

# Picking and Choosing? Country Visits by Thematic Special Procedures

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## I. Introduction

In 2005, United Nations Secretary-General Kofi Annan criticised States for seeking election to the Commission on Human Rights (CHR) to shield themselves from scrutiny.<sup>1</sup> He recommended replacing the Commission with a new Human Rights Council (HRC). In the Resolution creating the new body, Member States declared that the Council's work 'shall be guided by the principles of universality, impartiality ... and cooperation'; its members 'shall uphold the highest standards ... [and] shall fully cooperate with the Council'. All countries would be reviewed by the new Universal Periodic Review (UPR) mechanism.<sup>2</sup> Many hoped that UPR would bring scrutiny and applicability of human rights standards for all.

The HRC's emphasis on universality has focussed inter alia on Special Procedures. Because they bring independent information into the world body's deliberations about which States are and are not upholding standards proclaimed in international human rights instruments, Special Procedures, as a group, have been called the 'eyes and ears' of the UN human rights system.<sup>3</sup> Thematic Special Procedures, the subject of this chapter, are asked to be active – to seek and receive this information from various sources, governmental and non-governmental, and to respond effectively. In obtaining this information, these expert mechanisms are not limited to the inside of a UN conference room or to utilising only the data in States' reports or complainants' petitions. Mandate holders have developed a practice of visiting countries in person to examine and assess real-world conditions relevant to their mandate, thus moving away from writing only about theory and the law.

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<sup>1</sup> UN General Assembly (UNGA) 'In larger freedom: Towards development, security and human rights for all: Report of the Secretary-General' (21 March 2005) UN Doc A/59/2005.

<sup>2</sup> UN General Assembly (UNGA) Resolution 60/251 (3 April 2006) UN Doc A/Res/60/251.

<sup>3</sup> Office of the UN High Commissioner for Human Rights (OHCHR) 'United Nations Secretary-General Ban Ki-moon addresses Human Rights Council: Ban Ki-moon Says Special Procedures Allow Human Rights Council to Shine Light on Abuses Everywhere' (*OHCHR*, 25 January 2011) <[www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10677&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10677&LangID=E)> accessed 10 February 2016.

Through country visits, thematic mandate holders can compare how States address similar human rights problems, using a common informational base and set of criteria to examine their compliance with relevant human rights norms. Country visits provide mandate holders with a way to observe practices and facts relevant to their mandates, including a possibility of examining complaints first-hand, and communicate concerns and recommendations for amelioration to responsible public officials.<sup>4</sup>

During country visits, fact-finding and fact-checking are often key aims of mandate holders<sup>5</sup> who have been showered with large numbers of communications about individual cases.<sup>6</sup> Former Special Rapporteur on torture Nigel Rodley has explained that the country visits provide added value, specifically that they ‘make possible substantive uncovering of those aspects of the reality that governments prefer to conceal and which, indeed, may be unknown to important higher level decision makers, whether by preference or inadvertence’.<sup>7</sup> One of his mandate successors, Manfred Nowak, considers the visits to be a means of providing assistance to the State – assistance must be based on ‘thorough and objective fact-finding and assessment of the respective needs for reform’.<sup>8</sup> Other mandate holders have different views on what country visits can achieve, from understanding the causes and dynamics of a thematic mandate, to communicating about specific cases, and to proposing possible reforms.<sup>9</sup>

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<sup>4</sup> For example, according to UN Human Rights Council (UNHRC) ‘Communications Report Special Procedures: Communications Sent, 1 March to 31 March 2015; Replies Received, 1 May to 31 July 2015’ (4 September 2015) UN Doc A/HRC/30/27, from 2006 through to mid-2015, countries have received thousands of communications from more than 50 mandate holders. Special Procedures often receive communications from individuals and organisations and then consolidate and send their own communications to States. Some receive many detailed complaints, whereas others address broader policy and legal questions. According to the UN, there have been a total of 2,621 complaints sent by the Special Representative on human rights defenders and 1,896 from the Special Rapporteur on torture. In contrast, there have only been 407 complaints from the Special Rapporteur on the right to health; 204 from the Special Rapporteur on the right to food and just 13 sent by the Independent Expert on the right to a clean environment:

<[www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.27\\_ENG.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.27_ENG.docx)> accessed 10 February 2016.

<sup>5</sup> See ‘Terms of Reference for Fact-finding Missions by Special Procedures’ setting forth guarantees sought for country visits <[www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx)> accessed 10 February 2016.

<sup>6</sup> (n 4).

<sup>7</sup> N Rodley, ‘[United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights: Complementarity or Competition?](#)’ (2003) 25 Human Rights Quarterly 882.

<sup>8</sup> See eg UNHRC ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak’ (9 February 2010) UN Doc A/HRC/13/39, para 31.

<sup>9</sup> UNHRC ‘Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston’ (20 May 2010) UN Doc A/HRC/14/24, para 19.

The visits are also important for the officials of a country visited. Particularly in the context of the HRC and its UPR, country visits have become a marker of a country's cooperation with the UN human rights system and an indicator of accepting scrutiny of compliance with universal human rights standards. One of the documents that form the basis of the review, a compilation of each State's interaction with UN human rights mechanisms, contains a section that details cooperation with Special Procedures.<sup>10</sup> During the oral review at UPR, States often refer to the visits they have received. Other States often ask questions about such cooperation, to which the State under review is expected to respond.

Because States accept visits on a voluntary basis, mandate holders have experienced some challenges in getting to the countries they seek to visit and having the variety of experiences they seek. At an officially convened seminar on 'rationalising' Special Procedures, in 2005, Vitit Muntarbhorn, Chair of the Coordination Committee of Special Procedures, identified such challenges as including non-cooperation of some countries along with the 'paradoxical situation that those States that did cooperate were more closely scrutinized than those that refused to issue invitations for visits'.<sup>11</sup> Additionally, the mandate holders have complained that those that do cooperate often make choices that deliberately prevent certain kinds of scrutiny. Philip Alston, also a former Chair of the Coordination Committee, complained that the States' ability to refuse visits threatened to undermine the Special Procedures system.<sup>12</sup> Later, he elaborated on this threat, remarking that '[t]he most pressing problem ... is that states will often pick and choose which mandates they invite, as a result of which the most pertinent ones are often blocked while those that are considered relatively "harmless" are happily admitted'.<sup>13</sup> Alston's concern was not a complaint from just one mandate holder; at their annual

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<sup>10</sup> The Human Rights Council decided to include information on 'cooperation with human rights mechanisms' in all background documents prepared for UPR. See UNHRC 'General Guidelines for the Preparation of Information under the Universal Periodic Review' (27 September 2007) UN Doc A/HRC/DEC/6/102.

<sup>11</sup> UN Commission on Human Rights (UNCHR) 'Rationalization of the Work of the Commission on Human Rights: Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights' (12 December 2005) UN Doc E/CN.4/2006/116, para 6.

<sup>12</sup> *ibid* para 27.

<sup>13</sup> P Alston, 'Hobbling the Monitors' (2011) 52 *Harvard International Law Journal* 563, 573. For more on this point, see Shaheed and Parris Richter's contribution to this collection. For a discussion of the phenomenon of picking and choosing mandates in the context of engagement with both UN and African Union Special Procedures, see Fisher and Beswick's contribution to this collection.

meeting in 2014, all mandate holders formally stated that they ‘regretted the practice of some states that deny access to certain mandate holders while inviting others to visit’.<sup>14</sup>

Concern about States ‘picking and choosing’ focusses us on the question of whether the thematic mandates carry out universal coverage of the human rights issue they are mandated to examine or whether the experts are being manipulated by non-cooperating States in ways that conceal severe abuses, keeping them from being investigated by UN mechanisms. This chapter explores these issues by reviewing aspects of country visits and responses to them. Section II reviews the growth of country visits by thematic Special Procedures, some of the countries visited, and the issuance of ‘standing invitations’ to mandate holders. Section III looks at the distribution of visits and complaints about them made by States. Section IV examines how the work of the HRC has affected the cooperation of a sampling of States with the mandate holders. Specifically, it looks at how HRC elections and its UPR process may have influenced decisions to cooperate with mandate holders, and follow-up to their visits. This section examines how five countries that joined a formal statement to the HRC complaining about mandate holders’ country visits have engaged with country visits. These profiles consider pledges made at elections, the timing of invitations and visits, the selection of mandates, the number of visits, and the responses to those visits by States in the contexts of the UPR, HRC elections, and in the HRC’s public discussion about the visits. The chapter ends with a discussion of measures the HRC might take to avoid problematic ‘picking and choosing’.

## **II. Understanding country visits**

### **A. Growth of country visits**

HRC members have presided over a growth in the number of mandates and also the number of country visits by thematic mandate holders. The growth in mandates, from the first ones in 1967 (country-specific) and 1980 (thematic) to the 55 that exist at the time of writing has led to an increase in the number of country visits undertaken by mandate holders. But it is not just expansion of numbers that has impacted upon the increased numbers of visits. The early Special Procedures undertook very few visits compared to today, and they were brief. The Working Group on disappearances set the pattern for country visits by thematic procedures. Two of its

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<sup>14</sup> UNHRC ‘Report on the 21st Annual Meeting of Special Rapporteurs/Representatives, Independent Experts and Working Groups of Special Procedures of the Human Rights Council, Including Updated Information on the Special Procedures’ (29 January 2015) UN Doc A/HRC/28/41, para 37.

members visited Mexico in January 1982, and two members paid a three-day visit to Cyprus the same year.<sup>15</sup> Significantly, in March 1984 in the annual resolution renewing the Working Group, the CHR explicitly encouraged it to undertake country visits subject to invitation from the government concerned.<sup>16</sup> The CHR also tasked the UN to provide assistance to the Working Group to enable it to carry out its functions in an ‘effective and expeditious manner’.<sup>17</sup> In 1987 the CHR cited the need for Secretariat assistance to the Group ‘in carrying out missions or holding sessions in countries that would be prepared to receive them’.<sup>18</sup> By 1991 the CHR was asking States to provide information as to how they had implemented the recommendations of the Working Group, and in the following year referred to Secretariat assistance for ‘following them up’.<sup>19</sup>

Probably because of this explicit authorisation, a five-day visit to Bolivia in 1984 is cited on the website of the Office of the UN High Commissioner for Human Rights (OHCHR) as the first country visit by the Working Group on disappearances;<sup>20</sup> others followed to Peru (1985) and Guatemala (1987).<sup>21</sup> Although the Working Group made no further visits until it travelled to the Philippines in 1991,<sup>22</sup> country visits have followed in almost every year since, totalling around 30 country visits to date. The Special Rapporteur on summary or arbitrary executions,

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<sup>15</sup> In its first report, the Working Group attached a copy of a letter sent to seven States and one other entity asking them to invite the Working Group to visit to establish ‘direct contacts’: see UNCHR ‘Question of Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in Particular: Question of Missing and Disappeared Persons’ (26 January 1981) UN Doc E/CN.4/1435 Annex VIII. In its second report it stated that Mexico had issued an invitation and that a visit would occur in January 1982: UNCHR ‘Question of Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in Particular: Question of Missing and Disappeared Persons’ (31 December 1981) UN Doc E/CN.4/1492, para 15. In its third report it stated that two members visited Mexico in January 1982 and two visited Cyprus in July 1982: UNCHR ‘Question of Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in Particular: Question of Missing and Disappeared Persons’ (21 January 1983) E.CN.4/1983/14, para 19.

<sup>16</sup> ‘Encourages the Governments concerned to consider with special attention the wish of the Working Group to visit their countries, when such wish is expressed, thus enabling the Group to fulfil its mandate more effectively’: UNCHR Res 1984/23 (6 March 1984) UN Doc E/CN.4/RES/1984/23, para 7.

<sup>17</sup> *ibid* para 8.

<sup>18</sup> UNCHR Res 1987/27 (10 March 1987) UN Doc E/CN.4/RES/1987/27, para 10.

<sup>19</sup> UNCHR Res 1992/30 (28 February 1992) UN Doc E.CN.4/1992/30, 81.

<sup>20</sup> See list of country visits on <[www.ohchr.org/EN/Issues/Disappearances/Pages/Visits.aspx](http://www.ohchr.org/EN/Issues/Disappearances/Pages/Visits.aspx)> accessed 11 February 2016. See also UNCHR ‘Report of the Working Group on Enforced or Involuntary Disappearances’ (23 January 1985) UN Doc E/CN.4/1985/15, Visit by JKD Foli and LV Quirós to Bolivia, para 51.

<sup>21</sup> *ibid*. See also UNCHR ‘Report on the Visit to Peru by Two Members of the Working Group on Enforced or Involuntary Disappearances (17–22 June 1985)’ (8 January 1986) UN Doc E/CN.4/1986/18/Add.1; UNCHR ‘Report on a Visit to Guatemala by Two Members of the Working Group on Enforced or Involuntary Disappearances (5–9 October 1987)’ (21 December 1987) UN Doc E/CN.4/1988/19/Add.1.

<sup>22</sup> *ibid*. See also UNCHR ‘Report on the Visit to the Philippines by Two Members of the Working Group on Enforced or Involuntary Disappearances (27 August–7 September 1990)’ (10 January 1991) UN Doc E/CN.4/1991/20/Add.1.

established in 1982 as the second global thematic Special Procedure, undertook visits to Suriname (1984, 1986)<sup>23</sup> and to Uganda (1986)<sup>24</sup>. The Special Rapporteur on torture, established in 1985, made his first country visits to Argentina, Colombia and Uruguay in late 1987.<sup>25</sup> The Special Rapporteur on religious intolerance, established in 1986, went to Bulgaria for his first visit.<sup>26</sup>

The growth in mandates and expansion of activity has been aided by more financial support and creation of a separate branch of OHCHR, which treats the Procedures as a system. In 2006 mandate holders undertook a total of 48 visits to 38 States. In 2013, this had grown substantially to 79 visits to 66 States or territories, and in 2014 there were 80 visits to 60 States and territories.<sup>27</sup> Recent visits normally last for 10 days to two weeks, not a few days as in the early country visits.

Such visits have brought a very substantial increase in country coverage. Cumulatively, from the years 1998 to 2015, OHCHR reported that 167 States had received visits.<sup>28</sup> 26 States worldwide had never received a visit. Luxembourg, Andorra, Monaco and a number of small-island States were on this list, and apparently had never been asked for invitations. However, 11 of those never visited are States that have simply refused the requests – seven African, three Asian, and one Caribbean State. They include Djibouti, Democratic People’s Republic of Korea (DPRK), Eritrea, Gambia, Guinea, Libya and Zimbabwe, all States with serious human rights

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<sup>23</sup> UNCHR ‘Report by the Special Rapporteur, Mr S Amos Wako, Appointed Pursuant to Resolution 1984/35 of 24 May 1984 of the Economic and Social Council’ (12 February 1985) UN Doc E/CN.4/1985/17; UNCHR ‘Visit by the Special Rapporteur to Suriname (16 to 28 August 1986)’ (19 January 1988) UN Doc E/CN.4/1988/22 Annex, cited on the Country Visits page <[www.ohchr.org/EN/Issues/Executions/Pages/CountryVisits.aspx](http://www.ohchr.org/EN/Issues/Executions/Pages/CountryVisits.aspx)> accessed 11 February 2016.

<sup>24</sup> UNCHR ‘Visit to Uganda (17–20 August 1986)’ (22 January 1987) UN Doc E/CN.4/1987/20 Annex II, cited on the Country Visits page <[www.ohchr.org/EN/Issues/Executions/Pages/CountryVisits.aspx](http://www.ohchr.org/EN/Issues/Executions/Pages/CountryVisits.aspx)> accessed 11 February 2016.

<sup>25</sup> UNCHR ‘Report by the Special Rapporteur, Mr P Kooijmans, pursuant to Commission on Human Rights Resolution 1987/29 – Addendum: Visit by the Special Rapporteur to Argentina, Colombia and Uruguay’ (23 February 1988) UN Doc E/CN.4/1988/17/Add.1.

<sup>26</sup> UNCHR ‘Report Submitted by Mr Angelo Vidal d’Almeida Ribeiro, Special Rapporteur Appointed in Accordance with Resolution 1986/20 of the Commission on Human Rights’ (6 January 1988) UN Doc E/CN.4/1988/45, paras 25–36.

<sup>27</sup> UNHRC ‘Report on the Twenty-first Annual Meeting of Special Rapporteurs/Representatives, Independent Experts and Working Groups of the Special Procedures of the Human Rights Council, Including Updated Information on the Special Procedures’ (29 January 2015) UN Doc A/HRC/28/41, para 5.

<sup>28</sup> OHCHR ‘Table of States not yet visited by any mandate-holder’ <[www.ohchr.org/EN/HRBodies/SP/Pages/Statesnotyetvisited.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Statesnotyetvisited.aspx)> accessed 11 February 2016.

problems and many unanswered requests for visits.<sup>29</sup> François Crépeau, Chair of the Coordination Committee from 2014 to 2015, complained to the HRC about country visits. On behalf of the mandate holders, he lamented that despite 167 countries having been visited, ‘26 States have not yet accepted any visit by a mandate holder. Some do not react to repeated written requests for visits. Others have given access to only a select few. It is also unfortunately a reality that a standing invitation does not necessarily guarantee that a visit will actually take place’.<sup>30</sup> OHCHR has published lists of the outstanding requests for visits, and in recent years, has provided updated information on the responses and non-responses of States in reports and on the OHCHR website.<sup>31</sup> Each year there has been progress, as mandate holders appear to be looking at the matter seriously, apparently striving for the universality that HRC founders had sought.

#### B. Countries visited by mandate holders

Despite early hopes for universality of scrutiny through Special Procedure visits, as of December 2013 thematic mandate holders have visited some countries quite often and others comparatively little. The highest number visited since 1998 (when OHCHR’s records begin) were States in the Americas: Brazil and Guatemala led with 21 visits, the US and Mexico had 20 visits, Ecuador 19, and then the figures drop to 15 for the UK and Turkey. In the rest of the world, countries have been visited far less, with 11 being the largest number of thematic visits for any country in the other three regions. In Asia, Indonesia leads with 11 visits, and Sri Lanka, India, and Kazakhstan are next, at nine each. Similarly, in Africa, 11 thematic visits is the largest, for South Africa, with Democratic Republic of Congo and Morocco having had nine. The countries with the largest number of visits for Eastern Europe are Armenia 11, Azerbaijan 10, Georgia 9, and Russia 8.<sup>32</sup>

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<sup>29</sup> *ibid.* DPRK and Eritrea have country mandates. Libya was the focus of a Commission of Inquiry. Since its 2011 change of government, Libya has responded positively to requests to visit, but security issues have prevented any visits from being conducted.

<sup>30</sup> OHCHR ‘François Crépeau, the Chairperson of the Coordination Committee, Presents the Annual Report of Special Procedures to the Council’ (*OHCHR*, 18 March 2015) <[www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15801&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15801&LangID=E)> accessed 11 February 2016.

<sup>31</sup> UNCHR (n 20).

<sup>32</sup> These figures are derived from the chart on the OHCHR website (n 20). An additional source covering some of the early visits can be found in M Lepinen, *The United Nations Commission on Human Rights and the Different Treatment of Governments* (Åbo Akademi University Press 2005) 456

This numerical account does not make clear whether key countries are being visited by pertinent Special Procedures. As CHR and HRC members have demanded reform of Special Procedures and introduced a Code of Conduct,<sup>33</sup> there have been requests for more transparency and information about visits. OHCHR has responded with statistics, and other information in reports and online. These data suggest there may be a more coordinated effort, supported by the Secretariat, to ensure that mandate holders visit a ‘balanced’ array of States. OHCHR’s charts also demonstrate the large number (and large proportion) of outstanding requests for visits to Asian and African countries. On close inspection, many of these requests are concentrated on only a few countries. Among those often asked for new invitations, Uzbekistan and Turkmenistan have each been visited only once and Thailand twice.

The decision to seek and conduct country visits is reached strictly by the individual serving as mandate holder. Yet mandate holders have said very little about the reasons behind their choice of countries visited. Key motivations appear to include the urgency of a situation, the potential impact of the visit, and a desire for geographical balance.<sup>34</sup>

Often, mandate holders request an invitation from a State, which the State may issue or reject by its silence, or otherwise respond. In some cases, States are the first to ask. Sometimes a State that is visited has sponsored a mandate’s creation, or has made a financial contribution in support of the mandate. For example, Russia was said to have provided extra-budgetary support for the mandate on cultural rights. When that mandate holder was invited to visit Russia in 2012, some observers thought this funding may have been a factor.<sup>35</sup>

A State’s relationship to the UN or OHCHR, the presence of a UN human rights adviser, or pursuit of a country office, can also lead a State to issue invitations to mandate holders. For example, OHCHR sent a Senior Adviser in Human Rights to Honduras in 2010. Not long after, in October 2011, Honduras invited 14 mandate holders all at once, an action which appears to have been linked to the Government’s effort to obtain a larger human rights presence in the country. According to the 2015 UN Human Rights Appeal,<sup>36</sup> which sets out OHCHR’s priorities and needs, there were plans to open a country office in Honduras this year. Similarly, the very

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<sup>33</sup> UNHRC ‘Code of Conduct for Special Procedures mandate-holders of the Human Rights Council’ (18 June 2007) UN Doc A/HRC/Res/5/2.

<sup>34</sup> J Naples-Mitchell, ‘Perspective of UN Special Rapporteurs on their Role: Inherent Tensions and Unique Contributions to Human Rights’ (2011) 15 International Journal of Human Rights 232.

<sup>35</sup> Interviews with OHCHR officials, Geneva, 2013.

<sup>36</sup> [OHCHR ‘UN Human Rights Appeal’ \(2015\) 8](http://www.ohchr.org/Documents/AboutUs/UNHumanRightsAppeal2015.pdf)  
<[www.ohchr.org/Documents/AboutUs/UNHumanRightsAppeal2015.pdf](http://www.ohchr.org/Documents/AboutUs/UNHumanRightsAppeal2015.pdf)> accessed 11 February 2016.

large number of thematic Special Procedures visits to Guatemala (21) may also be linked to the presence of a UN country office in that State.

UPR has also had an impact on issuing invitations for visits and their timing. For example, on 9 March 2009, just two months before its UPR was to take place, Vietnam invited three mandate holders to visit (right to education, health, and extreme poverty). At the UPR session, the State's representative announced that Vietnam had 'recently' invited *five* mandate holders.<sup>37</sup> Concerned that more than mere numbers were at stake, France asked Vietnam to invite all the mandate holders who actually requested visits to Vietnam, and not to limit the country to invitations dealing only with economic, social and cultural rights.<sup>38</sup> The United Kingdom, New Zealand, Germany and Italy specifically urged Vietnam to renew engagement with the Special Rapporteur on Freedom of Religion.<sup>39</sup>

Algeria also invited a group of seven mandate holders at once, but few were able to visit in the short time period it had identified. Its Minister explained that it would not allow others to visit until all seven had conducted missions.<sup>40</sup> Some observers speculate that, in view of Algeria's primary role in sponsoring the Code of Conduct, its motives were to look good at UPR and to make the mandate holders who did not find the time to visit appear biased against the State.<sup>41</sup>

Sometimes a mixture of internal and external political pressures can influence invitations. For example, in July 2006, one month after the Minister of Justice spoke at the HRC opening session, Zimbabwe made an unsolicited invitation to three mandate holders (freedom of religion, right to education, and violence against women).<sup>42</sup> The invitation ignored five other requests received between 2000 and 2006 (independence of judges and lawyers, human rights defenders,

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<sup>37</sup> UNHRC 'Report of the Working Group on the Universal Periodic Review' (5 October 2009) UN Doc A/HRC/12/11, para 21.

<sup>38</sup> *ibid* para 85.

<sup>39</sup> *ibid* paras 51, 59, 63, 64, 83 and 87.

<sup>40</sup> UNGA 'Note Verbale Dated 2 July 2013 from the Permanent Mission of Algeria to the United Nations Addressed to the Secretariat' (17 July 2013) UN Doc A/68/153, para 11; UNHRC 'Panel Discussion on the Negative Impact of Corruption on the Enjoyment of Human Rights' (27 September 2012) UN Doc A/HRC/21/13, para 50. For an example of Algeria's public comments to mandate holders, see video of UNHRC 'Algeria, Clustered ID on Expression and Executions, 4th Meeting' (19 June 2012) <[www.unmultimedia.org/tv/webcast/2012/06/algeria-clustered-id-on-expression-and-executions-4th-meeting.html](http://www.unmultimedia.org/tv/webcast/2012/06/algeria-clustered-id-on-expression-and-executions-4th-meeting.html)> accessed 11 February 2016.

<sup>41</sup> Interviews with mandate holders and OHCHR officials, Geneva, 2014. .

<sup>42</sup> OHCHR 'Country and Other Visits by Special Procedures Mandate Holders since 1998 – N–Z' <[www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsN-Z.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsN-Z.aspx)> accessed 11 February 2016. Footnote 2 states that '[o]n 27 July 2006, the Government of Zimbabwe sent an unsolicited invitation to the three mandates (Freedom of religion, Right to education and Violence against women)'.

freedom of expression, torture, and right to food). Later, in 2009, the Special Rapporteur on torture Manfred Nowak was invited to visit, but his invitation was withdrawn while he was *en route* to the country. Nowak stated that he was invited by the Prime Minister, but when he arrived he was denied entry and had to spend the night in the Harare airport. According to the press, he blamed the country's President – that is, internal political rivalries between the Prime Minister and President – for his ouster.<sup>43</sup> To date, no mandate holder has visited Zimbabwe.<sup>44</sup>

Political pressure from external sources could also lead to a decision to receive visits from certain Special Procedures. For example, the visit of the Special Rapporteur on torture to Uzbekistan in 2003 reportedly came about after pressure from the US and European Union. The Special Rapporteur found 'systematic torture'.<sup>45</sup> Despite 13 outstanding requests since then, Uzbekistan has not permitted another visit from a mandate holder.<sup>46</sup>

OHCHR officials surmise that some States' approach to receiving visits changed positively for other reasons, such as when that country is running for election to the HRC, is a candidate for Council Presidency, or about to be reviewed by UPR.<sup>47</sup> One mandate holder claims that when the Philippines ran for election to the HRC, it opened conversations with him to present a positive image to other States.<sup>48</sup> In their voluntary pledges and commitments for HRC election, some States cite visits they have already hosted,<sup>49</sup> visits they will agree to in the

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<sup>43</sup> See UN Doc A/HRC/13/39 (n 8); D Smith, 'UN Torture Investigator Refused Entry to Zimbabwe' *The Guardian* (Johannesburg, 29 October 2009) <[www.theguardian.com/world/2009/oct/29/zimbabwe-blocks-un-torture-investigator](http://www.theguardian.com/world/2009/oct/29/zimbabwe-blocks-un-torture-investigator)> accessed 11 February 2016.

<sup>44</sup> However, UN High Commissioner Navi Pillay did visit Zimbabwe in May 2012: OHCHR 'UN Human Rights Chief Ends First Ever Mission to Zimbabwe' (*OHCHR*, 29 May 2012) <[www.ohchr.org/EN/NewsEvents/Pages/HRChiefendsfirstevermissiontoZimbabwebyUNHRCforHR.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/HRChiefendsfirstevermissiontoZimbabwebyUNHRCforHR.aspx)> accessed 11 February 2016.

<sup>45</sup> UNCHR 'Civil and Political Rights, Including the Question of Torture and Detention' (3 February 2003) UN Doc E/CN.4/2003/68/Add.2. See also Z Eshanova, 'Uzbekistan: UN Rapporteur Says Use of Torture "Systematic"' (*Radio Free Europe Radio Liberty*, 9 December 2002) <[www.rferl.org/content/article/1101615.html](http://www.rferl.org/content/article/1101615.html)> accessed 11 March 2016.

<sup>46</sup> See Uzbekistan on OHCHR 'Country and Other Visits by Special Procedures Mandate Holders since 1998 – N–Z' (n 42).

<sup>47</sup> Interviews with OHCHR officials, Geneva, 2013.

<sup>48</sup> Interview with former mandate holder, Geneva, July 2014.

<sup>49</sup> For example, in 2014 Costa Rica prominently referenced that it received visits from mandate holders on indigenous rights, safe drinking water and clean environment, as well as its standing invitation, in UNGA 'Letter dated 6 March 2014 from the Permanent Representative of Costa Rica to the United Nations addressed to the President of the General Assembly' (7 March 2014) UN Doc A/69/68. Latvia, also citing the standing invitation, referenced five visits it had received, in its voluntary pledges for 2014, in UNGA 'Letter dated 25 July 2014 from the Chargé d'affaires a.i. of the Permanent Mission of Latvia to the United Nations addressed to the Secretary-General' (25 August 2014) UN Doc A/69/352. Indonesia referenced its visit from the mandate holder on adequate housing, in UNGA 'Note Verbale dated 2 July 2014 from the Permanent Mission of Indonesia to the United Nations addressed to the President of the General Assembly' (10 September 2014) UN Doc A/69/375.

future,<sup>50</sup> or talk generically about cooperation with Special Procedures<sup>51</sup> and their responses to requests for information on communications. Yet some countries that have had few visits, or refuse to accept visit requests, have said nothing about Special Procedures in their initial pledges for election. When there is a standing invitation it is commonly mentioned in the pledges made by candidate countries.<sup>52</sup>

### C. The standing invitation

Beginning in 1999, some countries attempted to address the problem of non-cooperation with Special Procedures and simultaneously to establish universality of coverage by issuing a so-called ‘standing invitation’ to all mandate holders. In 2004, the CHR encouraged all States to consider extending such invitations.<sup>53</sup> According to OHCHR’s website, 34 States had done so by 2001; the number had grown to 89 States in 2011, and there were 114 in 2015.<sup>54</sup> Standing invitations have been issued by members of all UN regional groups, with West European and Others Group (WEOG) and East European Group members having done so in the largest proportion: 27 of 29 WEOG members have extended standing invitations, as have 21 of 24 East European Group members. In contrast, only 18 of the 33 Latin American and Caribbean States have issued standing invitations. In Africa and Asia less than half of all States have done so: 24 of 54 African States, and 24 of 53 Asian States.<sup>55</sup>

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<sup>50</sup> After detailing visits already received (torture, slavery, health), 2014 HRC candidate Ghana stated it was considering a visit from the Working Group on mercenaries. See UNGA ‘Note Verbale dated 8 August 2014 from the Permanent Mission of Ghana to the United Nations addressed to the President of the General Assembly’ (11 September 2014) UN Doc A/69/221. Similarly, election candidate Thailand stated that it seeks to promote ‘constructive cooperation between States and special procedures mandate holders’ in UNGA ‘Letter dated 22 July 2014 from the Permanent Representative of Thailand to the United Nations addressed to the President of the General Assembly’ (22 July 2014) UN Doc A/69/175.

<sup>51</sup> For 2014, see Qatar, UNGA ‘Letter dated 16 September 2014 from the Permanent Representative of Qatar to the United Nations addressed to the President of the General Assembly’ (24 September 2014) UN Doc A/69/403; India, UNGA ‘Letter dated 16 October 2014 from the Permanent Representative of India to the United Nations addressed to the President of the General Assembly’ (20 October 2014) UN Doc A/69/538, para 10j; Indonesia, UNGA ‘Letter dated 2 July 2014 from the Permanent Representative of Indonesia to the United Nations addressed to the President of the General Assembly’ (10 September 2014) UN Doc A/69/375, all of whom promise generically to cooperate with UN human rights Special Procedures.

<sup>52</sup> See n 499. Paraguay also references its ‘open invitation’ in UNGA ‘Letter dated 27 December 2013 from the Chargé d’affaires a.i. of the Permanent Mission of Paraguay to the United Nations addressed to the President of the General Assembly’ (25 April 2014) UN Doc A/69/78.

<sup>53</sup> UNCHR Res 2004/76 (21 April 2004) UN Doc E/CN.4/RES/2004/76.

<sup>54</sup> OHCHR ‘Standing Invitations’ <[http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/StandingInvitations.aspx](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx)> accessed 11 March 2016.

<sup>55</sup> *ibid.* [As of 7 December 2015, there were 114 standing invitations.](#)

In practice, each visit has to be planned and agreed to by the State irrespective of whether a standing invitation exists. One might ask whether a standing invitation has any meaning, since each visit is negotiated in just as much detail whether it does or does not exist. Iran, for example, extended a standing invitation in 2002, but after receiving five mandate holders between 2003 and 2005 (freedom of expression, Working Group on Arbitrary Detention, migrants, violence against women, and housing), its officials have not accepted any visit from any thematic or country-specific mandate holder. In addition to requests from the Special Rapporteur on human rights in Iran, established in 2011, who has never been permitted to visit, seven thematic mandate holders have outstanding requests for visits that have neither been accepted nor taken place.<sup>56</sup>

### **III. States' approaches and responses to visit requests**

#### **A. Do States block key mandates deliberately?**

In response to questions and criticism about which States mandate holders visit, OHCHR has published a detailed list concerning country visits since 1998.<sup>57</sup> The list suggests that many States accepted visits from mandate holders focussed on specific social groups or on economic and social rights, while, with exceptions, refusing to receive certain civil or political rights mandate holders. Sometimes the State has accepted one visit from a case-oriented Special Procedure, but not from the many others that have asked for invitations – suggesting that there may have been political pressure to permit one otherwise unwelcome visit but not more. The reader can see this throughout the dozens of pages of the list, arranged alphabetically for some 165 countries.<sup>58</sup> Below are three examples that appear at the beginning of the list. Each reveals that the countries concerned ‘pick and choose’ whether or not to receive visits from mandate holders on civil and political rights.

- Angola had received visits from mandate holders on internally displaced persons, human rights defenders, and, most recently in 2007, from the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion. Since then, no mandate holder has visited the country. Six have requested invitations, and Angola has formally accepted, in principle,

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<sup>56</sup> For Iran's country visits, see OHCHR 'Country and Other Visits by Special Procedures Mandate Holders since 1998 – F–M' <[www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx)> accessed 11 March 2016. Reportedly, Iran has also invited the High Commissioner for Human Rights; the last two office holders have not agreed to visit. For more on Iran and country visits, see Shaheed and Parris Richter's contribution to this collection.

<sup>57</sup> See n 20.

<sup>58</sup> *ibid.*

visits from mandate holders on housing, education, and migrants, but not from those on freedom of association or independence of judges and lawyers.

- Azerbaijan was visited by mandate holders on internally displaced persons, freedom of expression, health, violence against women, and the Working Group on business and human rights, all since the HRC was established in 2006. But Azerbaijan, which has been engaged in a reported crackdown on human rights defenders, lawyers, and others, has not yet permitted visits from Special Procedures on arbitrary detention, freedom of association, independence of lawyers and judges, or human rights defenders. It has not permitted any visit from the Working Group on mercenaries which asked to visit in 2008 and 2011 in response to claims that Chechen and Afghan mercenaries were fighting in Nagorno-Karabakh.
- Bahrain, which has long had a troubled relationship with its majority Shi'a population, received visits in 2001 and 2006 from the Working Group on Arbitrary Detention and the Special Rapporteur on trafficking. But since then, and particularly since demonstrations grew during the 'Arab spring', Bahrain has not accepted the requests for invitations nor any visits from the Special Rapporteur on torture,<sup>59</sup> migrants, freedom of association, human rights defenders, and freedom of expression, all problematic subjects in the small Gulf state.

## B. Distribution of country visits

One ongoing criticism of Special Procedures is that selection of countries to visit is unfair and unbalanced between the Global 'North' and Global 'South'. While initially Special Procedures visited a large number of States in the Global South, this has not been the case more recently.<sup>60</sup> Lists provided by the Secretariat offer useful information on this matter. Piccone and Limon report that, as of December 2013, there had been a total of 962 visits by mandate holders divided, as follows, according to the UN regional groupings<sup>61</sup>:

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<sup>59</sup> In the case of the torture mandate, Bahrain accepted and then postponed the visit – the Special Rapporteur on torture issued a press release indicating that Bahrain refused the visit. See OHCHR 'Bahrain/Human Rights: Government Effectively Cancels UN Special Rapporteur on Torture's Visit' (*OHCHR*, 24 April 2013) <[www.ohchr.org/EN/NewsEvents/pages/DisplayNews.aspx?NewsID=13261](http://www.ohchr.org/EN/NewsEvents/pages/DisplayNews.aspx?NewsID=13261)> accessed 11 February 2016.

<sup>60</sup> See n 20.

<sup>61</sup> M Limon and T Piccone, 'Human Rights Special Procedures: Determinants of Influence. Understanding and Strengthening the Effectiveness of the UN's Independent Human Rights Experts' (*Universal Rights Group*, March 2014) 24 <[www.universal-rights.org/wp-content/uploads/2015/02/URG\\_Human\\_rights\\_special\\_procedures\\_pge\\_by\\_pge\\_hd.pdf](http://www.universal-rights.org/wp-content/uploads/2015/02/URG_Human_rights_special_procedures_pge_by_pge_hd.pdf)> accessed 9 February 2016.

<b><u>Regional Group (# States in group)</u></b>	<b><u>Visits</u></b>	<b><u>Requests Outstanding</u></b>	Asia +
Pacific (53)	248	276	
Africa (54)	235	209	
Latin Amer. + Caribbean (33)	202	88	
West European + Others (29)	140	51	
East European (23)	119	49	

Figure 3.1 *Visits and requests according to regional groups*

It appears that Asia and Africa are being visited more often than other regions of the world, but if one considers the number of countries in each regional group, the picture seems quite different. If one divides the number of visits to countries in a regional group by the number of States in each regional group, it turns out that, proportionately, there have been more visits to Latin American<sup>62</sup> countries than to other regional groups. East Europe,<sup>63</sup> and then West Europe and Others<sup>64</sup> have the next highest proportion of visits, given the number of countries in the region. Asian and African countries have had fewer visits, proportionately.<sup>65</sup>

### C. Complaints about the Special Procedures

Sometimes States have complained about actions by mandate holders during their visits – who and where they visit, statements made to the media during the visit and other actions outside the control of the state authorities.<sup>66</sup> Some charge that the mandate holders demonstrate bias in their work. To address such concerns, States adopted a ‘Code of Conduct’ to govern the professional behaviour of mandate holders even as they called upon States to cooperate with mandate holders.<sup>67</sup> While affirming mandate holders’ independence and their need for confidentiality, the

<sup>62</sup> Latin America’s 33 countries have received 202 visits, with an average of 6.12 visits per country in the group.

<sup>63</sup> Eastern European Group’s 23 countries have received 119 visits, with an average of 5.17 visits per country.

<sup>64</sup> WEOG’s 29 countries received 140 visits, with an average of 4.83 per country.

<sup>65</sup> The Asian Group’s 55 members, with 248 visits, average 4.51 visits per country; Africa’s 54 members, receiving 235 visits, average 4.35 visits each.

<sup>66</sup> See Alston (n 133). See also statement by Kenya, 3 June 2009, on the UNHRC Extranet <<http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/11thSession/OralStatements/030306/Tab1/Tab1/Kenya1.pdf>> accessed 29 June 2016. See also China’s statement at UNHRC 19th Session (6 March 2012), criticising the mandate holder on the right to food, <[extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/19thSession/Pages/OralStatement.aspx?MeetingNumber=19&MeetingDate=Tuesday,%206%20March%202012](http://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/19thSession/Pages/OralStatement.aspx?MeetingNumber=19&MeetingDate=Tuesday,%206%20March%202012)> accessed 29 June 2016.

<sup>67</sup> UN Doc A/HRC/RES/5/2 (n 33).

Code also requires ‘even-handedness’ and giving States the first opportunity to comment on the mandate holder’s conclusions, thus attempting to limit public statements in-country.

At the HRC session in June 2013, 11 States made a comprehensive joint statement complaining about mandate holders’ country visits, pointing to items included in the Code of Conduct.<sup>68</sup> Together, Algeria, Belarus, China, Cuba, Ecuador, India, Iran, Pakistan, Russia, Sri Lanka and Thailand criticised OHCHR staff (for example, claiming that OHCHR staff, rather than the mandate holder, negotiated the visit plan; made ‘unilateral changes’ to the programme when a mandate holder actually visits) and raised concerns about extra-budgetary funding of mandate holders. They complained that public statements by mandate holders at the end of their visits are made without consultation with the State concerned and that some mandate holders reject the ‘security’ provided by States during their visits. The 11 States challenged such underlying principles as the independence of and methodology used by mandate holders – stating that their States would like to see ‘terms of reference’ for a country visit approved by the Council as a whole, not proclaimed independently by the mandate holders. Such charges raise questions about what happened during visits to each of the countries joining the statement, or whether these public complaints are simply a new variation of old opposition to the Special Procedures and country-specific scrutiny on core human rights issues.

#### D. Relevance of the Universal Periodic Review

The UPR has encouraged countries to cooperate with Special Procedures and accept country visits. Each State’s record of cooperation – and non-cooperation – is detailed in the compilation of information prepared by the Secretariat.<sup>69</sup> Many States ask questions about such cooperation – particularly whether the State will issue a standing invitation, whether it will ‘cooperate’ with one or more Special Procedures, and whether it will accept a visit from a specific mandate

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<sup>68</sup> ‘Joint Statement on Special Rapporteurs and their country visits. General Debate: Item 5’ (7 June 2013) delivered by India. See UNHRC Extranet <[https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/23rdSession/OralStatements/India\\_29.pdf](https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/23rdSession/OralStatements/India_29.pdf)> accessed 29 June 2016.

<sup>69</sup> See ‘Compilation Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21’ for each UN Member State, accessible on the OHCHR website <[www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx)> accessed 16 February 2016.

holder. Less often, States ask whether the country under review will in fact implement the recommendation(s) of mandate holders.<sup>70</sup>

With the advent of the UPR mechanism, many rights-respecting States argued that it would be possible to achieve universal scrutiny of practices in States.<sup>71</sup> As the UPR second cycle nears completion, the strengths and weaknesses of the process are evident: UPR has brought uneven scrutiny and cursory examination of issues, but it has focussed attention on how each State cooperates with the international human rights system. Treaties ratified and reports submitted are staples of the review process. So, too, is the relationship with Special Procedures. The UN's compilation addresses each State's cooperation with Special Procedures and whether it has extended a standing invitation.

The sections below examine how several of the States that were part of the joint statement in 2013 have responded to visits by Special Procedures and to questions about them raised in the context of the UPR. This includes examining the questions asked by 'peers' (that is, other States) about those States' interaction with Special Procedures, their responses, and their reactions to mandate holders' visits. This may provide some insight into whether States have in fact been picking and choosing visits to allow in ways that have blocked certain mandate holders in favour of others. An overview of the States joining the statement is followed by profiles of five of those countries: China, Russia, Algeria, Iran and Cuba.

#### **IV. Case studies**

##### **A. UPR recommendations on Special Procedures**

During the two UPR cycles, States that made the joint statement on country visits were often asked about their cooperation with Special Procedures. The table below<sup>72</sup> indicates the total number of recommendations on Special Procedures made during UPR to each of the 11 States

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<sup>70</sup> Documentation can be found by examining each 'Report of the Working Group' document in the collection of UPR background information on the OHCHR website as cited in the previous footnote. An additional and user-friendly source is the website of the nongovernmental organisation, UPR-Info: [www.upr-info.org/database](http://www.upr-info.org/database) accessed 16 February 2016. Information on recommendations made by States during the Working Group's review of each State under review, and whether that State has accepted them, can be searched there. This chapter has utilised this resource and categorised replies into the four categories employed in it: cooperation, standing invitations, cooperation with specific rapporteurs, and accepting visits from specific rapporteurs.

<sup>71</sup> F Gaer, 'A Voice not an Echo: Universal Periodic Review and the UN Treaty Body System' (2007) 7 Human Rights Law Review 126.

<sup>72</sup> The table is based on an analysis of the recommendations made in UPR for each of these countries, as searched on the database at UPR-Info at [www.upr-info.org/database](http://www.upr-info.org/database) accessed 16 February 2016.

that criticised country visits. It then shows that these recommendations fell into four general categories: recommending that the State issue a standing invitation, recommending that the State actually implement mandate holders' recommendations (that is, any who visited), calling for cooperation with Special Procedures (sometimes calling for 'continued cooperation' which is at odds with the usual request when there is non-cooperation), and specific recommendations to invite mandate holders for a visit. The latter category, about invitations to mandate holders, has often included references to specific mandate holders whose requests for invitations have not been accepted and/or realised.

### Category of recommendations

<b>Country</b>	<b>No of SP Reccs</b>	<b>Standing Invite</b>	<b>Implement</b>	<b>Co-op with SP</b>	<b>Invite SP</b>
Algeria	17	4	2	4	7
Belarus	10	8	2	6	1
China	22	9	0	8	7
Cuba	29	10	1	11	9
India	11	2	4	1	5
Iran	34	6	3	7	15
Pakistan	18	9	1	2	8
Russia	21	11	1	2	8
Sri Lanka	27	5	6	9	8
Thailand*	8	4	0	0	4
Ecuador*	5	0	1	0	3

\*Only one UPR round counted

Figure 3.2 *Recommendations about Special Procedures made at UPR sessions*

The table reveals that, of the 11 countries criticising country visits in 2013, Iran, Cuba, China, Sri Lanka and Russia received the most recommendations concerning their interaction with the Special Procedures system during their UPR sessions. Iran was asked again and again to invite rapporteurs; Cuba, Sri Lanka and China were repeatedly urged to cooperate with them. The most common recommendation was a request to the State under review to issue a standing invitation.

Surprisingly few States said anything about implementing the recommendations of mandate holders who had visited. Sadly, this demonstrates that ‘cooperation’ has become the standard being evaluated in UPR, rather than implementation (or compliance with the standards, as requested). The chart confirms that while each of these countries is put on the spot during the UPR about their interaction with Special Procedures, it has been possible to manipulate this issue to focus on ‘cooperation’. In this way, the number of mandate holders that visit becomes more important than the subject matter under scrutiny. If each mandate is as good as any other, then it becomes possible for States to manipulate the issue of cooperation – inviting mandates unlikely to criticise the most egregious violations within their territories rather than those that might address particularly pertinent topics.

## B. China

Since quelling the demonstrations at Tiananmen Square, China has tried to change the conversation about human rights by prioritising ‘cooperation’ in human rights over ‘compliance’ with the human rights standards it has accepted in treaties.<sup>73</sup> This was a particularly important component of China’s approach throughout much of the 1990s (and thereafter) when it was trying to defeat China-specific resolutions introduced in the CHR. By inviting mandate holders to China, the State could claim to be ‘cooperative’ with UN human rights mechanisms. At the same time, China could exercise its sovereign authority in deciding whether or not to receive any mandate holder – blocking any scrutiny it did not agree to – and demonstrating that it was only through ‘cooperation’ that a UN human rights investigator could gain access to the country.

China’s invitation to the Special Rapporteur on freedom of religion in 1994 was understood to be aimed at pre-empting criticism of China’s treatment of its ethnic minorities, especially Tibetans, which seemed likely to be a key element in a country-specific resolution expected at the 1995 CHR.<sup>74</sup> In the 1990s, Special Rapporteur on torture Nigel Rodley sent hundreds of individual communications to China. In 1995 he asked for an invitation to visit but

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<sup>73</sup> See F Gaer, ‘Engaging China on Human Rights: The UN Labyrinth – HRIC Interview with Felice Gaer’ (*Human Rights in China*, 29 October 2010) <[www.hrichina.org/en/content/3261](http://www.hrichina.org/en/content/3261)> accessed 11 February 2016.

<sup>74</sup> A Kent, *China, the United Nations, and Human Rights: The Limits of Compliance* (University of Pennsylvania Press 1999) 112. At the CHR, China’s Ambassador stated, ‘In inviting the Special Rapporteur on the Question of Religious Intolerance to China, the Chinese government has demonstrated fully its sincerity in developing international cooperation in the field of human rights’: Statement at 51st Session of the UN Commission on Human Rights (Geneva, 10 February 1995), cited in Kent, 281.

did not receive a positive response.<sup>75</sup> By 2000, when China still had not issued an invitation to visit, Rodley reported that he met with China's Political Counsellor in New York, seeking to 'clarify the nature of the difficulties posed for the Government by his request ... for a fact-finding visit'. Rodley recounted that his diplomatic interlocutor 'confirmed the continuing applicability of his Government's February 1999 invitation for a *friendly visit*' (emphasis added). Rodley then 'indicated his desire to find a solution that would be consistent with his commitment to undertaking a standard visit, with the usual methodology'.<sup>76</sup> The 'usual methodology' meant agreeing to terms of reference<sup>77</sup> that would allow him to visit places of detention unannounced, meet privately with complainants, and more. To this, China would not agree and Rodley never visited China.

In 2005, however, Manfred Nowak, another Special Rapporteur on torture, was finally permitted to visit.<sup>78</sup> Nowak's report on his visit to China presents a detailed account of the law, his meetings, and what needs to be corrected. It also describes the obstacles that Chinese authorities placed in his path – attempting to prevent him from private visits to detention facilities and from speaking to key persons.<sup>79</sup> The UN compilation prepared for China's UPR uncharacteristically reminded States that during Nowak's visit 'security and intelligence officials attempted to obstruct or restrict his attempts at fact-finding'.<sup>80</sup> Nowak's report presents some of the details on intimidation that the UPR summary merely references.<sup>81</sup>

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<sup>75</sup> N Rodley 'On the responsibility of Special Rapporteurs' (2011) 15 *International Journal of Human Rights* 328.

<sup>76</sup> UNCHR 'Report of the Special Rapporteur, Sir Nigel Rodley, Submitted Pursuant to Commission on Human Rights Resolution 2000/43' (25 January 2001) UN Doc E/CN.4/2001/66, para 14.

<sup>77</sup> Terms of reference include: freedom of movement throughout the country; freedom of inquiry, especially in terms of access to all detention centres and places of interrogation; free contact with central and local authorities of all branches of government; free contact with representatives of nongovernmental organisations, other private institutions and the media; confidential and unsupervised contacts with witnesses and other private individuals, including persons deprived of their liberty; and full access to all documentary material relevant to the mandate. See UNCHR 'Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38' (17 December 2002) UN Doc. E/CN.4/2003/68, para 16.

<sup>78</sup> UNCHR 'Civil and Political Rights, Including the Question of Torture and Detention: Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak' (10 March 2006) UN Doc E/CN.4/2006/6/Add.6.

<sup>79</sup> *ibid* paras 9–10.

<sup>80</sup> UNHRC 'Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1: People's Republic of China (including Hong Kong and Macao Special Administrative Regions (HKSAR) and (MSAR))' (16 December 2008) UN Doc A/HRC/WG.6/4/CHN/2, para 8.

<sup>81</sup> UNCHR (n 78) para 10 and fn 2.

In all, China has accepted rather few visits from Special Procedures – it cited only four (since 1997) in its voluntary pledges for election,<sup>82</sup> at the time the HRC was established, although it had already been visited by five thematic procedures dating back to 1994. Nine years later, it has received only two others – on the right to food and on discrimination against women. The visits are carefully timed and China’s willingness to consider a new visit has been announced on a few occasions as a tantalising possible breakthrough. Still, at the time of writing, there are 14 outstanding requests for visits to China, including on extrajudicial executions, human rights defenders, free assembly, toxic waste, health, housing, and disappearances.

China’s interaction with Special Procedures became an issue raised both in connection with commitments made before elections to the HRC as well as queries connected to the UPR. As a candidate for the first HRC election in 2006, China explained that it had previously invited and received visits from mandate holders on freedom of religion, and the right to education as well as arbitrary detention and torture.<sup>83</sup> Yet many other countries had received far more visits; for example, Brazil and Colombia had already received 14 country visits, Sudan 12, Turkey 11, and the United Kingdom, the United States and Guatemala 10 each.<sup>84</sup>

When China presented itself for the UPR in February 2009, its national report cited those same four visits.<sup>85</sup> Denmark presented a written question asking how China was implementing the Special Rapporteur on torture’s recommendations.<sup>86</sup> Norway asked whether China was responding to requests for visits, including to Tibet.<sup>87</sup> In the oral UPR session China began its remarks pointing out it ‘maintained good relations of cooperation’ with Special Procedures and was ‘considering inviting another Special Procedure to visit China in 2009’.<sup>88</sup> The Netherlands, UK and Latvia recommended that China issue a standing invitation,<sup>89</sup> Canada recommended an invitation to the Rapporteur on freedom of religion,<sup>90</sup> and Mexico recommended inviting six

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<sup>82</sup> ‘Aide Memoire’ (4 April 2006) <[www.un.org/ga/60/elect/hrc/china.pdf](http://www.un.org/ga/60/elect/hrc/china.pdf)> accessed 11 March 2016.

<sup>83</sup> *ibid.*

<sup>84</sup> See n 20.

<sup>85</sup> See UNHRC ‘National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1’ (10 November 2008) UN Doc A/HRC/WG.6/4/CHN/1, para 78.

<sup>86</sup> Advance Questions submitted to China – Addendum, available at <<http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/CHINAAdd1.pdf>> accessed 11 March 2016.

<sup>87</sup> *ibid.*

<sup>88</sup> UNHRC ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review – China’ (29 May 2009) UN Doc A/HRC/11/25, para 14.

<sup>89</sup> *ibid* paras 30 (Netherlands), 42 (United Kingdom), and 81 (Latvia).

<sup>90</sup> *ibid* para 28.

mandate holders who were waiting for invitations.<sup>91</sup> Saudi Arabia, which has received visits from only two mandate holders to date, urged China to invite some mandate holders, but suggested that China should now invite experts on economic, social and cultural rights<sup>92</sup>. China outlined its record and its intention to ‘continue’ to extend invitations to Special Procedures and again stated it would ‘consider inviting one in 2009’.<sup>93</sup> (According to one observer, China’s declaration was considered to constitute progress.<sup>94</sup>)

In November 2012, the High Commissioner for Human Rights, Navi Pillay, called upon China to facilitate the country visits, noting that there were 12 outstanding requests for invitations and that during the UPR session China had agreed to ‘step up’ such visits.<sup>95</sup> In 2013, China was re-elected to the Council. Its pledge at that time again referenced its ‘good cooperation’ and cited a 2010 visit on the right to food.<sup>96</sup> Indeed, that was the only such visit it had facilitated since Manfred Nowak’s visit in 2005. Using essentially the same language as in its first election, China declared that it would ‘continue to cooperate with the human rights Special Procedures’ and offered the same small promise that it would ‘consider inviting one special rapporteur to visit China this year’.<sup>97</sup> Notably, China did not promise to invite a mandate holder, only to ‘consider’ inviting one, nor did it specify which one, nor why it would only permit one mandate holder to visit after five years without a visit particularly when so many mandate holders were asking for invitations. At its 2013 UPR session China added some new conditions to its discussion of future country visits, citing limits based on its capacity to receive a

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<sup>91</sup> *ibid* para 38.

<sup>92</sup> *ibid* para 41.

<sup>93</sup> *ibid* para 65.

<sup>94</sup> Interview with former mandate holder, Geneva, March 2013.

<sup>95</sup> OHCHR ‘Pillay: China must urgently address deep-rooted frustrations with human rights in Tibetan areas’ (*OHCHR*, 2 November 2012) <[www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12729&LangID=E#sthash.YcBCa5og.dpuf](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12729&LangID=E#sthash.YcBCa5og.dpuf)> accessed 11 March 2016.

<sup>96</sup> UNGA ‘Note Verbale dated 5 June 2013 from the Permanent Mission of China to the United Nations Addressed to the President of the General Assembly’ (6 June 2013) UN Doc A/68/90, 3.

<sup>97</sup> ‘Aide Memoire’ (30 April 2009) UN Doc A/63/840 <[www.un.org/ga/60/elect/hrc/china.pdf](http://www.un.org/ga/60/elect/hrc/china.pdf)> accessed 11 March 2016.

visit and the balancing of rights mandates.<sup>98</sup> China's three invitations for country visits since 2005 have focussed on economic and social rights and discrimination against women.<sup>99</sup>

During its two UPR reviews, China received a total of 22 recommendations from States asking about Special Procedures. Seven of these urged China to accept specific visits requests. Another eight recommendations simply called for cooperation with Special Procedures (some, like Ghana, urging it to 'continue' its cooperation), and nine requested that China offer a standing invitation.<sup>100</sup> In 2013 China announced that it would receive the Working Group on discrimination against women shortly, and three other mandate holders.<sup>101</sup> The Working Group visited in December 2013.<sup>102</sup>

Both the Special Rapporteur on the right to food and the Chair of the Working Group on discrimination against women in law and practice presented oral and written reports to the HRC about their visits.<sup>103</sup> China's representative was positive about the visits but critical of the mandate holders' findings. Olivier De Schutter's report on right to food was considered 'generally balanced' particularly when it complimented China's achievements in feeding its people, but the country's representative criticised the 'unfounded' analysis of regions he did not personally visit (Tibet and Inner Mongolia) and his report's 'misunderstanding' of Chinese law and policy, particularly because it questioned food security for nomadic peoples and internal

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<sup>98</sup> 'China will continue to cooperate with special procedures ... and carefully consider the requests to visit of Special Procedures, bearing in mind its receiving capability and the balance between civil and political rights and economic, social and cultural rights' (n 96) 5.

<sup>99</sup> For a full list of requests for invitations and country visits completed, with links to the reports, see OHCHR 'Country and Other Visits by Special Procedures Mandate Holders since 1998 – A–E' <[www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsA-E.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsA-E.aspx)> accessed 11 March 2016.

<sup>100</sup> This number totals more than 22 as some recommendations contained two distinct requests. The figures are based on the author's analysis of the results of a search of recommendations for China at <[www.upr-info.org/database/](http://www.upr-info.org/database/)> accessed 28 June 2015.

<sup>101</sup> UNHRC 'Report of the Working Group on the Universal Periodic Review – China (including Hong Kong, China and Macao, China)' (4 December 2013) UN Doc A/HRC/25/5, para 21.

<sup>102</sup> The report on the Working Group's mission to China is contained in UNHRC 'Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice – Mission to China' (14 June 2014) UN Doc A/HRC/26/39/Add.2.

<sup>103</sup> The Special Rapporteur's report is contained in UNHRC 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter – Addendum' (20 January 2012) UN Doc A/HRC/19/59/Add.1, and was presented orally at the HRC on 6 March 2012. For the Working Group's report, see previous footnote; oral report was delivered at the 14th meeting of the 26th Session of the HRC: <<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/26th-session/watch/clustered-id-wg-on-discrimination-and-sr-on-education-14th-meeting-26th-regular-session-of-human-rights-council/3625086640001>> accessed 29 June 2016. Reply by Zhan Xianpeng of China: <<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/26th-session/watch/clustered-id-wg-on-discrimination-and-sr-on-education-14th-meeting-26th-regular-session-of-human-rights-council/3625086639001>> accessed 29 June 2016.

migrants.<sup>104</sup> Similarly, after some general praise of the Working Group's professionalism, China criticised its report, which cited lack of access to judicial tribunals, called for more effort to end gender-based violence and to prevent forced abortions, and for better treatment of independent women's groups. China's also levelled criticism at the Working Group for addressing issues which it claimed were not touched upon in-country.<sup>105</sup>

In sum, China has been visited seven times by mandate holders on freedom of religion (1994), arbitrary detention (1997, 2004), education (2003), torture (2005), right to food (2010), and discrimination against women (2013). But 14 outstanding invitations dating back to 2004 remain. Those mandates address freedom of association, summary and arbitrary executions, human rights defenders, independence of judges and lawyers, 'disappearances', health, toxic waste, housing, minority issues, religious freedom, water and foreign debt.<sup>106</sup> China's longstanding emphasis on 'cooperation' has enabled it to claim that it works well with mandate holders while keeping the number of visits quite small. Compared to the number of mandate holders requesting visits, and to the number of visits other major powers have received, China has received very few. Moreover, since Nowak's 2005 visit, China has not issued invitations to any mandate holder focussed solely on civil and political rights. Mandate holders received since the 2005 torture examination are generally considered 'soft' mandates. China appears to fit the pattern Philip Alston and other mandate holders complained about: claiming 'cooperation' but rejecting many 'pertinent' topics in favour of 'harmless' ones.

### C. Russia

Russia has received visits from eight thematic mandate holders since 1998: sale of children, internally displaced persons, violence against women, racism, independence of judges and lawyers (twice), indigenous peoples, and cultural rights.<sup>107</sup> Earlier, in July 1994, the Special Rapporteur on torture, Nigel Rodley, visited Russia. His visit was widely publicised and

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<sup>104</sup> See webcast at <[www.unmultimedia.org/tv/webcast/2012/03/china-concerned-country-id-on-right-to-food-and-housing-19th-meeting-19th-session.html](http://www.unmultimedia.org/tv/webcast/2012/03/china-concerned-country-id-on-right-to-food-and-housing-19th-meeting-19th-session.html)> accessed 29 June 2016.

<sup>105</sup> See n 1033.

<sup>106</sup> As this chapter was being written, the Independent Expert on foreign debt was expected in China (the visit took place beginning 19 June 2015), but none of the others had been permitted to visit.

<sup>107</sup> See 'Russia' in OHCHR 'Country and Other Visits by Special Procedures Mandate Holders since 1998 – N–Z' (n 42).

reportedly influenced penitentiary officers and higher officials.<sup>108</sup> Currently, 15 requests to visit Russia have not received responses. According to OHCHR, Russia has accepted visits from the Special Rapporteur on internally displaced persons, and the Working Group on human rights and business, but neither visit has been scheduled. There are 13 unanswered requests from mandate holders on human rights defenders, freedom of expression, freedom of religion, toxic waste, extrajudicial executions, arbitrary detention, trafficking, torture, right to food, human rights and counter-terrorism, freedom of assembly, and the Working Group on African Descendants.<sup>109</sup>

Russia's announcement of its 2006 candidacy for the HRC stated that 'active cooperation' with Special Procedures 'constitutes an integral part' of its policy. Russia listed the thematic mandate holders who had previously visited.<sup>110</sup> Moreover, it declared that the Special Rapporteur on violence against women and the Special Rapporteur on torture were scheduled to visit in the 'current year' – although the latter visit never happened.<sup>111</sup> In 2009, when running again, Russia reiterated that it maintained a policy of 'active cooperation' with Special Procedures, mentioning recent visits by the Special Rapporteurs on racism and independence of judges and lawyers, stating that other (unnamed) visits were also planned.<sup>112</sup> In 2013, when Russia ran for re-election to the HRC, it explained its relationship to Special Procedures slightly differently, declaring that it cooperated 'on an ongoing basis' but also insisting that 'interaction between States and Special Procedures should be based on voluntary and constructive cooperation and that the Special Procedures should work in strict compliance with their mandates and with the Code of Conduct'.<sup>113</sup> Russia also cited the mandate holders that had

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<sup>108</sup> K Moskalenko, M Goldman and CA Fitzpatrick, 'The High Commissioner for Human Rights in the Russian Federation' in FD Gaer and CL Broecker (eds), *United Nations High Commissioner for Human Rights: Conscience of the World* (Brill 2013) 334. In UNCHR 'Report of the Special Rapporteur, Mr Nigel S Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1994/37 – Addendum – Visit by the Special Rapporteur to the Russian Federation' (16 November 1994) UN Doc E/CN.4/1995/34/Add.1, Rodley provided constructive suggestions, which Russian officials began to implement.

<sup>109</sup> See OHCHR 'Country and Other Visits by Special Procedures Mandate Holders since 1998 – N–Z' (n 42).

<sup>110</sup> These included mandate holders on internally displaced persons, children in armed conflict, sale of children and violence against women: '[Ad Memoire on the Question of Election of the Russian Federation to the UN Human Rights Council](http://www.un.org/ga/60/elect/hrc/russianfed.pdf)' <[www.un.org/ga/60/elect/hrc/russianfed.pdf](http://www.un.org/ga/60/elect/hrc/russianfed.pdf)> accessed 11 March 2016. The UNGA created a Special Representative of the Secretary-General and a UN staff member to address children in armed conflict.

<sup>111</sup> *ibid.*

<sup>112</sup> UNGA 63rd Session Agenda Item 104 (c), 'Letter dated 24 March 2009 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General' (31 March 2009) UN Doc A/63/797.

<sup>113</sup> See UNGA 'Letter Dated 15 July 2013 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General' (17 July 2013) UN Doc A/68/155.

visited, mentioning missions by some UN experts that are not included on the OHCHR chart listing country visits.<sup>114</sup>

Earlier, at the UPR, Russia presented itself as the most cooperative State with regard to Special Procedures. In its first national report Russia described itself as receiving ‘constant visits’, citing visits in 2006 (racism) and 2008 (independence of judges and lawyers).<sup>115</sup> At the first UPR, several States (France, Brazil, Czech Republic, Switzerland, Latvia and Slovenia) encouraged Russia to issue a standing invitation, and others (Denmark, UK) recommended visits by specific mandate holders (torture and extrajudicial executions). Mexico called on the Government to accept all requested visits. Russia noted, but did not accept these recommendations.<sup>116</sup>

At its second UPR, Russia continued to claim it was especially cooperative with Special Procedures. The OHCHR compilation cited new two visits (2009 on indigenous persons and 2012 on cultural rights),<sup>117</sup> but Russia insisted that it had received four visits including the Special Representative on human rights and transnational corporations and the Special Representative of the Secretary-General on violence against children, the latter of which is not a Special Procedure.<sup>118</sup> Russia also declared that it had received more than 20 visits from the Council of Europe’s Committee for the Prevention of Torture.<sup>119</sup> The OHCHR compilation report also showed that none of the visits Russia had cited as ‘agreed’ – disappearances, internally displaced persons and torture – had taken place. It listed 11 unanswered requests for invitations.<sup>120</sup> A number of States again recommended issuing a standing invitation

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<sup>114</sup> *ibid.*

<sup>115</sup> UNHRC ‘National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1’ (10 November 2008) UN Doc A/HRC/WG.6/4/RUS/1, para 10.

<sup>116</sup> See UNHRC ‘Report of the Working Group on the Universal Periodic Review – Russian Federation’ (5 October 2009) UN Doc A/HRC/11/19; UNHRC ‘Report of the Working Group on the Universal Periodic Review – Russian Federation – Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review’ (5 June 2009) A/HRC/11/19/Add.1/Rev.1. Author’s further analysis of recommendations and responses is based on a search of the database on the Russian Federation at UPR-Info, available at <[www.upr-info.org/database](http://www.upr-info.org/database)>.

<sup>117</sup> UNHRC ‘Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21’ (11 February 2013) UN Doc A/HRC/WG.6/16/RUS/2.

<sup>118</sup> For the national report, see UNHRC ‘National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 – Russian Federation’ (6 February 2013) UN Doc A/HRC/WG.6/16/RUS/1, para 14. These procedures are not listed on the OHCHR ‘Country and Other Visits by Special Procedures Mandate Holders since 1998 – N–Z’ (n 42).

<sup>119</sup> UNHRC ‘National Report’ (n 118) para 43.

<sup>120</sup> UNHRC ‘Compilation Prepared by the Office of the High Commissioner’ (n 117).

(Montenegro, Guatemala, Slovenia, Paraguay and Czech Republic) and urged Russia to invite specific mandate holders.<sup>121</sup> Russia did not accept those recommendations, but did accept recommendations for strengthening international ‘cooperation’ – lacking any specifics – from Cuba, China, and DPRK, among others.<sup>122</sup>

Despite Russia’s 2008 boast of ‘constant’ cooperation with Special Procedures mandate holders, it has not kept pace with the requests received, as detailed above. The Special Rapporteur on sale of children visited in October 2000. The Special Rapporteur on freedom of expression asked for a visit in 2002. The mandate holder on internally displaced persons visited in 2003. The mandate holder on human rights defenders asked to visit in 2004. Russia accepted a visit from the Special Rapporteur on violence against women in December 2004. Requests were also made by the mandate holder on toxic waste (2005), the Working Group on Enforced or Involuntary Disappearances (2006 and annually thereafter), the Working Group on Arbitrary Detention, and the Special Rapporteur on human rights while countering terrorism (both 2008), as well as mandate holders on trafficking (2009), torture (2010), right to food and freedom of assembly (2011) and African descendants (2013), but no visit has been scheduled.<sup>123</sup> Russia permitted visits from the mandate holders on racial discrimination (2006) and independence of judges and lawyers (2008).<sup>124</sup> Since then, it seemed to turn to ‘softer’ mandates – for example, indigenous (2009) and then cultural rights (2012) – although it also permitted a follow-up visit by the mandate holder on independence of judges and lawyers (2013).<sup>125</sup>

Although there are many mandates waiting for answers – mandates that have sent States a large number of communications about alleged violations – (executions, disappearances, expression, arbitrary detention, human rights defenders, torture and freedom of assembly), Russia invited the mandate holders on indigenous and cultural rights, neither of which sends many case-based communications to States. Notably, Russia did not accept visits from mandate

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<sup>121</sup> UNHRC ‘Report of the Working Group on the Universal Periodic Review – Russian Federation’ (8 July 2013) UN Doc A/HRC/24/14.

<sup>122</sup> See UNHRC ‘Report of the Working Group on the Universal Periodic Review – Russian Federation – Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review’ (2 September 2013) UN Doc A/HRC/24/14/Add.1, in which Russia accepts, partially accepts or rejects various recommendations. Additionally, the author analysed recommendations and responses as summarised on [www.u-info.org/database/](http://www.u-info.org/database/).

<sup>123</sup> OHCHR ‘Country and Other Visits by Special Procedures Mandate Holders since 1998 – N–Z’ (n 42).

<sup>124</sup> *ibid.*

<sup>125</sup> *ibid.*

holders on extrajudicial executions or human rights defenders.<sup>126</sup> Perhaps the fact that the cultural rights mandate was new, was sponsored by Cuba, and was considered to be a ‘soft’ mandate played a role alongside Russia’s own reported financial support of its work.

During her visit, the Special Rapporteur on cultural rights acknowledged improvement in respect for cultural and other rights since Soviet times but cited a decrease more recently. Examining cultural heritage, religion and art, including artistic expression, and the right to challenge or regulate them, she raised questions about the ‘lack of effective implementation and concrete outcome’ of cultural policies. She discussed the impact of the Orthodox Church’s policies favouring ‘traditional values’ on other religious communities and on women, as well as those of local authorities in Chechnya. She also discussed the Roma, the disabled, and the lesbian, gay, bisexual and transgender community.<sup>127</sup> Russia’s response to her report was chilly: its representative told the HRC that freedom of expression is not absolute; that there was no discrimination against sexual minorities; that the comments on the impact of ‘traditional values’ on women were unsubstantiated; and that her references to the North Caucasus were ‘beyond the framework’ of her visit since she had not visited those areas personally.<sup>128</sup> The Rapporteur replied a few days later, stating she had discussed some of these points with the Russian representatives and would continue to do so.<sup>129</sup>

Similarly, when the Special Rapporteur on the independence of judges and lawyers completed her follow-up mission and reported to the Council a year later,<sup>130</sup> Russia stated it did not agree with all her recommendations or with her view of the professional activities of lawyers. Where the mandate holder pointed to excessive powers of presidential courts, and criticised the constitutional court, Russia explained that safeguards existed that she had not taken into

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<sup>126</sup> See Russia’s responses to recommendations in UNHRC ‘Report of the Working Group’ (n 122).

<sup>127</sup> UNHRC ‘Report of the Special Rapporteur in the field of Cultural Rights, Farida Shaheed – Addendum – Mission to the Russian Federation (16–26 April 2012)’ (11 March 2013) UN Doc A/HRC/23/34/Add.1.

<sup>128</sup> *ibid.* See also oral response by Russia: UN ‘Mr. Serguei Kondratiev speaking at UNHRC 23rd Session’ (*UNWebTV*, 31 May 2013) <<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/23rd-session/watch/clustered-id-on-cultural-rights-and-discrimination-14th-meeting-23rd-regular-session-of-human-rights-council/2428553140001>> accessed 29 June 2016.

<sup>129</sup> Oral response of Farida Shaheed: UN ‘Clustered Interactive Dialogue with the Special Rapporteur on Cultural Rights’ (*UNWebTV*, 3 June 2013) <<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/23rd-session/watch/clustered-id-on-cultural-rights-and-discrimination-contd-15th-meeting-23rd-regular-session-of-human-rights-council/2428553156001>> accessed 11 March 2016.

<sup>130</sup> UNHRC ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul – Addendum – Mission to the Russian Federation’ (30 April 2014) UN Doc A/HRC/26/32/Add.1.

account.<sup>131</sup> As set forth in the Outcome of the review of the Council,<sup>132</sup> Russia asked for its comments to be published as an annex to her report.<sup>133</sup> The Rapporteur rebutted Russia's public remarks quite firmly, pointing to the President's extensive powers regarding judicial appointments, and interference, threats, and intimidation – in some cases even murder – that undermine the legal profession and judges.<sup>134</sup>

In sum, Russia's poor record in scheduling visits – particularly those focussed on civil and political rights and case-oriented mandates – is clear. Although it has been visited eight times, there are 15 mandate holders waiting for approval of requests. Recently, Russia has permitted visits from several considered to be 'softer' mandate holders. When the mandate holders have reported orally, Russia has mounted a vigorous defence, including challenging some of the substantive allegations. Ominously, it has set forth conditions for visits referencing the Code of Conduct and playing the procedure card.<sup>135</sup> Russia has affirmed its 'cooperation' in the context of elections and the UPR, while taking measures that reveal how carefully it picks and chooses which mandate holders it will receive, cooperate with, and challenge publicly.

#### D. Algeria

Algeria was elected to a one-year term on the HRC in 2006. In 2013, it ran again and submitted a document with pledges in which Algeria recalled that, in March 2010, it had invited seven thematic mandate holders to conduct working visits in Algeria. It also pledged to 'strengthen its cooperation' with Special Procedures by extending invitations to other mandate holders to visit.<sup>136</sup>

The section of the UPR compilation report about 'cooperation' with Special Procedures prepared before the first UPR in 2009 shows Algeria had received mandate holders on freedom

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<sup>131</sup> See oral response by Russia: UN 'Mr. Serguei Kondratiev speaking at UNHRC 26<sup>th</sup> Session' (*UN WebTV*, 13 June 2014) <<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/26th-session/watch/clustered-id-sr-on-independence-of-judges-and-lawyers-and-sr-on-migrants-12th-meeting-26th-regular-session-of-human-rights-council/3624290556001>> accessed 29 June 2016.

<sup>132</sup> A/HRC/RES/16/21, para 25.

<sup>133</sup> Such publication of state views is now routine.

<sup>134</sup> UN 'UN Web TV: the United Nations Live and on Demand' <<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/26th-session/watch/clustered-id-contd-sr-on-independence-of-judges-lawyers-and-sr-on-migrants-14th-meeting-26th-regular-session-of-human-rights-council/3625039145001>> accessed 11 March 2016.

<sup>135</sup> See especially UNHRC 'Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed – the Right to Freedom of Artistic Expression and Creativity – Addendum – Mission to the Russian Federation: Comments by the State on the Report of the Special Rapporteur' (24 May 2013) UN Doc A/HRC/23/34/Add.3 on cultural rights mandate holder's visit.

<sup>136</sup> UNGA 'Note Verbale Dated 2 July 2013' (n 40) including para 56.

of religion (2002) and violence against women (2007) but had postponed a visit from the Special Rapporteur on freedom of expression (in February 2005), and that requests were outstanding from the Working Group on disappearances since 2000, and from Rapporteurs on torture (2007), extrajudicial executions (2007), and human rights and counter-terrorism (2006).<sup>137</sup> The UN's stakeholders report for the first UPR noted that Amnesty International claimed that Algeria had 'failed to cooperate' with Special Procedures.<sup>138</sup>

During Algeria's first UPR review, Germany and the UK asked about cooperation with Special Procedures on extrajudicial executions, torture, disappearances, and countering terrorism.<sup>139</sup> Latvia asked whether Algeria would accept a standing invitation,<sup>140</sup> and Brazil and the Netherlands urged Algeria to facilitate visits.<sup>141</sup> Algeria responded cautiously to these inquiries, stating that such visits must be factual<sup>142</sup> and that it would 'consider the request for visits of mandate holders keeping in mind its statutory right to determine the appropriateness of such visits'.<sup>143</sup> In a more frank response at the very end of the review, Algeria's representative explained that some of the mandates remain pending 'because they were made in a sensitive political moment'.<sup>144</sup>

Algeria received two mandate holders before the second UPR: on freedom of expression and the right to housing. It also accepted a request for a visit from the mandate holder on the right to clean water and sanitation (which has not yet taken place). Longstanding requests from the Working Group on disappearances (first made in 2000), and the Special Rapporteurs on torture, extrajudicial executions, and human rights while countering terrorism remain unanswered, as do more recent requests from the Working Group on Arbitrary Detention, the Rapporteur on sale of children, and the Independent Expert on foreign debt.<sup>145</sup>

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<sup>137</sup> UNHRC, Working Group on the Universal Periodic Review, 'Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Algeria' (26 March 2008) UN Doc A/HRC/WG.6/DZA/2.

<sup>138</sup> UNHRC 'Report of the Working Group on the Universal Periodic Review – Algeria' (6 March 2008) UN Doc A/HRC/WG.6/1/DZA/3.

<sup>139</sup> UNHRC 'Report of the Working Group on the Universal Periodic Review – Algeria' (23 May 2008) UN Doc A/HRC/8/29, paras 29 (UK) and 44 (Germany).

<sup>140</sup> *ibid* para 61.

<sup>141</sup> *ibid* paras 62–63.

<sup>142</sup> *ibid* para 67.

<sup>143</sup> See UNHRC 'Report of the Working Group on the Universal Periodic Review – Algeria' (16 April 2008) UN Doc A/HRC/WG.6/1/DZA/4, para 69.

<sup>144</sup> *ibid* 13.

<sup>145</sup> See n 20.

In a report on his country visit, Special Rapporteur Frank La Rue concluded that Algeria ‘has come a long way from the Black Decade, during which journalists paid a tremendously high price’.<sup>146</sup> He cited concerns about the laws, noted some improvements made, and also discussed acts of ‘intimidation’ of journalists and bloggers while he was present, including the alleged refusal to issue visas to foreign journalists in the weeks before his visit.<sup>147</sup> La Rue also discussed freedom of assembly and association in Algeria.<sup>148</sup> The Government issued formal comments on La Rue’s findings, beginning with criticism of the procedure followed, particularly the alleged failure to show the report to the country’s officials before it was issued, and alleging that the Special Rapporteur exceeded his mandate, as Algeria considered that freedom of association and assembly was not part of his mandate.<sup>149</sup> The Algerian Government also criticised the ‘spirit of deliberate selectivity that dominated the draft report’ and many specific points.<sup>150</sup> At the HRC, Algeria claimed that La Rue, ‘in contravention of the Code of Conduct, drew hasty conclusions’ that were wrong, and ignored Algeria’s response on one very visible case.<sup>151</sup> La Rue publicly affirmed that freedoms of association and assembly were integral to freedom of expression.<sup>152</sup>

In 2015, Algeria permitted a visit from the Special Rapporteur on the right to education,<sup>153</sup> but the long-waiting other mandate holders have not yet been allowed to visit. Those focussed on key civil and political rights issues have remained unable to visit the country. Despite the fact that the country’s most severe crisis is over, Algeria continues to refuse visits from the case-oriented Special Procedures. In sum, after the unhappy experience with La Rue, Algeria appears to fit the pattern of claiming ‘cooperation’ but rejecting the pertinent topics and accepting ‘harmless’ ones.

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<sup>146</sup> UNHRC ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue’ (12 June 2012) UN Doc A/HRC/20/17/Add.1, para 8.

<sup>147</sup> *ibid* paras 40–41.

<sup>148</sup> *ibid* paras 73–79 (assembly) and 80–87 (association).

<sup>149</sup> UNHRC ‘Rapport présenté par le Rapporteur spécial sur la promotion et la protection du droit à la liberté d’opinion et d’expression’ (19 June 2012) UN Doc A/HRC/20/17/Add.3, para 4ff.

<sup>150</sup> *ibid* paras 4 and 9–10.

<sup>151</sup> *ibid* para 5; OHCHR ‘Webcast of the 4th Meeting’ (*OHCHR*, 19 June 2012) <[www.unmultimedia.org/tv/webcast/2012/06/algeria-clustered-id-on-expression-and-executions-4th-meeting.html](http://www.unmultimedia.org/tv/webcast/2012/06/algeria-clustered-id-on-expression-and-executions-4th-meeting.html)> accessed 29 June 2016.

<sup>152</sup> UNHRC 20th Session, ‘Oral Remarks of Mr. Frank La Rue, Special Rapporteur on Freedom of expression’ (20 June 2012), <<http://www.unmultimedia.org/tv/webcast/2012/06/final-remarks-sr-expression-clustered-id-on-expression-and-executions-continued-6th-meeting.html>> accessed 29 June 2016.

<sup>153</sup> UNHRC ‘Report of the Special Rapporteur on the Right to Education, Kishore Singh – Addendum – Mission to Algeria’ (25 June 2015) UN Doc A/HRC/29/30/Add.2.

## E. Iran

Iran had been the subject of a country-specific mandate created by the CHR from 1984 until 2002, and it had allowed some of those mandate holders to visit the country. The first Special Representative on human rights in Iran, Andres Aguilar, was not allowed to visit,<sup>154</sup> but his successors visited the country on four occasions. Reynaldo Galindo Pohl (1986–95), was permitted three country visits between 1990 and 1992, but barred after that.<sup>155</sup> The report of his 10-day tumultuous first visit, replete with details of mobs blocking meetings at the UN offices, official refusals of visits to a key cleric under house arrest, and visits taken to the notorious Evin prison and elsewhere, makes fascinating reading.<sup>156</sup> Maurice Copithorne, Galindo Pohl's successor (1995–2002), was allowed only one visit, in 1996, for six days. He described his meetings with high level government officials as consisting mainly of Iranian criticism of the political nature of the resolution creating the mandate.<sup>157</sup>

The year before Copithorne's 1996 visit, the Iranian Government permitted a visit from the Special Rapporteur on religious intolerance, the late Abdelfattah Amor of Tunisia.<sup>158</sup> A few years later, in 2002, when the country-specific mandate ended, Iran extended a standing invitation to thematic Special Procedures mandate holders and received visits from five of them: arbitrary detention (2003), freedom of expression (2003), migrants (2004), violence against women (2005) and right to housing (2005). Despite the standing invitation to all Special

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<sup>154</sup> See Iran Human Rights Documentation Center, 'A History of United Nations Special Representatives and Rapporteurs in Iran' <[www.iranhrdc.org/english/news/features/3410-table-of-un-special-rapporteurs-and-representative-involvement-in-iran.html](http://www.iranhrdc.org/english/news/features/3410-table-of-un-special-rapporteurs-and-representative-involvement-in-iran.html)> accessed 16 February 2016; R Shadan, 'Iran and Human Rights Organs of the United Nations' (*Iran Human Rights Review*, October 2014) <[www.ihrr.org/ihrr\\_article/un-en\\_iran-and-human-rights-organs-of-the-united-nations/](http://www.ihrr.org/ihrr_article/un-en_iran-and-human-rights-organs-of-the-united-nations/)> accessed 16 February 2016. See also UNCHR 'Report on the Human Rights Situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, appointed pursuant to Resolution 1986/41' (28 January 1987) UN Doc E/CN.4/1987/23.

<sup>155</sup> See table cited in previous footnote.

<sup>156</sup> UNCHR 'Report on the Human Rights Situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, pursuant to Commission Resolution 1989/66' (12 February 1990) UN Doc E/CN.4/1990/24. See also UNCHR 'Report on the Human Rights Situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, pursuant to Resolution 1990/79' (13 February 1991) UN Doc E/CN.4/1991/35, paras 328–460; UNCHR 'Report on the Human Rights Situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, pursuant to Commission Resolution 1991/82' (2 January 1992) UN Doc E/CN.4/1992/34, paras 202–471.

<sup>157</sup> UNCHR 'Report on the Situation of human Rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights, Mr Maurice Copithorne (Canada), pursuant to Commission Resolution 1995/68 of 8 March 1995 and Economic and Social Council Decision 1995/279 of 25 July 1995' (21 March 1996) UN Doc E/CN.4/1996/59, para 20ff and especially para 22.

<sup>158</sup> UNCHR 'Report Submitted by Mr Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights Resolution 1995/23' (9 February 1996) UN Doc E/CN.4/1996/95/Add.2.

Procedures, Iran had not permitted any mandate holder focussed on Iran to visit between 2006 and 2010,<sup>159</sup> and has not allowed anyone since.<sup>160</sup> Meanwhile, the HRC established a new country mandate on Iran, but Iran has not yet agreed to terms of reference to receive the Special Rapporteur.

When Iran appeared for its UPR in 2010, its delegation head publicly stressed the Government's 'continuous and full cooperation' with OHCHR and pointed to Iran's standing invitation to Special Procedures. Iran pointed out the visits of 'several special rapporteurs' despite the fact that none had visited in the past five years.<sup>161</sup> A number of States inquired about this contradiction in written questions: Belgium pointed to Iran's official report which affirmed there were 'plans under consideration' for other visits. Belgium and others pressed for specific details on the 'plans' as well as visits requested, to which Iran did not respond. Ireland and Denmark asked whether the Special Rapporteur on torture would be permitted to visit; the Dutch representative inquired about letting in rapporteurs to gather information on reported violations connected to the 2009 presidential elections and demonstrations that followed.<sup>162</sup> Others raised the issue during the review session, making recommendations for Iran to implement its standing invitation and/or allow mandate holders to visit (Luxembourg, Czech Republic, Chile, USA, Spain, Austria, and the United Kingdom).<sup>163</sup> In fact, although a number of countries (USA, Australia, New Zealand, France, and the Netherlands) specifically called for the Special Rapporteur on torture to be permitted a visit, Iran rejected these recommendations claiming generally that they were 'inconsistent' with the institution-building text or not in conformity with the country's existing laws, pledges or commitments.<sup>164</sup>

At the second UPR, in August 2014, and despite the absence of any visit in the interim, Iran's national report once again claimed that it had 'continuously interacted' with OHCHR

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<sup>159</sup> A Special Rapporteur on human rights in Iran was established in 2010. Iran did not permit the mandate holder to visit. There were reportedly some efforts to encourage visits from thematic rapporteurs during this period, and from the High Commissioner, but OHCHR reportedly discouraged any such visit until the country-specific mandate went first.

<sup>160</sup> See n 20. See also Iran Human Rights Documentation Center, 'A History of United Nations Special Representatives and Rapporteurs in Iran' (n 154).

<sup>161</sup> UNHRC 'Report of the Working Group on Iran' (17 February 2010) UN Doc A/HRC/WG.6/7/L.11.

<sup>162</sup> Written questions are in a document online at <<http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IR/Iran.pdf>> accessed 16 February 2016.

<sup>163</sup> UNHRC 'Report of the Working Group on Iran' (n 161) paras 90.26 (Luxembourg), 27 (Czech Republic), 28 (Chile), 29 (USA), 91.3 (Spain), 4 (Austria) and 92.10 (United Kingdom).

<sup>164</sup> *ibid* paras 92.5 (USA), 6 (Australia), 7 (New Zealand), 8 (France) and 9 (Netherlands).

including the Special Rapporteur on Iran.<sup>165</sup> While no longer claiming its cooperation was ‘full’, Iran nonetheless stressed its ongoing commitment to ‘dialogue and cooperation’.<sup>166</sup> However, Iran’s actual record was clearly revealed through the UN’s compilation report,<sup>167</sup> which referenced the standing invitation and the earlier visits, and also displayed a large blank space about any visits since the 2010 UPR. The compilation noted that during the first review Iran had accepted visit requests by the Working Group on disappearances, and the Special Rapporteurs on extrajudicial executions and on freedom of religion, but that none of these mandate holders had visited the country. There were also outstanding requests for invitations from the mandate holders on freedom of expression, right to food, independence of judges and lawyers, and the country-specific rapporteur. In all, there were at least six mandate holders seeking to visit in 2014.<sup>168</sup>

The UN compilation noted that ‘the Secretary-General regretted that, since 2005, no thematic mandate holders had been invited to visit the country, despite a standing invitation to all thematic mandate holders in 2002 and a pledge to invite two such experts in 2012’.<sup>169</sup> Additionally, the compilation pointed out that the Working Group on disappearances had transmitted 537 cases to Iran since its establishment (1981) of which 518 ‘remained outstanding’.<sup>170</sup> Nine States raised questions and made recommendations about Iran’s standing invitation to and actual visits to the country.<sup>171</sup> Eight others recommended a visit by the country-specific rapporteur.<sup>172</sup> Two States urged continued cooperation: with Special Procedures in general (Uzbekistan)<sup>173</sup> and the Iran country mandate in particular (Guatemala).<sup>174</sup>

In sum, after allowing some Iran-specific country mandate holders to visit the country, Iran’s leaders defeated the mandate in 2002, issued a standing invitation to permit thematic mandate holders into the country and allowed several visits. But Iran stopped them in 2005,

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<sup>165</sup> UNHRC ‘Report of the Working Group on Iran’ (4 August 2014) UN Doc A/HRC/WG.6/20/IRN/1.

<sup>166</sup> *ibid* para 124.

<sup>167</sup> UNHRC ‘Report of the Working Group on Iran’ (18 August 2014) UN Doc A/HRC/WG.6/20/IRN/2.

<sup>168</sup> *ibid*.

<sup>169</sup> *ibid* para 9.

<sup>170</sup> *ibid* para 10.

<sup>171</sup> UNHRC ‘Report of the Working Group on the Universal Periodic Review’ (22 December 2014) UN Doc A/HRC/28/12. These States included Finland (written question), Belgium (written question), Latvia (paras 101 and 136.69), Bosnia-Herzegovina (para 138.73), Costa Rica (para 138.75), Germany (para 138.76), Lithuania (para 138.79), Peru (para 138.80) and Poland (para 138.80).

<sup>172</sup> These included Australia (para 138.72), Sweden (para 138.70), USA (para 138.71), Hungary (para 138.78), Portugal (para 138.81), Korea (para 138.82), Romania (para 138.83) and Slovenia (para 138.84).

<sup>173</sup> *ibid* para 138.68 (Uzbekistan).

<sup>174</sup> *ibid* para 138.77 (Guatemala).

making a mockery of the term ‘standing invitation’. The HRC’s re-establishment of a country mandate on human rights in Iran has not improved the situation. Iran’s UPR presentations emphasise cooperation with UN mechanisms, but there is little scrutiny to be had. Iran’s ongoing rhetorical emphasis on cooperation is belied by its actions regarding the Rapporteurs.

#### F. Cuba

Like Iran, Cuba’s engagement with Special Procedures has been heavily influenced by the on-again off-again creation of a country-specific mandate on Cuba.<sup>175</sup> Moreover, Cuba had long refused to accept the human rights paradigm focussed on individuals, rather than societal forces.<sup>176</sup> Despite this, Cuba’s national report and presentations at the UPR in November 2008 emphasised its ‘cooperation with those human rights mechanisms that are applied universally and on a non-discriminatory basis’, meaning those that are not country-specific. Cuba stressed that it would not accept any ‘value judgements’ reached under the country-specific mandates ‘imposed’ on the CHR by the USA.<sup>177</sup>

The UN’s compilation<sup>178</sup> for Cuba’s first UPR noted that there was no standing invitation and that there had been only three thematic rapporteurs visits to Cuba as of 2008, namely, from the mandate holder on violence against women (1999), the Working Group on mercenaries

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<sup>175</sup> The first Cuba mandate, in 1988, sent a Working Group of 6 to visit the country. See Report at E/CN.4.1989/46 and Corr. 1. In 1991, a Special Representative was appointed in UNCHR Res 1991/68 (6 March 1991) as contained in UN Doc E/CN.4/1991/91, 156. This then became a Special Rapporteur in 1992 (UNCHR Res 1992/61 (3 March 1992) UN Doc E/CN.4/1992/84, 141), a post that continued until 1998 when a draft resolution was defeated 16–19–18. From 2002 to 2007 there was a personal representative of the SG on Cuba. This post was discontinued in 2007: <[www.ohchr.org/EN/HRBodies/SP/CountriesMandates/CU/Pages/PersonnalRepresentativeInCuba.aspx](http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/CU/Pages/PersonnalRepresentativeInCuba.aspx)> accessed 16 February 2016.

<sup>176</sup> See eg UNCHR ‘Report by Mr Maurice Glèlè-Ahanhanzo, Special Rapporteur on Contemporary forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights Resolution 2000/14’ (6 February 2001) UN Doc E/CN.4/2001/21, paras 20–24, in which Cuba tells the Special Rapporteur on racism (at para 21): ‘... the Cuban Government considers that the prevalence of individualistic and discriminatory models of political, social and economic organization which ... have the effect of exacerbating social exclusion and the marginalization of countries, peoples, ethnic groups, minorities and other categories of social groups and individuals, creates a context conducive to the development of contemporary manifestations of racism and xenophobia’; and (at para 22) ‘In Cuba’s opinion, current manifestations of racism...reflect...: 2. The individualist approach adopted to the question of the rights of human beings, without relating the duties of individuals, groups and peoples to the enjoyment of rights by the rest of humanity.... 8. The principle of equal opportunities promoted by the liberal bourgeois democracies and by neo-liberal capitalist globalization in the context of a world where inequity prevails...’.

<sup>177</sup> UNHRC ‘National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1’ (4 November 2008) UN Doc A/HRC/WG.6/4/CUB/1, para 128.

<sup>178</sup> UNHRC ‘Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1’ (18 December 2008) UN Doc A/HRC/WG.6/4/CUB/2.

(1999), and, eight years later, from the rapporteur on right to food who visited in November 2007 just prior to Cuba's UPR. Mandate holders on freedom of expression and freedom of association had requested visits but the Cuban Government rejected them.<sup>179</sup> The UN compilation also noted that on her visit in 1999, the Special Rapporteur on violence against women urged Cuba to accept visits from those mandate holders who requested them, including on torture, freedom of expression, and religious freedom.<sup>180</sup> Eight years later, the Special Rapporteur on the right to food recommended that Cuba extend a standing invitation.<sup>181</sup>

The Special Rapporteur on violence against women noted a lack of statistical data, and called for creation of shelters for victims of violence against women. As a result, 'Cuba denounced the lack of neutrality in the report'<sup>182</sup> and 'rejected' its recommendation for Cuba to accept independent civil and political organisations to act as watchdogs, claiming this stemmed from false information and malicious sources.<sup>183</sup> When Cuba was approached by other mandate holders, it also challenged the data they presented as 'false'.<sup>184</sup> The Special Rapporteur on the right to food, for example, raised concerns about health and medical care problems<sup>185</sup> which Cuba dismissed as 'groundless' allegations.<sup>186</sup> These hostile responses to mandate holders were made despite Cuba's earlier pledges when seeking election to the HRC in 2006<sup>187</sup> when it confirmed plans to promote the right to food, cultural rights, the right to peace, and international solidarity<sup>188</sup> – that is, the mandates Cuba had sponsored in the CHR and the HRC.

At the UPR, Cuba continued to emphasise its 'traditional international cooperation' with human rights mechanisms applied on a 'universal and non-discriminatory basis'.<sup>189</sup> Cuba boasted of its February 2009 invitation to the Special Rapporteur on torture, which some countries (UK, Canada, Jordan, Chile and Switzerland) commended.<sup>190</sup> However, that visit never took place. Special Rapporteur Manfred Nowak reported publicly that despite offering several dates for a

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<sup>179</sup> *ibid* para 8.

<sup>180</sup> *ibid*.

<sup>181</sup> *ibid*.

<sup>182</sup> *ibid* para 17.

<sup>183</sup> *ibid* para 25.

<sup>184</sup> *ibid* para 30.

<sup>185</sup> *ibid* para 16.

<sup>186</sup> *ibid* para 47.

<sup>187</sup> See Letter to the UN Secretary-General from the Cuban Mission to the UN (4 April 2006) <[www.un.org/ga/60/elect/hrc/cuba.pdf](http://www.un.org/ga/60/elect/hrc/cuba.pdf)> accessed 11 February 2016.

<sup>188</sup> UN Doc A/HRC/WG.6/4/CUB/2 (n 178) para 53.

<sup>189</sup> UNHRC 'Report of the Working Group on the Universal Periodic Review – Cuba' (5 October 2009) UN Doc A/HRC/11/22, para 43.

<sup>190</sup> *ibid* para 47.

visit during that year, none was accepted by Cuba.<sup>191</sup> Several States including France, Canada and Switzerland, encouraged Cuba to extend standing invitations or to approve requests for invitations by mandate holders.<sup>192</sup> Austria mentioned the conclusions of the Working Group on Arbitrary Detention, which called for correcting the arbitrary detention of 79 people in Cuba.<sup>193</sup> In response, Cuba declared that there are no prisoners of conscience in the country and that human rights defenders are respected and ‘no one is harassed, detained or punished for exercising, enjoying or defending human rights’, and that ‘freedom of expression is guaranteed...’.<sup>194</sup>

At that first UPR, Cuba supported recommendations (Brazil and Bhutan) to cooperate with UN human rights mechanisms,<sup>195</sup> and to strengthen those mechanisms (Iran, DPRK, Viet Nam and Zimbabwe).<sup>196</sup> It also supported recommendations to receive other mandate holders in general,<sup>197</sup> but would only give further consideration to the recommendations to extend a standing invitation or for receiving the Rapporteurs on human rights defenders, freedom of expression and freedom of religion.<sup>198</sup> Cuba rejected recommendations from Israel, the UK, Canada, Australia, Slovakia, Italy and others that addressed freedom of expression, prisoners of conscience, and legal reform.<sup>199</sup> Cuba cited its sovereign right to choose its own political and juridical system, and that no country can accept any policy ‘that contributes to the implementation of a policy designed by a foreign superpower with the objective of destroying the legitimate constitutional order freely chosen by its people’.<sup>200</sup>

At the second UPR in May 2013, Cuba had not received a single additional visit. Nevertheless, it insisted that it ‘maintains a high level of cooperation and interaction with UN human rights procedures’,<sup>201</sup> pointing to the ‘comprehensive information’ it provided in response

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<sup>191</sup> See ‘Cuban Visit Will Not Take Place, says UN Expert on Torture as he Voices Frustration’ (*UN News Centre*, 9 June 2010) <[www.un.org/apps/news/story.asp?NewsID=34966#.Vfbh1xFViko](http://www.un.org/apps/news/story.asp?NewsID=34966#.Vfbh1xFViko)> accessed 11 February 2016.

<sup>192</sup> UN Doc A/HRC/11/22 (n 189) paras 82, 79 and 86 respectively.

<sup>193</sup> *ibid* para 96.

<sup>194</sup> *ibid* paras 114–16 and 118.

<sup>195</sup> *ibid* paras 130–34 and 136.

<sup>196</sup> *ibid* paras 130–35.

<sup>197</sup> *ibid* paras 130–37.

<sup>198</sup> *ibid* paras 131–37 and 139.

<sup>199</sup> *ibid* para 132.

<sup>200</sup> *ibid*.

<sup>201</sup> UNHRC ‘National Report Submitted in Accordance with Human Rights Council Resolution 16/21, Annex, Paragraph 5’ (7 February 2013) UN Doc A/HRC/WG.6/16/CUB/1, para 145.

to communications from Special Procedures.<sup>202</sup> As for the country visits, Cuba said it ‘remains strongly committed to continuing to issue invitations’.<sup>203</sup> Four visit requests were cited in the UN compilation report (violence against women, and freedoms of religion, association, and expression),<sup>204</sup> and it was emphasised that ‘[t]he Government contested all the communications, providing detailed information ... and stating ... that the allegations were untrue and politically motivated’.<sup>205</sup> Not surprisingly, written questions again focussed on standing invitations and the need for follow-up to the invitation to the Special Rapporteur on torture.<sup>206</sup> The outcome document cited Cuba’s response that it ‘maintained a high level of cooperation and interaction with the procedures and mechanisms of the UN system in...human rights’.<sup>207</sup> Recommendations from Russia, Bolivia and Zimbabwe, encouraging Cuba to ‘continue’ or ‘increase’ its cooperation, were accepted, but recommendations from others (Austria, Spain, Hungary, El Salvador, Finland, and France) to extend a standing or ‘open’ invitation were merely ‘noted’.<sup>208</sup> Similarly, Cuba ‘noted’ but did not accept recommendations to receive the Special Rapporteur on torture whose visit had been promised some time earlier (Spain, Mexico) or the Special Rapporteur on freedom of assembly (Chile).<sup>209</sup>

Examining the record closely, Cuba’s interest in ‘cooperation’ for country visits seemed to be most vigorous at UPR sessions and when seeking election to the Council, and not in actually bringing to the country those mandate holders who address specific alleged violations involving specific individuals. This conclusion is bolstered by looking at Cuba’s record of total rejection of cases communicated by mandate holders, as described by the Secretariat in the UPR compilations.

## **V. Improving country visits: The way forward**

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<sup>202</sup> *ibid* para 146.

<sup>203</sup> *ibid* para 157.

<sup>204</sup> UNHRC ‘Compilation Prepared by the Office of the High Commissioner for Human Rights in Accord with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21’ (11 February 2013) UN Doc A/HRC/WG.6/16/CUB/2, para 21.

<sup>205</sup> *ibid* para 54.

<sup>206</sup> ‘Universal Periodic Review Second Cycle – Cuba’ Questions in Advance and Add 1 <[www.ohchr.org/EN/HRBodies/UPR/Pages/CUSession16.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/CUSession16.aspx)> accessed 11 February 2016.

<sup>207</sup> UNHRC ‘Report of the Working Group on the Universal Periodic Review – Cuba’ (8 July 2013) UN Doc A/HRC/24/16, para 24.

<sup>208</sup> *ibid* paras 170.98 and 170.107–110.

<sup>209</sup> *ibid* paras 170.111–113.

The HRC's founding resolution instructs those who are elected as members to 'fully cooperate' with the Council.<sup>210</sup> Indeed, cooperation with UN mechanisms has become a practical step necessary to achieve compliance with human rights standards. As flawed as UPR may be, the process prominently scrutinises the issue of cooperation. States prominently mention their 'cooperation' with Special Procedures when they appear before UPR and many refer to it in pledges made when they seek election to the Council. After 18 years of OHCHR record-keeping, the largest number of thematic visits to any country amounts to just 21. As illustrated above, scrutiny is not universal. Non-cooperating States manage to avoid scrutiny in many ways, including by picking and choosing 'harmless' topics instead of those Alston called 'pertinent'. More recently, the Code of Conduct and other measures have been employed to diminish visibility and activity of mandate holders taking country visits.

Manfred Nowak, in his final report to the Council, reflected on invitations for country visits, noting that

it seems that several Governments invited me for other reasons, such as earlier pledges to the Human Rights Council in order to be elected and a general political desire to show to the international community that they actively cooperate with special procedures.<sup>211</sup>

Nowak also remarked on obstruction that may follow in sensitive situations once the mandate holder arrives:

The authorities of the country are under considerable pressure to hide the real situation, to monitor my activities with distrust and to make my fact-finding as difficult as possible. ... Sometimes, it needed considerable efforts from my side to break through a wall of silence or a wall of lies which had been erected by the authorities when instructing detainees about how they should interact with me.<sup>212</sup>

Alston has reflected, more simply, that 'there is a risk that country visits will be treated by some Governments as a temporary inconvenience to be endured rather than as an occasion for serious

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<sup>210</sup> UNGA (n 2).

<sup>211</sup> UNHRC 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention' (5 February 2010) UN Doc A/HRC/13/39/Add.5, para 18.

<sup>212</sup> *ibid.*

stock-taking to enhance respect for human rights'.<sup>213</sup> These concerns, and others made by mandate holders in candid moments or when reflecting on their achievements at the end of a mandate, raise questions of what can be done to ensure universal acceptance of country visits, to ensure global coverage by mandate holders, to address long-delayed or unanswered requests for invitations to visit, and to avoid situations where countries declare themselves in cooperation with Special Procedures when they are in fact 'gaming the system' to avoid serious scrutiny by politically unwelcome mandates.

While permitting a visit is a decision for each State, there is an official expectation that States will cooperate with mandate holders. At issue is how to improve this record. Some advisers might counsel continuing with the current methods which have already brought substantial growth in the number of standing invitations and actual visits, including to never-visited States. But another approach is to use existing machinery more effectively, and more strategically. Cooperation could be improved, and there are new tools which could be better utilised. There are already many new pressures on mandate holders. Stakeholders and victims are demanding redress for abuses, and look to mandate holders for real results. States are demanding more precise verification of facts as outlined in the Code of Conduct. In view of the large number of communications handled annually by a core group of mandates, ongoing accuracy and verification of facts becomes quite important to their credibility and effectiveness, in both communications and visits to the States. Another possible tool for the mandate holders is the presence and activity of national human rights institutions, along with opportunities for increased access through country visits by the High Commissioner or his deputies in New York or Geneva. Other new and developing human rights mechanisms and institutions such as the UPR, the Presidency of the HRC, and the High Commissioner for Human Rights can help increase a mandate holder's capacity to obtain an invitation for a country visit. The UPR has already caused States, including some that are resistant to scrutiny, to attempt to appear 'cooperative' – especially if they are Council members.

The Council could engage on the issue of making the machinery that is in place function more effectively. For example, it could instruct the President to intervene confidentially to try to obtain permission for country visits when requests for invitations are long delayed and unanswered. Alternatively, if the President does not want to personally engage on the issue, they

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<sup>213</sup> Alston (n 8) para 25.

could appoint a designated special envoy to review and examine compliance and cooperation on country visits. That special envoy could report publicly prior to HRC elections and UPR reviews on how ‘standing invitations’ are or are not honoured by States, or the State concerned could be asked to reply in public to concerns raised. An alternative would be to ask the national human rights institution in the country concerned, if it is compliant with the Paris Principles on national human rights institutions,<sup>214</sup> to report publicly at the HRC on the State’s cooperation with mandate holders, both as to standing invitations and actual conduct of visits. Finally, States could be encouraged to ask more questions during the UPR not only about cooperation and invitations to specific mandate holders, but also about the implementation of the recommendations made in the reports on the country visits.

The mandate holders could also use existing mechanisms and reports more effectively. For example, they could promote transparency about the interactions between themselves and Member States on the issue of country visits by discussing such issues in their annual reports, or in a special addendum to the annual report on this issue. Just as some mandate holders publish follow-up reports on communications, others could publish correspondence about such visits such as in the case of Manfred Nowak’s attempted visit to Zimbabwe or Cuba, or those between the mandate holders and the Russian Federation or Thailand. Elsewhere, I have suggested that the High Commissioner should explore the option of taking a mandate holder with him/her on certain country visits.<sup>215</sup> The mandate holders themselves could establish a time-limit regarding requests for invitations – when the time-limit expires, the mandate holder could publish a report without visiting the State concerned. In many ways this would mirror the practice of some treaty bodies regarding inquiry procedures: when a State does not accept a visit requested, the treaty body may issue a report without a visit, based on hearings or other materials examined during the inquiry.<sup>216</sup> While there is some concern that such reports might raise conflicts with the requirements set down in the Code of Conduct, there are reasons to consider such reports in keeping with the terms of Resolutions 60/251 and 5/2, which call upon States to take preventive action and to act when there are human rights emergencies.

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<sup>214</sup> UNGA Res 48/134 (20 December 1993) UN Doc A/RES/48/134, Annex.

<sup>215</sup> Gaer (n 1088) 133.

<sup>216</sup> See inquiry reports of the Committee against Torture on Egypt (1996) and Nepal (2012) <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Inquiries.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Inquiries.aspx)> accessed 10 February 2016.

All of the above could be implemented, if Member States see the problem of ‘picking and choosing’ as one that has hampered the effectiveness of the UN human rights programme as carried out by the HRC. Without a new approach, the problem of manipulation of the number of mandate holder visits and of the welcoming of ‘soft’ mandates rather than politically unwelcome ‘hard’ ones will continue.