



International Covenant on Civil and Political Rights

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Human Rights Committee

The mandate of the Special Rapporteur on New Communications and Interim Measures

Report by the Special Rapporteur

Introduction

1. At its 35th session, in March 1989, the Committee decided to designate a Special Rapporteur (SR) authorized to process new communications and requests for interim measures as they were received. The following provisions of the Committee's Rules of Procedure refer to the mandate of the Special Rapporteur:

Rule 95, para. 3: "The Committee may designate special rapporteurs from among its members to assist in the handling of communications";

Rule 97, para. 1: "As soon as possible after the communication has been received, the Committee, a working group (...) or a special rapporteur designated under rule 95, paragraph 3, shall request the State party concerned to submit a written reply to the communication."

Rule 97, para. 2: When requesting the State party concerned to submit written explanations on the admissibility and merits of the communication the special rapporteur may decide, because of the exceptional nature of the case, to request a written reply that relates only to the question of admissibility;

Rule 97, para. 3: The Special Rapporteur may decide to extend the six month period given to the State party to reply to the communication, because of the special circumstances of the case;

Rule 97, para. 4: The Special Rapporteur may request the State party or the author of the communication to submit, within specified time limits, additional written information or observations relevant to the question of admissibility or the merits.

2. At its 108th session, in July 2013, the Committee decided to appoint an alternate to the Special Rapporteur who should deal with urgent matters when the Rapporteur is not available or is unable to act in application of rules 90 and 91 of the Rules of Procedure.

Functions of the Special Rapporteur

3. The scope of the Special Rapporteur's mandate extends from the moment a new communication is received until this communication is scheduled to be examined by the Working Group on communications. The mandate encompasses five main functions: a) Taking decisions on registration; b) Dealing with requests from authors on interim and protection measures; c) Responding to any procedural matter that may arise after registration; d) Proposing communications to be declared inadmissible without transmission to the State party; e) Selecting the communications to be included in the Committee's agenda at each session.

A. Registration of new communications

4. When the Secretariat receives a new communication which, *prima facie*, meets all admissibility criteria and contains a reasonable level of substantiation the Secretariat prepares a summary of the facts and the complaint for the Special Rapporteur who then decides whether or not the communication should be registered and transmitted to the State party for observations. The Special Rapporteur can accept or refuse registration. He/she can also decide to request additional information from the author of the communication.

5. Due to the high amount of correspondence received by the Secretariat, including requests for registration, the Committee agreed, from its early years, that the Secretariat respond directly to complainants when it is clear from the outset that their cases cannot be processed under the Optional Protocol. This happens, for instance, when the State concerned is not a party to the Covenant or the Optional Protocol, or when the subject matter is uncontrovertibly outside the scope of the Covenant or when the submission lacks basic information on the facts and claims.

B. Requests for interim measures and protection measures

Interim measures

6. Rule 92 of the Rules of Procedure states: "The Committee may, prior to forwarding its Views on the communication to the State party concerned, inform that State of its Views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State party concerned that such expression of its Views on interim measures does not imply a determination on the merits of the communication".

7. Although not specified in the rules of procedure, the Committee has entrusted the Special Rapporteur to deal with requests from the authors of communications to issue interim measures. Most of these requests are made together with the submission of a new communication and therefore the Special Rapporteur takes the decision to grant or refuse them when he/she decides on registration of the communication. Interim measures are not granted on non-registered cases.

8. At its 55th session, in 1995, the Committee decided that the competence of the Special Rapporteur to issue and, if necessary, to withdraw requests for interim measures in a particular case continues until the Working Group on communications takes up the question of admissibility. Subsequently, when the Committee is not in session, that competence will be exercised by the Chairperson until the Working Group considers the substance of the case, in consultation, where necessary, with the Special Rapporteur.

9. The decision to grant interim measures is based on the nature of the violation alleged and the risk of actions by the State which could have irreparable consequences in respect of the rights invoked by the author. As to the nature of the risk alleged, typical interim

measures involve potential violations of articles 6 (right to life) and the prohibition of torture or cruel, inhuman or degrading treatment (article 7). The Special Rapporteur has, nevertheless, requested interim measures to stop imminent violations of other rights such as those under articles 17, 18, 19 or 27.

10. When there are doubts regarding the imminence, credibility or irreparability of harm, the Special Rapporteur may decide to grant “provisional” interim measures. In these situations the State party is informed that the decision of the Special Rapporteur to grant interim measures may be revised in the light of the information provided by the State party at any moment of the proceedings. The information provided by the State party in this regard is generally transmitted to the author of the communication, for comments within a brief deadline. Once these comments are received, or if the author fails to submit them within the deadline, the Special Rapporteur decides whether or not to lift the request.

Measures of protection

11. Over the years Special Rapporteur has developed the practice of requesting States parties to adopt measures of protection vis-à-vis the author(s) of a communication or close family members, when there are well-founded indications that the submission of the communication to the Committee has resulted or will result in acts of intimidation against these persons. More recently, the Special Rapporteur has been requested to intervene in connection with allegations of ongoing acts contrary to article 7 inflicted on the authors after registration of their cases, but not necessarily as a result of the submission of the communication. In response to these requests, the Special Rapporteur has written to the State party transmitting his/her concern at the allegations received and asking it to adopt measures to protect the authors against those acts. The Special Rapporteur has also requested the State party to respond to him/her on the measures taken within a short period of time.

12. Protection measures are to be distinguished from interim measures in that their purpose is not to prevent irreparable damage affecting the object of the communication itself, but simply to protect those who might suffer adverse consequences for having submitted the communication, or to call the State party’s attention to their aggravating situation linked to the alleged violations of their rights.

C. Other procedural matters falling within the scope of the Special Rapporteur’s mandate

Requests for extension to make submissions

13. Requests are frequently received from the parties in a communication for an extension of the period within which they are required to comment on the submissions made by the other party. Depending on the circumstances of the particular case and the reasons for the delay the Special Rapporteur can grant or refuse the extension.

Requests to examine admissibility separately from the merits (“split requests”)

14. When submitting their observations on the admissibility of a particular communication States parties may request an examination of admissibility separately from the merits. The State party’s submission on admissibility is sent to the author of the communication for comments within a relatively short deadline. The decision of the Special Rapporteur to grant or refuse the split is then communicated to the parties.

Requests concerning confidentiality of the proceedings

15. The Special Rapporteur can respond to concerns from the parties in a communication regarding respect of confidentiality while proceedings are ongoing. For instance, the State party may express concern that the author has made public his/her submission before the Committee and that this could cause tensions in sectors of the population. Rule 102 of the rules of procedure indicate in this respect that “communications shall be examined in closed session and that oral deliberations and summary records shall remain confidential; this shall not affect the right of the parties to make public any submissions or information bearing on the proceedings; however, the Committee, the Working Group or the Special Rapporteur may, as deemed appropriate, request the author of a communication or the State party concerned to keep confidential the whole or part of any such submissions or information”.

Proposals to discontinue the examination of registered communications

16. The proposal to discontinue the examination of registered communications is also part of the Special Rapporteur’s mandate. Summaries of cases proposed for discontinuation are included in a document that the Special Rapporteur submits to each session of the Committee. The document is circulated among Committee members, who can object or ask questions regarding the cases included in it. The final decision on discontinuation is then taken by the Committee.

Other procedural issues

17. Any other procedural issue that may arise, from the registration stage until the communication is before the Working Group on communications, falls within the Special Rapporteur’s mandate, such as maintaining contacts with Permanent Missions on specific matters.

D. Communications declared inadmissible without transmission to the State party

18. Some registered communications are not transmitted to the State party concerned for observations because their inadmissibility is apparent on the basis of the information submitted by the author. A short inadmissibility decision is then proposed by the Special Rapporteur for adoption by the Committee.

E. Selecting the communications to be included in the Committee’s agenda at each session

19. At each session, the Special Rapporteur selects the communications to be included in the Committee’s agenda for examination at the following session. In making the selection the Special Rapporteur follows the principles set up by the Committee, according to which primary consideration must be given to the chronological order in which the communications were registered. However, this rule has to be balanced with the gravity and urgency of the allegations involved. Thus, when deciding on the Committee’s agenda for a particular session the Special Rapporteur follows the principle established by the Committee that some communications should have priority over the general rule of consideration by chronological order, including the following:

- a) Communications raising urgent issues regarding risk of violations of the right to life, physical integrity or arbitrary detention;
- b) Communications alleging serious violations of the rights of vulnerable persons, such as minors and persons with disabilities;
- c) Communications where interim measures were granted;

- d) Communications raising an important question of general interest, capable of having implications for the domestic legal system(s) concerned or the Committee's jurisprudence.
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