International allies in prison reform

Special mechanisms in the UN system and the African Commission on Human and Peoples’ Rights

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Our journey

(1) International human rights monitoring mechanisms: Drawing the line between treaty bodies and special procedures

(2) Role of special procedures in advancing human rights

(3) Overview of special procedures in the African human rights system

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### Inter human rights monitoring mechanisms: Treaty bodies (vs) special procedures

<table>
<thead>
<tr>
<th>Treaty bodies</th>
<th>Special procedures</th>
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<tbody>
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<td>1. Established under a charter/treaty</td>
<td>1. Usually part of a treaty body</td>
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<td>2. Monitor treaty implementation (analyse reports)</td>
<td>2. Advance implementation of a specific provision/aspects under a treaty</td>
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<td>3. Have a collegial composition</td>
<td>3. An individual or body of individuals</td>
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<td>4. Members are appointed by states parties</td>
<td>4. Appointed by charter/treaty bodies</td>
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What are special procedures/mechanisms?

- These include special rapporteurs, special representatives, independent experts and working groups that (1) monitor, (2) examine, (3) advise and (4) publicly report on thematic issues or human rights situations in specific countries.

- They are independent human rights experts/collegial body with mandates to report and advise on human rights from a thematic or country-specific (e.g. Eritrea) perspective.
What role can they play in advancing human rights?

Special Procedures undertake –

- **Country visits**;

  Oficial/unofficial visits

- Act on individual cases of alleged violations and concerns of a broader, structural nature by sending **communications** to States;
Special procedures role (Cont...)

- Conduct thematic studies and convene expert consultations,
- Contributing to the development of human rights standards;
- Engage in advocacy and raise public awareness; and
- Provide advice for technical cooperation.
Overview of special procedures in the African human rights system

Established under African Commission rules procedures and the African Charter

- Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons (1994)
- Special Rapporteur on Prisons, Conditions of Detention and Policing In Africa (1996)
- Special Rapporteur on the Rights of Women (1999)
Special procedures in the African human rights system (Cont...)

- Special Rapporteur on Freedom of Expression and Access to Information (2004);
- Special Rapporteur on Human Rights Defenders (2004);
- Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa (2005);
- Working Group on the Rights of Older Persons and People with Disabilities (2007);
- Working Group on Extractive Industries, Environment and Human Rights Violations (2009);
- Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at risk, Vulnerable to and Affected by HIV (2010); and
Overview of special mechanisms under the UN human rights system

Established under the UN Human Rights Council (43 thematic and 14 country - in Sept 2016)

- Independent Expert on the enjoyment of human rights by persons with albinism;
- Special Rapporteur on the sale of children, child prostitution and child pornography;
- Working Group on Arbitrary Detention;
- Special Rapporteur on the rights of persons with disabilities;
- Working Group on Enforced or Involuntary Disappearances;
- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity;
UN mechanisms (Cont...)

- Special Rapporteur on extrajudicial, summary or arbitrary executions;
- Special Rapporteur on Human Rights Defenders;
- Special Rapporteur on the right to food;
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- Special Rapporteur on freedom of religion or belief;
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
UN mechanisms (Cont...) 

- Special Rapporteur on the human rights of migrants;
- Independent expert on Protection of human rights and fundamental freedoms while countering terrorism;
- Special Rapporteur on torture
- Special Rapporteur on trafficking in persons, especially in women and children;
- Special Rapporteur on violence against women, its causes and consequences;
- etc
Examples of steps taken by Special Rappoteurs (UN Level)

Special Rapporteur on Torture encapsulated well the particular situation of sexual minorities in detention:

- ‘[They] are often considered as a sub-category of prisoners and detained in worse conditions of detention than the larger prison population. The Special Rapporteur has received information according to which members of sexual minorities in detention have been subjected to considerable violence, especially sexual assault and rape, by fellow inmates and, at times, by prison guards. Prison guards are also said to fail to take reasonable measures to abate the risk of violence by fellow inmates or even to have encouraged sexual violence, by identifying members of sexual minorities to fellow inmates for that express purpose. Prison guards are believed to use threats of transfer to main detention areas, where members of sexual minorities would be at high risk of sexual attack by other inmates. In particular, transsexual and transgendered persons, especially male-to-female transsexual inmates, are said to be at great risk of physical and sexual abuse by prison guards and fellow prisoners if placed within the general prison population in men’s prisons.’
Violence amongst detainees

The experience of being deprived of one’s liberty is harsh for any detainee, but LGBTI persons are more exposed to violence from fellow detainees. As the Special Rapporteur on Torture encapsulated well.

- ‘Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gay, lesbian, bisexual and trans-gender persons, suffer double or triple discrimination.’
HISTORY, MANDATE
Established at the 20th Ordinary Session of the ACHPR in Kampala/Uganda 1996. "Policing” aspect was not included in the initial mandate. Policing included in 1999 under Resolution 37

MANDATE
Examine the situation of persons deprived of their liberty within the territory of State parties to the African Charter

MISSION
Over 20 missions (e.g. Moz (1998), Malawi (2001); Zimbabwe etc) – culminating with mission reports
Rapporteur on Prisons, Conditions… (Cont…)

- Others activities
  - Awareness raising

- Support development of human rights standards (examples below):

  (a) Guidelines on conditions of arrest, police custody and pretrial detention in Africa (Luanda Guidelines);

  (b) Kampala Declaration on prison conditions in Africa;

  (c) Draft Principles on Declassification and Decriminalization of Petty offenses in Africa (work in Progress – see African Commission Communique of the Extra ordinary session held 23 Feb – 4 March)
What are the “do’s” and “don’ts”

- Write clearly highlighting the issues at stake

- Provide sufficient background information

- Ensure that you provide evidence backing the claims

- Provide relevant updates/developments of the situation on the ground

- Suggest action and or recommendations that SRP make to the state

- Give publicity to recommendations stemming from special mechanisms

- Follow up with govt ensuring implementation of recommendations; and

- Keep other mechanisms with related mandate informed (cc).
Some advantages of engaging special procedures compared to treaty bodies

- No need to exhaust local/domestic remedies;

- Less bureaucratic and therefore more accessible than treaties which entail following strict procedures;

- Timing is not a requirement (engage them at anytime unlike treaty bodies which will be engaged during state parties review processes);

- Unlike treaty bodies more than one special mechanism can be triggered at once (example thematic Rapporteurs and country Rapporteurs).
Important sources

African regional human rights system


UN human rights system


THANK YOU,
OBRIGADO, MERCI BEACOUP!!!

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