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Special Rapporteur on the situation of human rights
and fundamental freedoms of indigenous people

Special procedures and regional human rights systems: Areas for strengthening cooperation

Introduction

1. The issue of cooperation with regional human rights mechanisms has so far not been systematically examined at the Annual Meeting of Special Procedures. The objective of these general considerations is to help facilitate our collective reflection on possible means of strengthening the interaction and cooperation with these mechanisms, by the simple way of putting together a number of experiences from our work as special procedures' mandate holders.

2. Regional human rights mechanisms relevant to our work as special procedures include, in general, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, affiliated with the Organization of American States (OAS) and which include several thematic rapporteurs; the African Union's (AU) African Commission on Human and Peoples' Rights and its system of thematic special mechanisms; the Council of Europe's treaty bodies, including the European Court of Human Rights and the Committee for the Prevention of Torture, the European Committee of Social Rights and the Advisory Committee of the Framework Convention on the Protection of National Minorities, and other specialized mechanisms, particularly the Council's Human Rights Commissioner; the Organization for Security in Europe (OSCE) High Commissioner on National Minorities, the Representative on Freedom of the Media and the Special Representative and Co-ordinator for Combating Trafficking in Human Beings; and the European Union's Working Party for Human Rights and other European Union expert bodies.

3. The list, which is by no means exhaustive, is a good reminder of the complex network of norms and institutions that give shape to the international human rights regime, and of which regional mechanisms constitute a fundamental pillar. With diverging levels of institutional capacity, these institutions mobilize resources aimed at our common objectives of human rights promotion and protection. Many of these mechanisms cover areas that are identical or closely related to our own mandates, particularly in the case of thematic mandates. In a context of limited resources and burgeoning human rights abuses that demand our common efforts, the cooperation with regional human rights bodies requires careful consideration.

Technical expertise and general exchange of information

4. In recent years, special procedures have increased their cooperation with different regional human rights mechanisms in their respective areas of expertise, with very encouraging results. Participation in expert workshops and exchange of

information on relevant activities; exchange of views on substantive issues, as well as on working methods; and collaborative action in relation to specific situations, are some of the ways in which cooperation with regional mechanisms has taken place, and they have become routine activities for many mandate holders.

5. Recent experiences in this regard, to give only a handful of examples, include the activities carried out by the Independent Expert on minority issues in cooperation with the Inter-American Commission's Special Rapporteur on persons of African descent and against racial discrimination, concerning future inter-American standards on the issue of racial discrimination, or the interaction between the Representative of the Secretary General on internally displaced persons and his counterpart at the African Commission on Human and Peoples' Rights, concerning ongoing discussions regarding the drafting of an AU instrument on internally displaced persons. Similarly, the Special Rapporteur on torture has an established record of cooperation with relevant bodies and secretariats at the European level, including the OSCE Office for Democratic Institutions and the Council of Europe's Committee on Legal Affairs and Human Rights, the Commissioner for Human Rights, and, as a matter of course, the Committee for the Prevention of Torture. He has also participated in several meetings of the African Commission on Human and Peoples' Rights in relation to issues related to his mandate. To share also my own experience, I participated in 2005 in a plenary session of the African Commission in Banjul, where I had the opportunity to liaise with the Commission's Working Group on Indigenous Populations/Communities.

6. These activities are particularly useful for exchanging information with the relevant regional institutions on activities falling within our areas of thematic or country expertise. By their very nature, these institutions have a direct contact with regional and country realities and trends, and provide different conceptual approaches to the protection of human rights based on these realities and trends. The authoritative information they produce is hence extremely useful for our reporting activities, and also for the development of strategies and areas deserving priority attention in our work as independent experts.

Country visits

7. Mandate holders have also strengthened cooperation with regional human rights bodies in relation to country visits. Country and thematic reports elaborated by these bodies, as well as their recommendations concerning specific countries or cases are routinely used in the preparation of missions by mandate holders. Inasmuch as these bodies provide authoritative evidence of the human rights situation of specific countries, this information is crucial in the elaboration of mission reports. I have for instance referred to several individual cases examined by the Inter-American Commission in several Latin American countries I have visited, and the Commission's recommendations are most valuable in framing the recommendations I have made to the Governments concerned.

8. A more direct form of cooperation has taken place through the assistance in the preparation and conduct of special procedures' visits by regional bodies with a presence in the field. For instance, OSCE provided support during the visit of the Special Rapporteur on torture to Georgia in February 2005, and particularly for his visit to South Ossetia. In the case of my own mandate, the Inter-American Human Rights Institute (IIDH), based in Costa Rica, has provided assistance in preparing and carrying out my official missions to various Latin American countries, under the agreement signed between the Institute and the OHCHR. A senior staff member of IIDH was part of the official team during my visits to Guatemala, Chile, Colombia, Mexico and Ecuador.

9. More recently, there have been attempts to strengthen cooperation with regional bodies through the conduct of joint missions with similar procedures of regional bodies. This is particularly the case of the African human rights system, with a mechanism of thematic special rapporteurs in areas similar to those of the Human Rights Council. By way of illustration, the Representative of the Secretary General on Internally Displaced Persons is currently considering the possibility of a joint mission to Sudan with the Special Rapporteur on refugees, asylum seekers and internally displaced persons in Africa. A similar initiative is also being explored by the Special Representative of the Secretary General on human rights defenders and the Special Rapporteur on human rights defenders in Africa in relation to Togo.

10. I am sure that these important initiatives will bear fruit, not only in terms of concentrating efforts towards the common end of a more effective protection of human rights, but also in terms of the collateral effects of mutual learning and building institutional capacities.

Protection mechanisms

11. Hundreds of individual communications are sent by special procedures to Governments every year concerning specific allegations of human rights violations. As known by all of us, the flexibility of the communications procedure, as distinct from the more formal complaint procedures under human rights treaties, allows for a rapid intervention in a broad range of situations.

12. While the communications procedure is unique in its flexibility and universality, regional human rights systems include a number of similar procedures. This is the case, with certain legal differences, of the precautionary measures of the Inter-American Commission on Human Rights. These measures are granted even in relation to cases that are not formally being heard by these bodies; however, as distinct to the special procedures' communications, they include a minimum set of procedural requirements. The Council of Europe's Commissioner for Human Rights or the OSCE High Commissioner on National Minorities, under his specific "early warning" mandate, use quiet diplomacy in relation to situations of a humanitarian and urgent nature; these actions are normally not on record. On the contrary, other OSCE mechanisms, like the Representative on Freedom of the Media or the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

routinely publish press releases in relation to specific cases of urgent or critical situations.

13. While we are all generally aware of these mechanisms in our own areas of expertise, my feeling is that our workload, linked to the urgent character of the situations that are submitted to our attention, have somehow limited our capacity to co-operate with regional human rights mechanisms regarding specific instances of human rights violations. Although no research has been done on this issue, there are surely many instances in which we take action and other similar procedures at the regional level have also intervened. For instance, we have sent communications in cases where the Inter-American Commission on Human Rights has granted precautionary measures or is supervising the implementation of those measures, and vice-versa. While this is not necessarily bad, the limited resources available for our work and our important workload, linked to the established effectiveness of many of these regional mechanisms, surely justify a reflection in order to better select the grounds for our intervention and avoid potential overlaps. This could also reduce Government's reporting burden and, if I may suggest, lead to a concentration of Government's institutional efforts on effectively remedying the situations brought to their attention.

14. One way to advance in this direction would involve developing closer working relationships between the OHCHR's SPB Branch and the secretariats of these regional mechanisms, which could provide input on the advisability of sending a communication in specific cases –and particularly in those of a less urgent character– at least in relation to American and European countries. The establishment of regular channels of information exchange, similar to SPB's weekly briefings, or the designation of focal points within SPB and regional secretariats could also be explored.

15. Another way of trying to avoid potential overlap could be to request information from the source concerning the international action (as well as the domestic remedies) that have been sought in relation to the specific alleged violation –again, when time pressure is not a variable. While, as known, there is no non-duplicity rule as a procedural requirement for our intervention, this information may be important to weigh the advisability of our communications or to foster the communication exchange with the relevant regional bodies concerning specific cases.

16. This leads me to the similar, but wider issue of the complementarity between our communication procedure and the complaint procedures of the UN and regional treaty bodies. This is of course a vexing question that has no easy answer, and that presents issues of complementarity and overlap similar to the ones described above. Again, this should not necessarily be seen as something negative. To provide a recent example, I joined the Special Rapporteurs on adequate housing and on the right to food in a communication sent to the Government of Paraguay concerning the implementation of the Inter-American Court of Human Rights' decision in the *Yakye Axa* case. In this instance, we considered that the lack of implementation of this decision had resulted in a situation of ongoing human rights violations that merited

our intervention, and that this intervention could actually make an impact in the absence of strong implementation procedures in the Inter-American system.

17. In this connection, the fruitful efforts that have been made in recent years to strengthen our cooperation with the UN treaty bodies may provide some interesting examples of possible ways to enhance our cooperation with regional treaty bodies. Again, the OHCHR's Secretariat may play a key role in this regard.

18. The confidential nature of our communication procedure has been sometimes raised as an argument to restrain the exchange of information with external bodies in relation to specific cases. However, I am sure that the development of working relationships with regional bodies and their secretariats can allow for such an exchange in a way that fully respects the confidentiality of both our communications and of our sources of information.

Concluding remarks

19. Recent experience has shown that the cooperation with regional human rights bodies is becoming a crucial component of special procedures' activities. These bodies provide for expert knowledge and information on areas of direct relevance to special procedures' mandates, and their activities are of specific interest to our reporting activities. Special procedures' activities show that there is a satisfactory level of cooperation with regional bodies at the level of exchange of information and technical expertise, and this cooperation is also gradually being extended to the organization of country visits. The coordination with regional procedures in the response to specific human rights violations, including through communications, constitutes surely an area that may deserve further exploration in order to better utilize existing resources and contribute more effectively to the common goal of protecting human rights, at all levels.

20. The three major areas outlined above are merely illustrative of existing or potential cooperation between special procedures and regional organizations. More generally, it is inspiring to note, for example, that the Council of Europe's Human Rights Commissioner has recently indicated his interest in contributing to ensuring greater follow up on the conclusions and recommendations of special procedures in relation to countries covered by the organization. We may want to encourage wider discussions among ourselves and with our potential partners in regional organizations on ways to mutually encourage and support follow up to our work. We may also want to discuss whether we should develop strategies for enhanced overall coordination of our policies and activities with a view to strengthen the linkages between, and the joint impact of, the international and regional human rights systems.
