly available.²¹²

Supporters of the CCP often point to the case of Eritrea as an example of the Procedure's actual and potential effectiveness. According to these stakeholders, the fact that the situation in Eritrea was picked up by the WGC, was transmitted to the WGS and from there to the Council, and ended with the case being made public (via Council resolution 21/1), demonstrates that the system can work. However, this narrative does not fully hold up to scrutiny. In reality, three months before the Council's adoption of resolution 21/1, it had anyway already adopted another resolution – resolution 20/20 – on the situation in Eritrea. Resolution 20/20 was tabled by Djibouti and Somalia and was largely unrelated to the case under the CCP.

At first glance, this is the sum total of the CPP's achievements. However, and as pointed out by numerous interviewees for this report, behind these very few public outcomes, there are many more 'behind closed doors' outcomes that are not reflected in available UN data. As one former WGS noted: 'the effectiveness of the complaint procedure should not be judged by the number of cases sent to the Council.'²¹³

All former and current WGS members interviewed for this report were keen to emphasise that progress on cases was often made 'behind the scenes' – through confidential and often very frank discussions between members and the country concerned. The confidential nature of the exchange, coupled with the 'Damocles sword' of the case being made public in the absence of progress, often led – according to diplomats – to the State concerned 'making significant concessions,' working to resolve

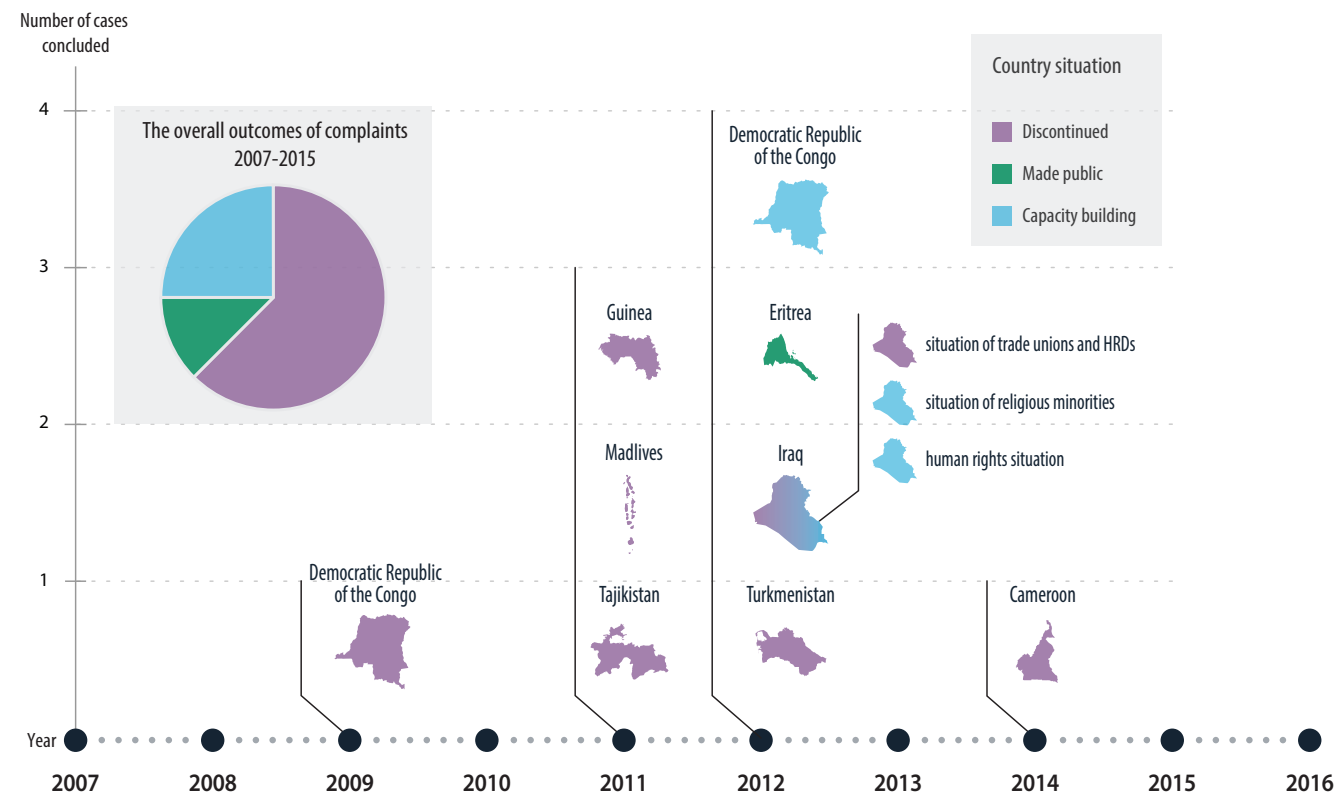
the issue itself, and communicating that resolution to the Working Group. A current WGS member agreed, arguing that the CCP is the only mechanism in the Council's 'armoury' where diplomats can act as mediator in difficult cases, and/or leverage 'preventative diplomacy' to resolve cases at an early stage. The CCP represents, according to this individual, 'a unique safe space for open and frank dialogue, without immediate fear of exposure, condemnation or criticism in the media.' A former member agreed: 'the confidential nature of the process means States are more willing to be honest about the situation and the challenges they face, and more willing to discuss possible solutions with their peers.'

The argument that the confidential nature of the CCP helps build trust and encourages concerned States to engage in a meaningful way (and therefore to avoid public censure in the Council), is supported by the high response rate from governments to requests for information. Secretariat staff and diplomats interviewed for this report estimate a response rather of over 90%.

It is important to note, however, that not everyone agrees with this reading of the CCP's potential strengths. Many NGOs continue to criticise the Procedure's lack of transparency, arguing that it promotes political deal making at the expense of human rights. An interview with a former Asian diplomat whose country was considered under the CCP in 2007-2008 seems to support this conclusion. According to the diplomat, during the time the WGS was considering the case, he received offers from some members of the Working Group to 'kill the case' in exchange for reciprocal support on other issues of mutual interest. Another diplomat, who served on the WGS, told a similar story but from the other perspective, recalling how confidential information was regularly leaked and how he would 'regularly receive phone calls from States asking me to drop a particular case.' Philip Alston has described the WGS's proceeding as 'unadulterated political horse-trading rather than a probing inquiry into the facts and a quest for the most effective potential response.'²¹⁴ A former member of the WGC, interviewed for this report, has compared the situation to the story of Odysseus's wife Penelope, who wove her burial shroud during the day (i.e. cases taken up by the WGC) only to unpick it overnight (i.e. the cases then discontinued by the WGS).²¹⁵

Some interviewees even suggested that States put themselves forward as members of the WGS primarily to 'block certain cases,'²¹⁶ – although a 'conflict of interest' rule means States can no longer block cases about themselves – as they occasionally did during the time of the Commission.

FIGURE 10. 'SITUATIONS' DEALT WITH BY THE COUNCIL'S CONFIDENTIAL COMPLAINT PROCEDURE (2007-2014)



Source: Data from the 'List of situations referred to the Human Rights Council under the complaint procedure since 2006,' OHCHR website.

PART III

CONCLUSIONS AND RECOMMENDATIONS: TOWARDS A SINGLE INTEGRATED UN HUMAN RIGHTS PETITIONS SYSTEM?

It is clear from the foregoing that each of the three UN human rights communications systems has important particularities and strengths, but also important structural weaknesses.

The Treaty Bodies provide the most legally robust communication system. While they are not judicial bodies per se, 'their views exhibit some important characteristics of a judicial decision.'²¹⁷ They also respond to every individual petition, even if it is only to advise the petitioner to address his/her appeal to another part of the UN system, and they act on every permissible petition. Where the relevant Treaty Body is concerned that a petition may provide evidence that an individual is in imminent danger, it is able to issue an 'interim measure' to deter or prevent possible violations. Perhaps because of the quasi-judicial nature of the Treaty Body communications system, it is able to secure a remarkably high response rate from governments (URG's analysis found that governments have responded to around 87% of communications).

However, the Treaty Body system also exhibits a number of fundamental weaknesses, especially when viewed from a victim's perspective. First, since the first Treaty Body communications procedure was created in 1976, fewer than 4,000 petitions have been registered by the Treaty Body system as a whole. This is a remarkably small number. Moreover, just two of the Treaty Bodies – the Human Rights Committee (74% of all petitions) and the Committee against Torture (20%) – account for nearly 95% of all logged petitions.

The Treaty Body communications procedure also appears largely invisible and/or inaccessible to victims from developing countries. Only six per cent of all petitions logged by the Human

Rights Committee have come from people living in Africa (compared with, for example, 39% from people living in the West). It is a similar story for the Committee against Torture: only two per cent of logged petitions come from people living in the Asia-Pacific region, whilst 88% of all cases have their providence in Europe.

The reason for this seems clear. According to URG's analysis and interviews, the key to knowing about and being able to access the extremely legalistic and complex Treaty Body communications procedures appears to be whether the victim or his/her representative has access to a wider expert support network made up, in particular, of lawyers and/or human rights NGOs. As an illustration of this point, URG found that in 77% of the cases concluded by Treaty Bodies in 2015, the alleged victim was represented by either a lawyer or an expert NGO.

A visit to the main Treaty Body communications webpage immediately reveals why there is this high level of dependency on expert lawyers and/or NGOs. The victim-interface is extremely 'un-user-friendly.' The user is confronted by an overwhelming amount (11,000 words on the main page alone) of complex and sometimes confusing information (with different Treaty Bodies setting different rules) about how to submit a petition. Notwithstanding this large amount of information, crucial data, for example on whether the home State of the petitioner is Party to the relevant convention and has accepted the relevant communications procedure is very difficult to find.

Moreover, the actual submission interface is right at the bottom of the main webpage. Even when a user finds the interface, strict admissibility criteria, including the need to demonstrate the

exhaustion of domestic remedy and prove that the case is not already being considered by another human rights mechanism, leads to around 21% of submissions falling at this first hurdle.

The system is also slow. According to URG's analysis of cases concluded in 2016, Treaty Bodies took, on average, three-and-a-half years (including the time spent waiting for responses from governments – on average one year) to reach a final View. In some cases the delay was seven years. These delays reflect severe resource constraints at the Office of the High Commissioner for Human Rights, where only around a dozen staff are responsible for processing hundreds if not thousands of petitions. As a direct consequence, a Treaty Body like the Human Rights Committee, which receives a lot of petitions, currently (as of end of 2016) has a backlog of over 640 pending cases.

Finally, there are serious question marks as to the degree to which the Treaty Body system is able, under current conditions, to fulfil its primary goal of helping secure remedy and redress for the victims of human rights violations around the world. One sign of this is the serious systemic imbalances uncovered through URG's research. As noted in Part II of this report, three Western democracies – Canada, Sweden, and Switzerland – account for 61% of all cases considered by the Committee Against Torture.²¹⁸ Similarly, Denmark accounts for an astonishing 34% of all cases registered under the CEDAW, and 19% of all Treaty Body petition cases concluded in 2016. According to Treaty Body members and State representatives interviewed for this report, this is largely because Western lawyers have begun to use the UN committees as 'courts of last appeal' in asylum cases. It goes without saying that this was not the reason the Treaty Body communications procedures were set up in the first place. Seen the other way round, URG found that 51 States (34% of the total) that have accepted one or more Treaty Body communications procedure have never been the subject of an individual complaint. Of these States, nearly half are from the African region and one-fifth from the Asia-Pacific.

The Special Procedures communications procedure also has important strengths. Following reforms led by OHCHR's Special Procedures branch over the last two years, the main Special Procedures petitions webpage is now simple and easy to use. The new single, secure online submission portal is a major improvement on the previous system, as is the new online platform for tracking progress with cases.

Two clear advantages of the Special Procedures petitions system are that it is not necessary for the home State of the alleged victim to be Party to any particular human rights treaty or to have accepted the relevant communications procedure; and second, it is less 'legalistic' than the Treaty Body system, meaning there are few (and somewhat 'light') formal admissibility criteria and no requirement to have exhausted domestic remedy.

The net result of these strengths is a system that is more user-friendly and more accessible to a wider range of people. One sign of this is the geographic coverage of the procedure – between 2015-2016, 21% of Special Procedures communications addressed alleged violations in Africa, 39% in the Asia-Pacific, 17% in Latin America, and 16% in the West. Over 72% of all UN member States have been subject to at least one Special Procedures communication – a far higher proportion than is the case with Treaty Bodies (48%).

The Special Procedures system is also relatively responsive – where cases are taken up, mandate-holders can act quickly to address violations (an important point in the context of often urgent situations), and are usually (60% of the time) able to secure a timely (less than 90 days) responses from governments.

However, the Special Procedures petitions system also faces a number of significant challenges. Like the Treaty Body system, it has a low level of visibility among victims and/or their representatives, and therefore many individuals are de facto excluded from using it. As with the Treaty Bodies, the key to accessing the Special Procedures petitions system appears to be whether the victim has access to a wider, expert support network made up of NGOs and lawyers.

For those who are aware of the system and are able to access it, as noted above, the Special Procedures have now put in place a relatively user-friendly online interface for submitting petitions. While, the submission portal and relevant guidance materials are currently only available in English, rollout in other official UN languages is expected to begin shortly. What is more, the new 'Communication Report and Search' portal greatly improves the transparency and responsiveness of the procedure, especially from a victim's perspective – allowing individual petitioners to more easily follow progress with their case.

Many petitions submitted to the Special Procedures are not processed at all (again, largely due to OHCHR capacity constraints, including an insufficient number of Russian, Chinese and Arabic speakers.) According to international NGOs with experience of the Special Procedures petitions system, typically less than ten per cent of submissions are taken up. Compounding this problem, where Special Procedures mandates do take up a complaint and communicate the details to States, governments only respond in around half of all cases. Furthermore, a URG analysis of those government responses found that only eight per cent of them provided substantive information on steps taken to address the alleged violation. Finally, in very few cases was there any further follow-up from Special Procedures mandate-holders.

The Council's Confidential Complaints Procedure (CCP) is functionally different from the other two UN human rights communications procedures. Whereas the Special Procedures



Participants during the 29th session of the Human Rights Council

and Treaty Body procedures are designed to receive and respond to individual complaints, the CCP is designed only to receive individual complaints – but in sufficient number that the Council is (in theory) able to discern wider patterns of human rights violations around the world.

Geographically and substantively, the CCP has the broadest scope of the three UN human rights petitions systems – it can address, in principle, any human rights concern in any part of the world. Curiously, considering the mechanism is not designed to help secure remedy and redress in individual cases, it is the most responsive of the three systems – petitioners are kept informed about progress throughout the process, (although updates are purely procedural in nature).

Many diplomats interviewed for this report, including a number who have served on the Working Group on situations (WGS), argue that the confidential nature of the CCP is an important strength – allowing emerging patterns of violations to be addressed ‘behind the scenes’ through a non-politicised dialogue with the country concerned. According to the diplomats, who note the very high response rate to their enquiries from governments, this ‘safe space’ approach has worked in many instances – perhaps helped by the ‘Damocles sword’ of the case potentially being made public (in the Human Rights Council) if the WGS deems that insufficient progress has been made.

However, others (especially NGOs) question this assessment, arguing that the confidential nature of the procedure may indeed encourage concerned States to engage, but the result is not usually ‘behind the scenes’ rights-based progress so much as ‘behind closed doors horse-trading and political deal-making’ between States.

Other criticisms of the CCP are its very low visibility in the outside world, and that it appears to deliver very few concrete results. On the first point, from interviews with human rights defenders and NGOs, it appears the CCP is even less well known than the other two UN petitions procedures, especially in developing countries. One consequence of this is the very small number of petitions the Procedure receives each year. On the second point, while the confidential nature of the mechanism means there is no publicly-available data on the number of petitions deemed admissible, the number of cases transmitted from the Working Group on communications to the WGS, or the number kept under review by the WGS, what is undeniable is that over the 11 year history of the CCP, only 11 situations across eight countries have been found to demonstrate a ‘consistent pattern of gross and reliably attested violations,’ and thus have been passed to the Human Rights Council. Furthermore, in only three of these 11 cases has there been a meaningful or tangible outcome (basically, a decision to provide technical assistance to the country concerned). On only one occasion has a case (Eritrea) dealt with by the CCP been brought to the attention of the Council for public debate and consideration, (and even then, the situation in Eritrea was already on the Council’s agenda).

More than anything else, research undertaken for this report shows that the CCP labours under the weight of ‘chronic conceptual opacity.’ Put simply, no one interviewed for this report appeared to have a clear grasp on what the procedure is, what it is supposed to do, and how it is supposed to work. Most stakeholders (diplomats and NGOs) appear to see the CCP as an extra option for dealing with individual human rights violations, rather than a distinct and specialised mechanism for identifying and addressing ‘consistent patterns of gross and reliably attested violations.’

This confusion may reflect a contradiction at the very heart of the CCP: it is a procedure that is expressly not designed to deal with – and secure remedy for – individual cases of alleged violations; and yet, by definition, it relies on receiving large amounts of information on individual violations (i.e. individual submissions) in order to be able to spot ‘consistent patterns’ of violations in a given State. This contradiction is even more serious when one considers that the CCP is not, at present, able to ‘borrow’ data on violations from the other two UN communications procedures, or from other sources (e.g. regional mechanisms, NHRIs). Indeed, some argue that the procedural requirements under the CCP to exhaust domestic remedy and avoid duplication with cases being dealt with by the Treaty Bodies or Special Procedures, explicitly prohibits data sharing.

SYSTEMIC REFORM OF THE UN COMMUNICATIONS SYSTEMS

From the foregoing, it is clear that each of the three key parts of the UN’s overall human rights petitions system has, in theory, an important, distinct role, and each of those roles are, again in theory, complementary. Each communications procedure also has notable strengths, but also important structural weaknesses. In general, the strengths are particular to each mechanism, whereas the weaknesses are common to all three. In any case, the net result is a UN petitions system that, in most cases, fails to respond to the needs of victims.

As Part I of this policy report has shown, knowledge of the specific failings of the different UN communications systems, and the consequences of those failings for the victims of human rights violations, is not new. Flowing from this point, senior UN officials, including two Secretary-Generals, have often spoken of the need for reform, and have made specific proposals in this regard. Crucially, those previous critiques and proposals (mainly from the late 1970s and the early 1990s), considered the UN petitions system as a single whole: one system composed of different complementary parts.

The first notable ‘analysis of existing UN procedures for dealing with communications concerning violations of human rights’ was conducted by the then UN Secretary-General, Kurt Waldheim in 1979, upon the request of the Commission on Human Rights.²¹⁹ The Commission had requested the analysis in order to help members study ‘measures to avoid possible duplication and overlapping of work in the implementation of these procedures.’²²⁰ At the time, the only communications procedures in existence were the 1503 Procedure (a confidential procedure) and the communications procedure established by the Optional Protocol to the ICCPR (a public procedure).

The Secretary-General’s insightful analysis began by noting (though not addressing in any detail – as he considered it outside his mandate) the complementary nature of the two procedures. He reflected on the ‘co-existence of public procedures for dealing with violations of human rights...and the confidential procedure for dealing with communications relating to violations of human rights,’ noting the contemporary view that communications under the public procedure should be ‘chanell[ed] into the 1503 Procedure,’ and asking Commission members to consider whether this remained the optimal nature of the relationship between the two.

It is remarkable that nearly 40 years later, UN member States and the Secretariat no longer question the relationship between the UN’s various communications procedures in this manner, and indeed appear, to a significant degree, to have lost any sense that the mechanisms should be ‘joined up’ and complementary. As already noted in this report, today, while the three communications procedures do share information in some cases, they nonetheless largely operate in silos, as three separate and distinct petition systems. The idea that petitions should be received by the UN as a whole, with information/data then ‘channelled’ to the most appropriate procedure, and/or ‘shared’ between procedures, has been almost entirely lost.

In the opinion of the Secretary-General, expressed in 1979, the solution to the growing breadth and complexity of the UN human rights petitions procedures was obvious: to present victims or their representatives (i.e. petitioners) with a single easy-to-access and easy-to-use interface. That interface, managed by the UN Secretariat, would then ‘channel’ petitions to the most appropriate procedure – at that time, meaning either the ICCPR communications procedure, or the 1503 Procedure. As the Secretary-General remarked in his report: ‘relatively few of the thousands of writers who annually address themselves to the United Nations [...] have prior knowledge of the existing procedures or the functions of the bodies implementing them.’²²¹ The Secretary-General understood that those suffering from, or threatened by, human rights violations would be unlikely to know – or indeed care – about the intricacies of different procedures and mechanisms; all they would want is to reach out to and receive help from the UN.

Secretary-General Kurt Waldheim was also clear that the UN Secretariat must play a central role in ‘manning’ or ‘managing’ that single user interface, in order to ‘assist authors, as appropriate’ in understanding ‘[which] specific procedures may be applicable [in

their case],’ and then by ‘sorting out mail at the initial [...] stage, with a view to ensuring proper channelling of material into each procedure.’²²² He also saw it as ‘inherent in the role of the secretariat [...] to endeavour to facilitate the work of the bodies concerned by a coherent and orderly handling of the material received.’²²³

Kurt Waldheim’s report, which was tacitly approved by the Commission, also offered thoughts on how such a ‘proper channelling of material’ to the most appropriate procedure(s) should happen in practice. He argued that ‘a specific procedure under an international treaty should, when it applies, take precedence over a general procedure based on a resolution’²²⁴ (i.e. the 1503 Procedure or, later, a Special Procedures communications procedure). Individual communications received by the Secretariat concerning allegations of human rights violations – ‘however addressed’ – should therefore be directed to the relevant Treaty Body (at that time meaning the Human Rights Committee) if the authors were deemed to have ‘the necessary standing to submit their complaint,’ providing that it could be ‘ascertained that they wish to avail themselves of the procedure laid down in the Optional Protocol,’ and, of course, that the communication contained an ‘allegation of violation of any of the rights protected by the [ICCPR] against a State party to the Optional Protocol.’²²⁵ Communications concerning allegations made against States not Party to the Optional Protocol, or where ‘for one reason or another’ they ‘cannot be received under the Optional Protocol,’ would be directed to the 1503 Procedure.²²⁶ Even communications specifically addressed to the Human Rights Committee, he argued, should be forwarded to the 1503 Procedure (with the consent of the complainants) in cases where the State concerned is not Party to the Optional Protocol or where they ‘concern matters which are outside the scope of the Covenant.’²²⁷ The Secretary-General was clear that only the Secretariat was in a position to objectively make these determinations (i.e. where to channel petitions) using, in his words, the criteria of ‘receivability’ (into the ICCPR communications procedure) as set down in the Optional Protocol to the ICCPR.

Regarding the operation of the 1503 Procedure, the Secretary-General noted that ECOSOC resolution 1235 (XLII) authorised the Commission on Human Rights to ‘make appropriate use of the vast source of information concerning alleged gross violations of human rights,’ contained in petitions received by the UN under ECOSOC resolution 728F (XXVIII) (this resolution, adopted in 1959, consolidated various amendments made over the years to the provisions of ECOSOC resolution 75 (V) of 1947, which established the original procedure for handling communications concerning human rights). This authorisation was important, as the Commission on Human Rights had recognised petitions as a key source of data necessary for it to identify ‘situations which reveal a consistent pattern of violations of human rights’ (i.e. through the 1503 Procedure).²²⁸

In other words, where a petition alleges the violation of rights set down in a given human rights treaty, and where the home State of the petitioner is Party to that treaty and has accepted the relevant communications procedure, then that petition should be dealt with by the relevant Treaty Body – because the Treaty Body communications system was deemed to be the most robust and

thus the most likely to be able to deliver remedy and redress. As Waldheim noted: the 1503 Procedure ‘is based on a resolution of a United Nations organ and its implementation is to a high degree dependent on a voluntary cooperation of States,’ whereas the Treaty Body procedure ‘is based on a binding international treaty.’ The 1503 Procedure should then be considered a ‘catch all’ communications procedure, able to deal with all other human rights petitions received by the UN. The 1503 Procedure would then be able to assess that ‘vast source of information,’ to identify ‘situations which reveal a consistent pattern of violations of human rights.’

The Secretary-General’s report also offered one of the clearest delineations in this history of the UN (in stark contrast to the ‘conceptual opacity’ afflicting the UN today), of the key functional differences between the different communications procedures. ‘The fundamental difference between the 1503 (XLVIII) procedure and the Optional Protocol procedure,’ he wrote, ‘is that the former is concerned with the examination of situations, whereas the latter is concerned with the examination of individual complaints, i.e. isolated instances of alleged violations of human rights,’ [emphases added].

Perhaps the one major weakness in Waldheim’s analysis was the absence of any recognition of the value of data being ‘shared’ by the different UN procedures. In other words, the possibility of the ICCPR communications procedure sharing top-level data about cases that were considered ‘receivable’ (and thus were taken up by the Human Rights Committee) with the 1503 Procedure (to help the latter identify ‘consistent patterns of violations’ in different corners of the world). Indeed, the inference at the beginning of Waldheim’s report is that he wished to avoid duplication or overlap in the use of information between different procedures.

This position is perhaps understandable when seen through a contemporary lens. In 1979 the UN possessed only two dedicated human rights communications procedures: one Treaty Body procedure (ICCPR) and the 1503 Procedure. At that time, when the OP-ICCPR had only recently come into force, and when few States were Party to the Covenant or had ratified its Optional Protocol, it is clear that very few petitions received by the UN would have been ‘channelled’ to the Human Rights Committee. Thus, a clear majority of the petitions, containing a ‘vast source of information on violations,’ would by default have been channelled to the 1503 Procedure. This made the sharing of data relatively unimportant. Today, however, with more treaties, more ratifications, more Treaty Body communications procedures and far higher State acceptance thereof; and with over 50 Special Procedures mandates now also accepting petitions; there is a far smaller chance that an individual petition would be ‘channelled’ to the successor to the 1503 Procedure: the CCP.

In 1994, a new Secretary-General, Boutros Boutros-Ghali, presented an updated analysis of the UN petitions system, including, on this occasion, consideration of the Special Procedures communications system (which had developed over the intervening years).²³⁰ Unfortunately, beyond recognising and expressing support for the ‘practice of the Commission not to

take any action under the 1503 procedure if the country concerned [is being] dealt with under a public procedure’ or to ‘discontinue consideration of a country situation under the 1503 procedure, in order to take up consideration of the same matter under a public country mandate,’²³¹ the Boutros Boutros-Ghali report represented a missed opportunity to bring greater clarity to the [now more complex] overall petitions system. He focused, instead, on how petitions should be channelled between country-specific and thematic Special Procedures.²³²

Finally, as recounted in Part I of this report, one of the most recent analyses of UN communications took place in the context of the 2000 Commission on Human Rights review of the Special Procedures mechanism. During that review, the High Commissioner for Human Rights proposed the centralisation and streamlining of the communications procedure. However, the proposals were not fully endorsed by Special Procedures mandate-holders, and the Chair of the Commission concluded that ‘a fully coordinated approach’ would only be ‘possible in a fully-automated system.’²³³

RECOMMENDATIONS

From the foregoing, it is possible to draw a number of conclusions.

First, each of the three main communications procedures plays a distinct and crucial role in the overall UN human rights petitions system. Each has its own strengths when viewed from a victim’s perspective.

Second, the challenges faced by, and the weaknesses of, each procedure, especially when viewed from a victim’s perspective, show significant overlap. For example, all three suffer from:

- A lack of on-the-ground visibility;
- A lack of awareness and understanding, among the general public, about how they operate and how to access them;
- A complicated and often confused user-interface, that serves (broadly speaking) to restrict access only to those victims who enjoy expert legal or NGO support;
- Severe human and technical (e.g. linguistic) capacity constraints across a fragmented Secretariat;
- Inconsistent responsiveness (in terms of, for example, providing updates to victims);
- Data management issues, including constraints on the sharing of data between the procedures; and
- A lack of public transparency and thus accountability, which serves to reduce incentives for State cooperation.

Third, these weaknesses or challenges cannot be addressed, within existing resources, by focusing on each procedure in isolation. Rather, States and the UN Secretariat must once again (as was the case in the late 1970s) look at the procedures as three interconnected and complementary parts of a single coherent UN petitions system – with a single user interface and, perhaps, a single Secretariat.

Fourth, modern technology presents enormous opportunities to finally put in place such a ‘fully coordinated approach’ within ‘a fully automated system’ (as called for by the Chair of the Commission in 2000).

With these conclusions in mind, the Universal Rights Group makes the following recommendations:

RECOMMENDATION 1 (STATES)

A group of supportive States should table a resolution at the UN General Assembly requesting the current Secretary-General, Antonio Guterres, to present an updated ‘analysis of existing UN procedures for dealing with communications concerning violations of human rights,’ together with recommendations for reform, following wide consultations with States, NGOs, and victims or their representatives.

RECOMMENDATION 2 (UN SECRETARIAT, STATES, AND NGOS)

In undertaking such an analysis, the Secretary-General (together, by definition, with the High Commissioner for Human Rights) should request State and NGO input in response to, *inter alia*, the following questions:

1. What are the distinct roles of the three communications procedures, and how do those roles complement one another?
2. How (optimally) should those three procedures fit together, and interconnect, within a fully integrated system?
3. Is it important, from a victim’s perspective, to move towards a single, simplified, visible and accessible user interface for UN petitions? Would such a unified approach help provide ‘economies of scale’ – thus improving the human and technical resource situation of the separate communications procedures?
4. If so, what should such a single user-friendly interface look like? In particular, how can information technology be mobilized and applied in that regard? (For example, by working with technology companies to develop a single ‘UN Petitions’ web interface).
5. Beyond the user interface, how might modern information technology help with data management, security and confidentiality, data sharing (between the procedures, as appropriate), transparency and State accountability, responsiveness to victims (i.e. the provision of progress updates), and the development of a results-based system?
6. Should the development of a single UN petitions system, comprised of the three communications procedures working in an integrated and synchronised manner, and presenting victims or their representatives with a single user interface, also entail the consolidation of existing resources into a single UN petitions Secretariat? Who should head and be responsible for such a unified Secretariat (and petitions system/interface): the High Commissioner, a new Deputy High Commissioner, an Assistant Secretary-General, or perhaps a new UN ombudsman / ombudswoman for human rights?

RECOMMENDATION 3 (STATES)

As part of such a review and reform process, States should reconsider the question of the purpose and performance of the Human Rights Council’s Confidential Complaints Procedure. After 11 years of operation, is the CCP fulfilling its mandate to identify and raise the alarm about ‘consistent patterns’ of human rights violations, or has it become simply a third individual complaints procedure? Or, to use the distinction put forward by Maxime Tardu,²³⁴ is the CCP operating (as it should) as a ‘petition-information system,’ or is it duplicating the role of the two ‘petition-recourse procedures’ – the Treaty Bodies and the Special Procedures. If it is not fulfilling its mandate to provide a petition-information system premised on identifying ‘consistent patterns’ of violations, then what can be done to reform the CCP both in its own right, and as part of wider reforms aimed at creating a single, coherent UN petitions system?

As part of these considerations, States should re-evaluate the merit of the ‘non-duplication’ principle – which prevents the CCP from borrowing data from the other UN (as well as regional) communications procedures. This principle was debated during the 2006/07 Council institution-building negotiations and the 2011 Council review, however on both occasions States were unable to agree on its deletion. That decision must be revisited. To be coherent and effective, any single UN petitions system must allow for the sharing of data with the CCP, otherwise it will be simply not possible for the procedure to gain access to sufficient data to allow it to identify ‘consistent patterns’ of violations.

States should also reconsider (again, as they did in 2006/07 and 2011) the merit, in the case of the CCP, of retaining strict legal admissibility criteria, including the requirement for a petitioner to have exhausted domestic remedy. As argued by the Permanent Representative of Switzerland, Blaise Godet, during the institution-building negotiations in 2006, ‘since the [purpose of the CCP] is not [...] to offer individual remedy, but rather to address situations of gross human rights violations,’ it is ‘inconsistent to demand that the complainant exhaust the available domestic remedies before submitting a communication.’²³⁵ Unfortunately, in 2006 States were not able to agree on this point, and thus the modalities of the CCP, as set down in the institution-building package, ‘reverted to the wording of the original 1503 resolution.’²³⁶

RECOMMENDATION 4 (STATES)

States should also consider how a reformed CCP should fit within, and contribute to, the Council’s emerging ‘prevention agenda’ (i.e. the operationalization of paragraph 5f of GA resolution 60/251). A reformed CCP, as part of a reformed UN petitions system (e.g. from which it could draw data), could potentially play a vital early warning role – bringing emerging situations of concern to the Council’s attention.

This potentially vital prevention role was also debated in 2006/07 (raised by, amongst others, Argentina and Switzerland). At that time, there was a proposal to re-orientate the mandate of the CCP to also identify ‘emerging patterns’ of violations – in addition to ‘consistent patterns.’ However, again, this proposal was rejected.²³⁷

RECOMMENDATION 5 (STATES)

As argued at the beginning of this report, the UN human rights communications procedures are central to the purpose, effectiveness and credibility of the United Nations – representing the only direct link between the victims of human rights violations and the international human rights protection system. However, over the past half-century, what was once a vibrant part of the UN’s human rights work (the sheer number and gravity of petitions received in the early decades of the UN was such that it catalysed many of the human rights pillar’s most important reforms), has become gradually discredited – the victim of growing complexity and distance from ‘the Peoples’ of the United Nations.

Reforming and re-energising the petitions system should therefore be a priority for States as they look towards the 2021-2026 review of the Human Rights Council by the General Assembly. In considering those reforms, States should adopt a victim’s perspective, viewing the current system – and possible changes thereto – through the lens of those people who need to use it. Reforms should aim, *inter alia*, to:

- Make the system more visible and understandable, for all people in all countries and regions;
- Make the system more easily accessible and user-friendly;
- Increase financial and human resource allocations to the overall human rights petitions system, as part of a package of reforms designed to rationalise, harmonise, and simplify that system – thus bringing system-wide efficiencies;
- Make the system more responsive to the needs and situation of victims; and
- Strengthen the system’s effectiveness in protecting human rights around the world.

In the opinion of the Universal Rights Group, such reforms, in order to be successful, must be based on the overarching objective of establishing a single, coherent UN human rights petitions system comprising a single user interface and single UN petitions Secretariat, responsible for channelling petitions to the most appropriate communications procedure(s) and following up on each and every case. To make this possible, the UN will need to leverage the power of modern information technology to, *inter alia*:

- Provide a secure and user-friendly interface;
- Manage big data and information flows;
- Ensure that the three communications procedures interact and interconnect in a coherent manner;
- Ensure that the CCP has access to sufficient information to identify emerging and actual patterns of concern; and
- Ensure that the UN is able to deliver individual remedy and redress.

NOTES

1 Human Rights Council resolution 5/1. A/HRC/RES/5/1, 18 June 2007, para. 85.

2 Ibid.

3 Ibid., para. 86.

4 Robert Marleau and Camille Montpetit (eds.). House of commons procedure and practice. January 2000, chapter 22. Available at: <https://www.ourcommons.ca/MarleauMontpetit/DocumentViewer.aspx?Sec=Ch22&Seq=2&Language=E>.

5 Ingeborg Schwarz. Parliamentary Human Rights Mechanisms. National Democratic Institute for International Affairs, May 2004, p.10. Available at: <http://www.ipu.org/splz-e/hr04/ndi.pdf>.

6 Roger Normand and Sarah Zaidi. Human rights at the UN: The Political History of Universal Justice. Indiana University Press, 19 December 2008, p.157.

7 Ibid.

8 Ibid.

9 Maxime E. Tardu. Human Rights: The International Petition System. Oceana, Vol.1: Complaint procedures of the United Nations organisation, 1979, p.13.

10 Ibid.

11 ECOSOC, Commission on Human Rights. Summary record of the 4th meeting held at Lake Success, New York, on Tuesday, 28 January, 1947. UN Doc. E/CN.4/SR.4, 29 January 1947.

12 The USA's initial reluctance to avoid measures of implementation was compounded by their embarrassment on the international stage over the NAACP's petition to the Commission. For more on the position of the USSR and the US, see Roger Normand and Sarah Zaidi, Op. Cit., pp.169-171.

13 Eleanor Roosevelt. The Promise of Human Rights. Foreign Affairs, April 1948. Available at: <https://www.gwu.edu/~erpapers/documents/articles/promiseofhumanrights.cfm>.

14 Commission on Human Rights, Report to the Economic and Social Council on the 1st session of the Commission held at Lake Success, New York, from 27 January to 10 February 1947. UN Doc. E/259 (Supp), 1947, para. 22.

15 Commission on Human Rights, Summary record of the 20th meeting held at Lake Success, New York, on Friday, 7 February 1947. UN Doc. E/CN.4/SR.20, 7 February 1947, p.3.

16 Ibid., p.2.

17 Ibid., p.3.

18 Howard Tolley Jr. The Concealed Crack in the Citadel: The United Nations Commission on Human Rights' Response to Confidential Communications. Human Rights Quarterly, Vol. 6, No. 4, November 1984, p.423.

19 According to ECOSOC Resolution 75 (V), dated 5 August 1947, States would receive a copy of any petitions concerning them, and would be provided the opportunity to respond. Other members of the Commission would be able 'upon request, to consult the originals of communications dealing with the principles involved in the promotion of universal respect for and observance of human rights', but not those containing specific allegations of human rights violations. Complainants would be informed 'that their communications [had] been received and duly noted for consideration in accordance with the procedure laid down by the United Nations,' and 'where necessary, the Secretary-General should

indicate that the Commission has no power to take any action in regard to any complaint concerning human rights' (from 1959, all complainants would be informed that the Commission would take no action, to avoid raising false hopes). At the end of each session, the Commission would adopt a decision merely taking note of the receipt of the lists and its 'no action' position (until 1959, when this formality was dropped). A similar procedure was also established for the handling of communications relating to the status of women by ECOSOC resolution 76 (V) of 5 August 1947 (for implementation by the Commission on the Status of Women).

20 John P. Humphrey. Human Rights and the United Nations: a great adventure. Transnational Publishers Inc., Dobbs Ferry, New York, 1984, p.28. John P. Humphrey served as Director of the Human Rights Division in the UN Secretariat from 1946-1966.

21 Ibid.As explained by Humphrey, only the State concerned would even see a copy of original communication(s) alleging violations that had occurred, and while 'a few governments took the communications seriously enough to investigate complaints and to write [...] considered replies [to the Secretariat] which [they] circulated to the Commission,' he explained, some other governments merely 'returned the 'libellous' allegations to the Secretariat.'

22 Commission on Human Rights, Report of the 3rd Session of the Commission of Human Rights, Lake Success, from 24 May to 18 June 1948. UN Doc. E/800. UN ECOSOC, 28 June 1948.

23 General Assembly resolution 217 (III) B. UN Doc. A/RES/3/217, 10 December 1948. The resolution was adopted at the 183rd plenary session, by 40 votes with eight abstentions.

24 See the UN Yearbook database: 1952 [p.448], 1953 [p.389], 1954 [p.228], 1955 [p.183], 1956 [p.233], 1957 [p.219], 1958 [p.231], UN Yearbook website. Available at: <https://unyearbook.un.org>.

25 ECOSOC, Summary Record of the 1st Session, 16th meeting. UN. Doc E/CN.4/SR.16, 6 February 1947, p.7.

26 It is important to note here that while membership of the General Assembly is universal, the membership of the Commission was not expanded/adjusted to represent the new UN membership until 1967. Progress therefore came sooner in the General Assembly.

27 General Assembly resolution 1654 (XVI). UN Doc. A/RES/1654(XVI), 27 November 1961.

28 General Assembly resolution 1761 (XVII). UN Doc. A/RES/1761(XVII), 6 November 1962.

29 General Assembly resolution 1804 (XVII). UN Doc. A/RES/1804(X-VII),14 December 1962; General Assembly resolution 1958 (XVIII). UN Doc. A/RES/1958 (XVIII), 12 December 1963.

30 John Carey. 'The United Nations' Double Standard on Human Rights Complaints. The American Journal of International Law, Vol.60, No.4, October 1966, p.798.

31 Ibid., p.796.

32 Ibid.

33 Report of the United Nations Fact-Finding Mission to South Viet-Nam. UN. Doc A/5630, 7 December 1963, para. 151.

34 Roland Burke. Decolonization and the Evolution of International Human Rights. University of Pennsylvania Press, Philadelphia, 2010, p.73.

35 Ibid., p.71.

36 Ibid., p.74.

37 Australian diplomatic cable, quoted in Roland Burke, Op. Cit., p.71

38 New Zealand diplomatic cable, quoted in Roland Burke, Op. Cit., p.72.

39 Ibid.

40 Ibid.

41 Theo van Boven. Human Rights from Exclusion to Inclusion; Principles and Practice, An Anthology of the Work of Theo Van Boven. Kluwer Law International, 2000, Chapter 12, p.185.

42 Roland Burke, Op. Cit., p.75.

43 Ibid.

44 General Assembly, Official records of the Twenty-First Sessions, 3rd Committee, 1439th Meeting. UN Doc. A/C.3/SR.1439, 30 November 1966, para. 20.

45 In favour: Afghanistan, Algeria, Bulgaria, Byelorussia, Cameroon, Cuba, Czechia, Ethiopia, Guinea, Guyana, Hungary, India, Indonesia, Islamic Republic of Iran, Iraq, Japan, Jordan, Kuwait, Lebanon, Libya, Mali, Mauritania, Mongolia, Morocco, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sudan, Syria, Thailand, Togo, Uganda, Ukraine, the Union of Soviet Socialist Republics, the United Arab Republic, Tanzania, Upper Volta, Yugoslavia, and Zambia.

46 Against: Argentina, Australia, Austria, Belgium, Bolivia, Canada, Ceylon, Chile, Colombia, Costa Rica, Cote d'Ivoire, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Ghana, Guatemala, Honduras, Iceland, Ireland, Italy, Jamaica, Luxembourg, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Panama, the Philippines, Spain, Sweden, Trinidad and Tobago, the United Kingdom, the United States of America, Uruguay, and Venezuela.

47 Abstentions: Brazil, Chad, China, the Democratic Republic of the Congo, Cyprus, Gabon, Greece, Israel, Liberia, Malawi, Malaysia, Pakistan, Portugal, Sierra Leone, Tunisia, and Turkey.

48 In favour: Afghanistan, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Cyprus, Denmark, the Dominican Republic, Ecuador, El Salvador, Finland, France, Ghana, Guatemala, Honduras, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Israel, Italy, Jamaica, Jordan, Kuwait, Lebanon, Lesotho, Libya, Luxembourg, Madagascar, Malawi, the Maldives, Mexico, Morocco, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, the Philippines, Somalia, Sudan, Sweden, Trinidad and Tobago, Tunisia, Turkey, the United Arab Republic, the United Kingdom, United States of America, Upper Volta, Uruguay, Venezuela, Yemen, and Zambia.

49 Against: Niger and Togo. Niger was unequivocal it the position that 'the establishment of a committee empowered to receive communications from States constituted interference in the domestic affairs of States' (A/C.3/SR.1451, para 7).

50 Abstentions: Algeria, Bulgaria, Burundi, Byelorussia, Cameroon, Chad, Congo (Brazzaville), the Democratic Republic of the Congo, Cuba, Czechia, Dahomey, Ethiopia, Greece, Guinea, Haiti, Hungary, India, Japan, Liberia, Malaysia, Mali, Mauritania, Mongolia, Nepal, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Syria, Thailand, Ukraine, Union of Soviet Socialist Republics, Tanzania, and Yugoslavia.

51 States still not Party to the Optional Protocol: Afghanistan, China, Egypt, Indonesia, Islamic Republic of Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Morocco, Nigeria, Pakistan, Sudan, the United Kingdom, the United States, and Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sudan, Syria, Thailand, Togo, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Yugoslavia, Zambia, Afghanistan, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Cuba, Czechoslovakia, Ethiopia, Guinea, Guyana, Hungary, India, Indonesia, Iran, Iraq, Japan, Jordan, Kuwait, Lebanon, Libya, Mali, Mauritania, Mongolia, Morocco.

52 See 'Monitoring the core international human rights treaties', OHCHR website. Available at: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

53 Nigel Rodley. The role and impact of treaty bodies. Oxford University Press, Oxford, 2013, Chapter 26, p.634.

54 Ibid.

55 Theo van Boven. The Petition System under the International Convention on the Elimination of All Forms of Racial Discrimination: A Sobering Balance Sheet. Max Planck Yearbook of United Nations Law, Vol.4, Kluwer Law International, Netherlands, 2000, p.272.

56 General Assembly, Official records of the Twenty-First Sessions, 3rd Committee, 1415th Meeting. UN Doc. A/C.3/SR.1415, 7 November 1966, para. 15.

57 OHCHR, Individual Complaint Procedures under the UN Human Rights Treaties, Fact Sheet No. 7/Rev.2. United Nations, New York – Geneva, 2013. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf/>.

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77 Including the Special Rapporteur on the situation of human rights defenders [see UN Doc. A/HRC/31/55/Add.1], and the Special Rapporteur on extrajudicial, summary or arbitrary executions [see UN Doc. A/HRC/32/39/ADD.3].

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79 See ‘Special Procedures of the Human Rights Council’, OHCHR website. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>.

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81 Marc Limon and Ted Piccone. Special Procedures: Determinants of Influence. Universal Rights Group, Geneva, March 2014. Available at: <http://www.universal-rights.org/urg-policy-reports/special-procedures-determinants-of-influence/>.

82 E.g. In 1999, the Bureau of the Commission called for priority to be given ‘to establishing effective and efficient information management and communications systems, taking full advantage of modern technologies and accessible to all Special Procedures office holders.’ See Report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112. UN doc. E/CN.4/1999/104, 23 December 1998, para. 45, proposal 6. In 2010, Philip Alston called for an ‘update [of] the techniques and technology being used to send, receive and manage communications,’ including a move away from reliance on fax, and a ‘web-based database accessible to all mandate-holders so that information can be shared in a far more efficient manner, priorities discussed, changes introduced more flexible, and that the overall situation can be monitored with ease at any given time.’ See Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Op. Cit., para. 13.

83 Human Rights Council resolution 5/1, Op. Cit. para. 85.

84 ECOSOC resolution 1503 (XLVIII), Op. Cit., para. 5.

85 Initially on an annual, ad hoc basis, until the ECOSOC made it a permanent feature of the procedure in 1990 with ECOSOC resolution 1990/41, E/1990/70, 25 May 1990.

86 M.F. Maria Ize-Charrin points out that: ‘Special Procedure mandates set up under the 1503 procedure followed the same guidelines as those set up under public proceedings. The major difference was that the reports of these mandates were only made public after a decision of the Commission. Examples of mandates set up under the 1503 procedure include the country Special Procedure mandates on Chad, Liberia and Uzbekistan.’ See M.F. Ize-Charrin. 1503: A Serious Procedure. International Human Rights Monitoring Mechanisms, Martinus Nijhoff Publishers, 2001, p.304.

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88 Ibid., p.437.

89 Ibid., p.438.

90 Le Monde, 13 September 1978, at 3, col. 5; quoted in Howard Tolley, Op. Cit., p.440.

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97 Howard Tolley, Op. Cit., p.444.

98 Frustration with this state of affairs led her, on one occasion, to threaten to disclose details of an Argentinian case. Ibid., p.43.

99 Jeroen Gutter, Op. Cit., p.68.

100 Commission on Human Rights, Report of the Bureau of the fifty-fourth session of the Commission on Human Rights. UN doc. E/CN.4/1999/104, 23 December 1998, para. 51. The report was submitted pursuant to Commission decision 1998/112.

101 Ibid., p.6.

102 Freidrich Ebert Stiftung. A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council. International Service for Human Rights, Geneva, 2006, Annex 5.1.; Marc Limon and Hilary Power, Op. Cit.

103 Sub Commission resolution 1 (XXIX), 767th meeting, 30 August 1976.

104 ECOSOC resolution 1503 (XLVIII), Op. Cit., para. 10.

105 Commission on Human Rights resolution 16 (XXXIV), UN doc. E/CN.4/ 1317, 7 March 1978. The resolution was adopted at the 1470th meeting, without a vote.

106 Commission on Human Rights, Analysis of existing United Nations procedures for dealing with communication concerning violations of human rights, Op. Cit.

107 Ibid., para. 28.

108 Ibid.

109 Maxime E. Tardu. United Nations response to gross violations of human rights: the 1503 procedure. Santa Clara Law Review, Vol.20, No.3, 1980, p.563. Available at: <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2056&context=lawreview>.

110 Ibid., paras 30, 35.

111 Commission on Human Rights, Analysis of existing United Nations procedures for dealing with communication concerning violations of human rights, Op. Cit., para. 36.

112 Commission on Human Rights, Report of the Secretary General, Boutros Boutros-Ghali: Effective functioning of the various mechanisms established for supervision, investigation and monitoring of the implementation of the Treaty obligations entered into by States in regard to human rights and of the existing international standards in this regard. UN Doc. E/CN.4/1994/42, 10 February 1994, para. 83.

113 Ibid., para. 84.

114 This figure is based on the number of current mandate-holders having dealt with communications since 1 June 2006, as per the Communications report of Special Procedures, submitted to the 34th session on the Human Rights Council, UN Doc. A/HRC/34/75, 17 February 2017.

115 The term used in article 5, paragraph 4 of the Optional Protocol to the ICCPR to describe the decisions of the Committee is ‘Views.’

116 OHCHR, Working with the United Nations Human Rights Programme: A Civil Society Handbook. United Nations, New York–Geneva. 2008, p.163. Available at: http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

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118 OHCHR, Individual Complaint Procedures under the UN Human Rights Treaties, Op. Cit. p.6.

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120 Human Rights Committee, General Comment No.33, The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights. UN Doc. CCPR /C/GC/33, 5 November 2008, para. 10.

121 Ibid., para. 13.

122 The study is based on data from the ‘Statistical Survey on Individual Complaints’, the OHCHR jurisprudence database, the Treaty collection database, and interviews with OHCHR officials. For methodology please see endnote.

123 As explained in Human Rights Committee General Comment 33: ‘the Committee uses the term ‘communication’ contained in article 1 of the Optional Protocol instead of such terms as ‘complaint’ or ‘petition,’ although the latter term is reflected in the current administrative structure of the Office of the High Commissioner for Human Rights, where communications under the Optional Protocol are initially handled by a section known as the Petitions Team.’ See Human Rights Committee, General Comment No. 33, Op. Cit., para. 6.

124 It is perhaps worth reiterating that because the Treaty Bodies record, and reach a decision on, every single ‘genuine’ case [i.e. concerning a State Party and a right listed in the relevant convention], these figures clearly show the number of viable communications reaching the system [rather than for the Special Procedures, which is based on case selection].

125 Out of the 2,756 cases scrutinised, 1,069 cases concerned WEOG States and 173 cases concerned AG States. Data from the OP-ICCPR ‘Statistical Survey on Individual Complaints’ as at March 2016, OHCHR website. Available at: <http://www.ohchr.org/Documents/HRBodies/CCPR/StatisticalSurvey.xls>.

126 Based on data collected from Views found on the OHCHR jurisprudence database.

127 Ibid.

128 Interview with NGO leader, Geneva.

129 See ‘Procedure for complaints by the individual under human rights treaties’, OHCHR website. Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>.

130 OHCHR, Working with the United Nations Human Rights Programme: A Civil Society Handbook, Op. Cit.

131 Interviews with OHCHR officials.

132 Ibid.

133 Including NGOs and Secretariat staff.

134 In a 2011 report (UN Doc. A/66/344), the Secretary General noted that ‘the total number of cases submitted under the communications procedures and pending decision by the respective Treaty Body is 459 [of which 333 cases for the Human Rights Committee and 103 for the Committee against Torture].’ According to the most up to date information URG collected as at December 2016, there are now a total of 906 ‘live’ cases, pending decisions [of which 645 for the Human Rights Committee, and 170 for the CAT as at December 2016].

135 Interviews with OHCHR officials.

136 Interview with a Human Rights Committee member.

137 The CERD [art. 70] empowers the Committee to ‘inform the State Party of its Views on the desirability, because of urgency, of taking interim measures.’

138 Human Rights Committee, General Comment No. 33, Op. Cit., para. 19.

139 Nowak, Buchinger and McArthur. The United Nations Convention Against Torture. Oxford Commentaries on International Law, Oxford, 2008, p.793.

140 Based on data collected from Views available on OHCHR jurisprudence database. For Methodology see endnote. Breaking the years down, interim measures were requested in 43 out of 100 cases concluded by all Committees in 2015, and 12 out of 43 cases concluded in 2016. In 2015, States complied with the Interim Measures

in 66% of cases, and ignored them in 34%. In 2016, States complied with Interim Measures in 83% of cases, and ignored them in 17%.

141 See, for example, Human Rights Committee cases 2013/2010 [available at: <http://bit.ly/2brj3Cn>] and 2289/2013, available at: <http://bit.ly/2bP9ldK>.

142 Human Rights Committee, General Comment No. 33, Op. Cit., para. 10.

143 It is worth noting first of all that the categorisation of levels of implementation is ‘inherently imprecise’ (as recognised by the Human Rights Committee itself in UN Doc. A/64/40 [Vol. II], para. 232). It is based on the Committee’s assessment of State reports, rather than independent assessment of implementation itself. Furthermore, implementation is rarely immediate. There may indeed be progress on those cases that remain open.

144 Replies from States Parties received and processed between November 2015 and July 2016, concerning 102 ‘remedies demanded’ by the Committee, in 37 cases across 19 countries.

145 Data collected from the Follow-up progress report on individual communications adopted by the Committee at its 118th session, 17 October – 4 November 2016. UN Doc. CCPR/C/118/3, 15 February 2017, pp. 1-41.

146 Ibid.

147 Ibid.

148 Interview with a member of the Human Rights Committee.

149 Manfred Nowak. Human Rights Committee Commentary. 2nd ed., 2005, p.669 OR Manfred Nowak. UN Covenant on Civil and political Rights: CCPR commentary (2nd rev.ed). N.P. Engel, Kehl, Arlington, 2005, p.669.

150 WEOG diplomat interviewed on March 2016.

151 WEOG diplomat interviewed on February 2016.

152 OHCHR, Manual of Operations of the Special Procedures of the Human Rights Council. 1 August 2008, para. 29. Available at: http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf.

153 Ibid., para. 30.

154 Ibid.

155 The term ‘submission’ is preferred to ‘complaint’ because communications can relate to broader issues as well as to individual alleged human rights violations. In this report, the term ‘submission’ refers to communications from individuals to Special Procedures, while the term ‘communication’ refers to communications from mandate-holders to Governments and ‘Government responses’ refer to the replies to those ‘communications’.

156 Human Rights Council, Code of Conduct for Special Procedures Mandate-holders. UN Doc.A/HRC/RES/5/2, 18 June 2007, Annex, Article 9 & 10.

157 Or sometimes to non-State actors such as international organizations or multinational companies.

158 Ibid.

159 The Joint Communication Reports database is available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>.

160 See Methods of the Working Group on Arbitrary Detention. UN Doc. A/HRC/33/66, 12 July 2016, p.4. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/66; Methods of Working Group on Enforced and Involuntary Disappearances. UN Doc. A/HRC/WGEID/102/2, 2 May 2014, p.5. Available at: <http://www.ohchr.org/EN/Issues/Disappearances/Pages/MethodsWork.aspx>.

161 Commission on Human Rights, Report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112, 23 December 1998 [UN Doc E/CN.4/1999/104. available at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/b034d5662a22c9b58025670b003c3c71/\\$FILE/G9805289.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/b034d5662a22c9b58025670b003c3c71/$FILE/G9805289.pdf).

162 Ibid., Observation 17, para. 39.

163 Interview with Special Procedures mandate-holder.

164 See ‘Communications’, OHCHR website. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

165 See ‘Submission of information to the Special Procedures’, endnote ‘79’.

166 Ibid.

167 Data from the OHCHR Communication Report database, OHCHR website. Available at: <https://spcommreports.ohchr.org/Tmsearch/TM-Documents>.

168 Ibid.

169 Interview with an NGO representative.

170 See the Joint Communication Reports database, endnote ‘160’.

171 See ‘Submission of information to the Special Procedures’, endnote ‘79’.

172 Commission on Human Rights, Report of the Bureau of the fifty-fourth session of the Commission on Human Rights, Op. Cit., Observation 17, para. 39.

173 Interview with SPB and OHCHR officials.

174 Former mandate assistant to the CPR and ESCR mandates.

175 Interview with a CPR mandate-holder.

176 Interview with a CPR mandate-holder.

177 Interview with Special Procedures mandate-holder.

178 Human Rights Council, Code of Conduct for Special Procedures mandate-holders. Op. Cit., para.1.

179 Ibid., para. 45.

180 The URG updated analysis is calculated on data collected from the Individual Data from Facts and Figures reports from 2005 to 2016; and the Joint Communication Reports database. For Methodology see endnote.

181 Ibid.

182 The countries were selected on the basis that they are the 15 countries which received the most communications between 2011 and 2013. For detailed information on the methodology used, see the document ‘Special Procedure communications: methodology for qualitative analysis’, available at <http://www.universal-rights.org/programmes/human-rights-institutions-mechanisms-and-processes/the-evolution-and-future-sustainability-of-the-special-procedure-system/>.

183 A small number were not translated in time for the analysis (six from China, one from the Russian Federation, Sudan, and Tunisia).

184 Interview with Special Procedures mandate-holder.

185 Report of the Meeting of 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. Annex to UN Doc E/CN.4/2000/5, 31 May-3 June 1999, para. 45.

186 Ibid., para. 43.

187 At a 2012 workshop hosted by Brookings, Google Ideas and the Center on Democracy, Development and the Rule of Law at Stanford University, a variety of ideas were generated to tackle these challenges, including a web-based interface for reporting abuses online and via mobile phone, a dashboard-style tool to collate and analyze data, and a case-management system to track individual complaints. See the ‘summary of the workshop: New Technologies and Human Rights Monitoring, August 6-7, 2012’. Available at: <http://www.brookings.edu/events/2012/08/06-tech-nology-human-rights>.

188 OHCHR, Manual of Operations of the Special Procedures of the Human Rights Council, Op. Cit., para. 32.

189 Ibid.

190 Interview with Special Procedures mandate-holder.

191 Ibid.

192 Ibid.

193 Ibid.

194 Human Rights Council resolution 5/1, Op. Cit.

195 Ibid., para. 85.

196 Ibid.

197 OHCHR, Working with the United Nations Human Rights Programme: A Civil Society Handbook, Op. Cit., p.82.

198 Ibid.

199 Ibid.

200 Ibid.

201 Human Rights Council, Report of the open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council. UN Doc. A/HRC/WG.8/2/, 14 May 2011, p.89.

202 Ibid., p.90.

203 Ibid.

204 Ibid., pp.90-95.

205 Interview with a Diplomat from a Human Rights Council Member State.

206 Interview with a former Chairperson of the Working Group on Situations.

207 Human Rights Council resolution 5/1, Op. Cit., para. 85.

208 Ibid., para. 87(g).

209 Ibid., para. 87(f).

210 See ‘List of situations referred to the Human Rights Council under the complaint procedure since 2006’ from October 2014, OHCHR website. Available at: <http://www.ohchr.org/Documents/HRBodies/ComplaintProcedure/SituationsConsideredUnderComplaintProcedures.pdf>.

211 Human Rights Council resolution 5/1, Op. Cit., para. 106.

212 See ‘List of situations referred to the Human Rights Council under the Complaint procedure since 2006’ from the OHCHR website, endnote ‘216’.

213 Former APG member of the Working Group on Situations.

214 Philip Alston. ‘The United Nations Commission on Human Rights’: The United Nations and Human Rights. Oxford University Press, Oxford, 1992, chapter 5, p.152.

215 Former member of the Working Group on Communications.

216 Ibid.

217 Human Rights Committee, General Comment No. 33, Op. Cit.

218 Ibid.

219 Report of the Secretary-General, Boutros Boutros-Ghali: Effective functioning of the various mechanisms established for supervision, investigation and monitoring of the implementation of the Treaty obligations entered into by States in regard to human rights and of the existing international standards in this regard, Op. Cit., para. 48. The Secretary-General Boutros Boutros-Ghali noted [in 1994] that the ‘Analysis of existing United Nations procedures for dealing with communications concerning violations of human rights’ had been tacitly approved by the Commission, and therefore regarded ‘as a legal basis, since 1979, for the Secretariat’s working methods in this respect.’

220 Ibid.

221 Commission on Human Rights, Analysis of existing United Nations

procedures for dealing with communications concerning violations of human rights, Op. Cit., para. 36.

222 Ibid., para. 30.

223 Ibid., para. 36.

224 Ibid., para. 31.

225 Ibid., para. 32(b).

226 Ibid., para. 33.

227 Ibid., para. 34.

228 Ibid., para. 14.

229 Ibid., para. 29.

230 Report of the Secretary-General, Boutros Boutros-Ghali: Effective functioning of the various mechanisms established for supervision, investigation and monitoring of the implementation of the Treaty obligations entered into by States in regard to human rights and of the existing international standards in this regard, Op. Cit.

231 Commission on Human Rights, Report of the Secretary General, Boutros Boutros-Ghali: Effective functioning of the various mechanisms established for supervision, investigation and monitoring of the implementation of the Treaty obligations entered into by States in regard to human rights and of the existing international standards in this regard. UN Doc. E/CN.4/1994/42, 10 February 1994, para. 83.

232 Commission on Human Rights, Report of the Secretary General, Boutros Boutros-Ghali: Effective functioning of the various mechanisms established for supervision, investigation and monitoring of the implementation of the Treaty obligations entered into by States in regard to human rights and of the existing international standards in this regard, Op. Cit., para.82.

233 Report of the Meeting of 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, Op. Cit., para. 45.

234 Maxime E. Tardu, United Nations response to gross violations of human rights: the 1503 procedure, Op.Cit. p.563.

235 Blaise Godet, Complaint Procedure, First 365 Days of the Human Rights Council.

236 Ibid.

237 Human Rights Council, Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled ‘Human Rights Council’: Second session of the inter-sessional open-ended intergovernmental working group on the implementation of operative paragraph 6 of General Assembly resolution 60/251. UN Doc. A/HRC/4/CRP.6, 13 March 2007, para. 14.

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METHODOLOGY

TREATY BODIES

State acceptance of Treaty Body communications procedures :

Source: Treaty collection database, available at: <https://treaties.un.org>. Data as at: 31st December 2016.

Treaty Body communications:

Source: The data on the numbers of communications for each Treaty Body is calculated from: the ‘Statistical Surveys on Individual Complaints’, available on the OHCHR website; and the OHCHR jurisprudence database, available at: <http://juris.ohchr.org/en/Home/Index/>. Data as at: May 2014 for the CPRD and the CERD; August 2014 for the CAT; April 2016 for the CEDAW; March 2016 for the ICCPR; and December 2016 for the CED, the CRC, and the ICESCR.Note: It must therefore be acknowledged that the data is collected from different time periods and is not all up-to-date.

Views:

Source: OHCHR jurisprudence database, available at: <http://juris.ohchr.org/en/Home/Index/>.Data as at: 31st December 2016.

SPECIAL PROCEDURES

Communications:

Source: Data for the Special Procedures communications is calculated from the Facts and Figures reports from 2005 to 2016; the communications sent by each mandate from 1st January 2014 to 31st December and the responses received from 1st January 2014 to 31st January 2016, from the Joint communications reports, available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>.

Note: Analysis of government responses based on a sample of 100 communications, analysed using the methodology developed by the URG and the Brookings Institution for the Human rights Special Procedures: Determinants of Influence report. The report and methodology are available at: <http://www.universal-rights.org/programmes/human-rights-institutions-mechanisms-and-processes/the-evolution-and-future-sustainability-of-the-special-procedure-system/>.

CONFIDENTIAL COMPLAINTS PROCEDURE

Source: Data for the Confidential Complaints Procedure is calculated from the Commission on Human Rights annual reports from 1970 to 2006; the Council annual reports from 2007 to 2015; and the ‘List of situations referred to the Human Rights Council under the complaint procedure since 2006’, available at: <http://www.ohchr.org/Documents/HRBodies/ComplaintProcedure/SituationsConsideredUnderComplaintProcedures.pdf>.



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