

Chasing Shadows

A Quantitative Analysis of the Scope and Impact of UN Communications on Human Rights Defenders (2000-2016)

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The United Nations' individual casework on human rights defenders can be effective, but it is neither balanced nor efficient. Based on extensive empirical research and the first systematic analysis of all communications sent out to date, this policy paper argues that a more deliberate prioritization of cases is required to ensure that the special procedures mandate can serve its protective purpose more effectively within the constraints of its very limited resources. It formulates recommendations to all stakeholders, aiming at maximizing potential impact on individual defenders, while systematically striving for a balanced documentation of cases.



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Introduction

Each year, the United Nations Special Rapporteur on human rights defenders (HRD) receives a large number of submissions regarding individual cases of concern. Only a fraction of these cases are addressed by the rapporteur's communications procedure. Nobody can determine with certainty how many cases have fallen through the cracks over the 17 years the mandate has been in existence, or who tends to benefit from its attention and who is often overlooked.

This policy paper is based on extensive empirical research and provides the first systematic analysis of all communications sent out to date. As I will demonstrate, there are credible indications that communications do have a positive impact, but there is room for improvement. This paper makes an evidence-based argument that a more deliberate prioritization of cases is required to ensure that the mandate can serve its protective purpose more effectively under the constraints of very limited resources. It recommends a number of adjustments and includes actionable recommendations to the mandate, to the Office of the High Commissioner for Human Rights (OHCHR), to states, and to civil society actors regarding how to enhance the effectiveness of UN efforts to protect threatened human rights defenders around the world.

Unlike outgoing communications, incoming cases are not publicly reported or even systematically registered by the UN. Furthermore, the criteria for the selection of cases (beyond basic eligibility) remain largely undefined. The consequences of case selection, whether according to explicitly stated rules or implicitly applied criteria, are quite significant. Considering that only 550 individual cases can currently be addressed by the mandate each year, the case selection process defines which types of defenders under pressure receive the UN's attention and legitimization – and which do not.

Incoming cases could be selected according to a range of different rationales:

- according to the severity of the allegation;
- considering the potential impact of a communication on the defender's situation;
- striving for equal representation of all violations occurring around the world;
- establishing a numerical balance between global regions;
- prioritizing individuals mentioned in a previous case;
- following up on unresolved allegations before new cases are addressed;
- complementing thematic reports by providing evidence for certain issues raised therein;
- at random or in order of receipt.

The analysis of trends and patterns in the mandate's casework presented here suggests that most or all of these potential prioritization rationales have been applied to some degree during the 17 years of the mandate's existence. In the absence of an overarching strategic approach, however, different approaches may be in direct tension with one another, and efforts in one area can cancel out efforts in another.

While recognizing the legitimacy and value of each potential rationale, this policy paper advocates an approach that aims to maximize the potential impact on the individual defender while systematically striving for a balanced documentation of cases.

Data and Structure of this Policy Paper

A systematic study of all 4,511 communications issued by the mandate between September 2000 and November 2016, as well as of the 12,086 individual cases addressed therein, forms the basis of this policy paper. In addition, I conducted an impact study on a sample of 471 cases. Using a survey of submitting organizations (n=89) and an analysis of reports available online (n=382), I collected information on the further development of cases after the mandate's intervention.

I will present the results of this data analysis following the step-by-step process a case undergoes from submission to ultimate outcome. After presenting the types of cases that are likely to be selected as well as the number of cases addressed by the mandate, I will then discuss the consequences of sending joint communications in cooperation with other mandates, accountability to victims, state engagement with the procedure, and how the mandate follows up on cases. Last but not least, I will analyze the complex question of the potential impact of a communication from the UN Special Rapporteur on the situation of human rights defenders. This paper concludes with a set of policy recommendations to the mandate-holder and OHCHR, to states, to NGOs, and to defenders themselves.

UN Mandate on the Situation of Human Rights Defenders

Established in 2000 by the former Commission on Human Rights, the mandate on the situation of human rights defenders was created as part of the UN's special procedures. One of its key tasks is to respond to allegations of violations against human rights defenders by intervening directly with governments (and, rarely, with other entities). Most of these communications – which can be presented as an urgent appeal, a letter of allegation, or another type of letter – deal with individual cases, although some also address mass violations, patterns of repression, or a piece of draft legislation. The letter presents the alleged violation, evokes relevant international human rights norms, and requests specific clarifications or actions on the part of the state. In addition, allegations can be made in official press releases. The three independent experts who have led the mandate since its inception are Hina Jilani (2000–2008), Margaret Sekaggya (2008–2014), and Michel Forst (2014 to the present).

The Representativeness of the Selected Cases

Trying to achieve a balanced representation of attacks against defenders worldwide among the cases raised by the mandate means chasing shadows. Due to the fact that most attacks seem to go unreported, notably at the international level, there is no information about the real distribution of cases against which the mandate's selection could be vetted. In addition, the cases submitted to the mandate are likely to be a highly biased selection from among this "real" case distribution. So why bother agonizing over representativeness?

There are two main reasons why striving for balanced representation should be one of the mandate's ambitions, despite its elusiveness. It is part of the mandate's task to identify trends and patterns in defenders' situations around the world, and the data available for this analysis are largely informed by its communications procedure. The more the selection process is biased toward certain types of cases, the less comprehensive and reflective of actual trends the mandate's assessment can be. In addition, disproportionate attention also translates into unequal access to the benefits of the communications procedure for certain groups of defenders. How can one improve representativeness without knowing the real case distribution? Although we will never know when or how actual representativeness is achieved, we can get a sense of what types of cases are likely over- or underrepresented among the mandate's cases by looking at their distribution according to types of violations against defenders, geographic locations, and profiles, as well as by comparing these distributions over time. With this information, the mandate can attempt to counterbalance some of its probable biases by readjusting selection criteria or actively seeking out specific cases.

Disproportionate attention translates into defenders having unequal access to the benefits of the communications procedure.

Types of Violations Addressed

Figure 1 shows the distribution of reported violations among the mandate's 12,086 individual cases (several violations against a defender can be addressed in the same case). In more than half of all cases raised, the individual was detained. In about a quarter of all cases, the defender experienced torture or other physical attacks, as a consequence of which 851 were killed. A quarter of the individuals received threats, and an additional 5 percent were pressured through threats or attacks against family members. 17 percent were put on trial, of which at least half were convicted.

Administrative measures, ranging from refusing to issue documents or travel permits to expelling defenders or revoking citizenship, are only addressed in about 8 percent of the cases taken up by the mandate. This distribution of cases between categories of violations has been fairly stable over time, although it is unlikely that it represents patterns of abuse against defenders around the world in a balanced manner.

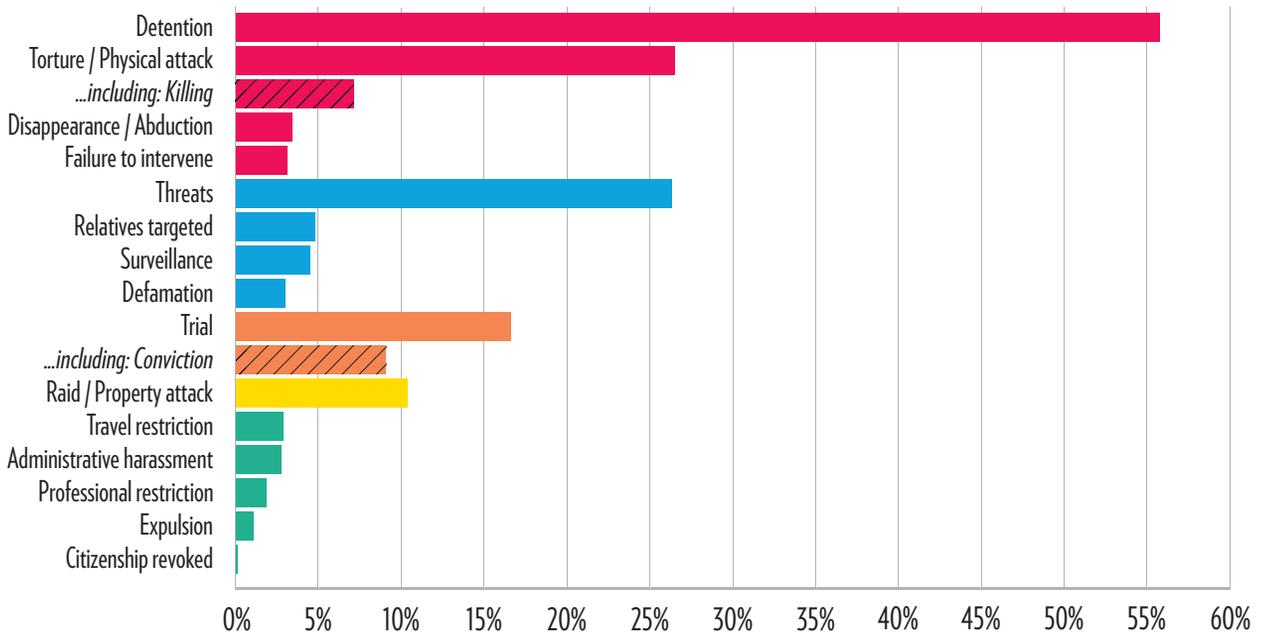


Figure 1: Distribution of individual cases according to violations suffered (n=12,086). Source: own data.

The reasons for the probable skewing of the data in favor of very severe violations and immediate threats are manifold. In terms of selection criteria, prioritizing cases according to the severity of the alleged attack is indeed one of the few choices the mandate makes deliberately. At the same time, the potential impact of the mandate’s communication also drives selection, which is why cases in which the defender was killed are not as frequently taken up as they would be otherwise. The disproportionate attention to cases of “hard” repression is reinforced by a similar bias that is doubtlessly already present in submissions to the mandate, which, based on longstanding traditions in human rights activism, might further explain the prominence of detention cases among communications.

The question of categories of violations aptly illustrates the tensions that can arise between different prioritization rationales. In terms of representativeness, softer forms of repression – such as the refusal to issue documents, defamation campaigns, or disciplinary proceedings – are inherently marginalized in a selection that targets only the most severe violations. Assassinations of defenders, in turn, are made invisible in a sample intent to make a difference for the individual in question.

At the same time, there are also subtler aspects to such decisions because the different types of violations are not equally distributed geographically or across defenders' profiles, either in the real world or among the mandate's cases. Therefore, when specific types of violations are prioritized, certain groups of defenders will, by default, have a much smaller chance of being considered by the mandate.

Profiles of the Defenders

In terms of gender distribution, for instance, women are even less represented in cases of detention (18 percent), trial (16 percent), and killing (13 percent) than they are across all types of cases (21 percent). If the mandate were to sharpen its focus on such cases of hard repression without a deliberate strategy of equal gender representation, women's chances of getting attention from the Special Rapporteur would automatically decrease. Women are more frequently represented in cases of threats (29 percent), defamation (30 percent), and violations against relatives (32 percent). This tendency seems relatively consistent with more general global patterns, according to reports on gendered violations against women human rights defenders.¹

The data can also be disaggregated according to the defenders' activities and thematic priorities rather than according to gender. Again, it is evident that selection based on the severity of the attack could lead to unintentional over- or underrepresentation. Protesters, for instance, represent 38 percent of detainees among the mandate's cases but only 13 percent of non-detention cases, which is certainly in line with the types of abuses protesters are most likely to suffer. At the same time, this distribution makes it safe to assume that the current focus on detention cases strongly favors protesters. This finding is all the more interesting because protesters might not be a priority *per se* for organizations concerned with the protection of human rights defenders, yet more than one-third of the 3,288 protesters considered by the mandate were not referred to as "activists" in the respective communication, nor were they described as pursuing any human rights-related activity other than their presence at the protest. There is arguably value in applying a broad definition of human rights defense in the mandate's casework, but this example shows that the presence of such marginal cases might unintentionally grow out of proportion.

Apart from selecting cases based on the severity of the allegation, other factors might influence the representativeness of abuses among cases taken up by the mandate, such as deliberate attention to a specific group of defenders. The widely reported observation that land and environmental rights defenders are more often victims of assassinations than other defenders is reflected in the mandate's cases. They account for 22 percent of cases involving killings, compared to 8 percent of cases involving non-lethal abuses. While the mandate does not prioritize assassination cases generally, it is likely that killings of land and environmental rights defenders are an exception for deliberate agenda-setting reasons. The current Special Rapporteur on human rights and the environment recently claimed that environmental human rights defenders "have tended to receive far less attention" than other defenders.

1 See Women Human Rights Defenders International Coalition, Global Report 2012, p. 89–99.

The HRD mandate, however, seems to perform relatively well in this regard: in 9 percent of all cases taken up, defenders were working on land or environmental rights and that number rises to 13 percent if we also include defenders of indigenous rights, which are often closely related to environmental and land issues. Again, it is very difficult to assess the actual distribution of issue areas across defenders facing repression around the world; however, this seems to be a relatively fair share (see Figure 2 for a comparison).²

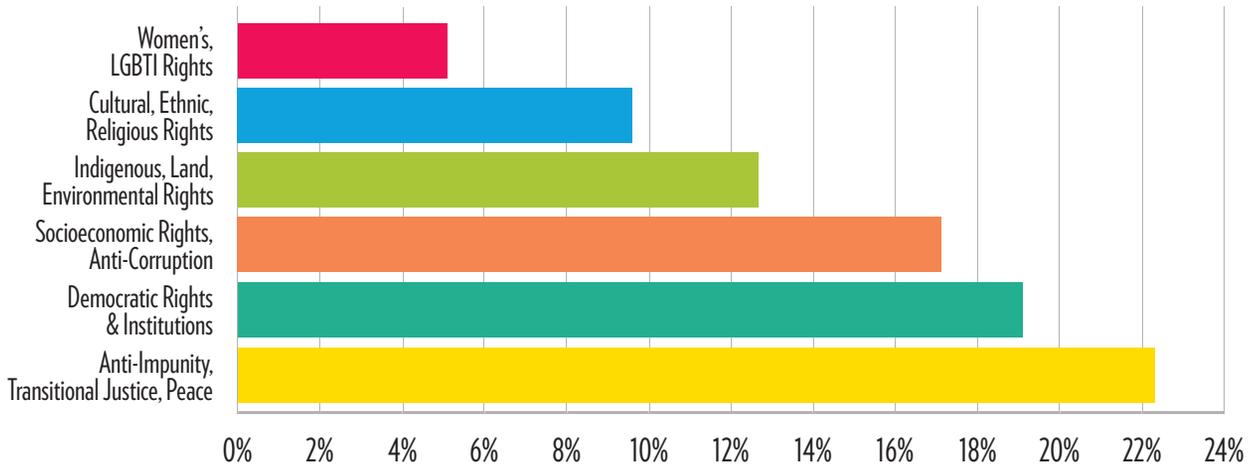


Figure 2: Distribution of individual cases according to defenders' issue areas (n=12,086).
Source: own data.

There have been several waves of land/environment/indigenous cases over time, with peaks in 2003 (14 percent) and 2007 (18 percent) as well as a renewed increase starting in 2012, which reached the highest level so far in 2016, at 24 percent. In some of these years, notably in 2012 and 2016, the rise in such cases can be linked to a thematic report on the issue prepared by the mandate. Together with the general increase in recent years, this illustrates how individual casework can be sensitive to current debates and also spark further activities on the part of the Special Rapporteur. Similarly, but on a much smaller scale, a consistent level of LGBTI defender cases since 2012/13 can be observed, stabilizing at 2 percent and complemented by a surge in LGBTI-related communications which did not contain individual names,³ when international attention to the issue was stirred by repressive draft legislation in several countries.

² As defenders often work on several issue areas at the same time, an individual case can fall into several of the categories in Figure 2. In addition, almost one-quarter of the 12,086 cases could not be attributed to any of the issue categories due to a lack of information in the communication.

³ Since 2000, a total of 560 communications have addressed issues such as draft legislation or mass abuses without naming individual defenders and are therefore not accounted for in Figure 2. Due to their different nature, the 139 press releases that were issued are also not included, although some of them did raise individual cases. In the case of LGBTI defenders, in addition to 92 communications addressing 157 individual cases, 3 LGBTI-related press releases and 42 communications have been issued without including individual names, in some cases for safety reasons.

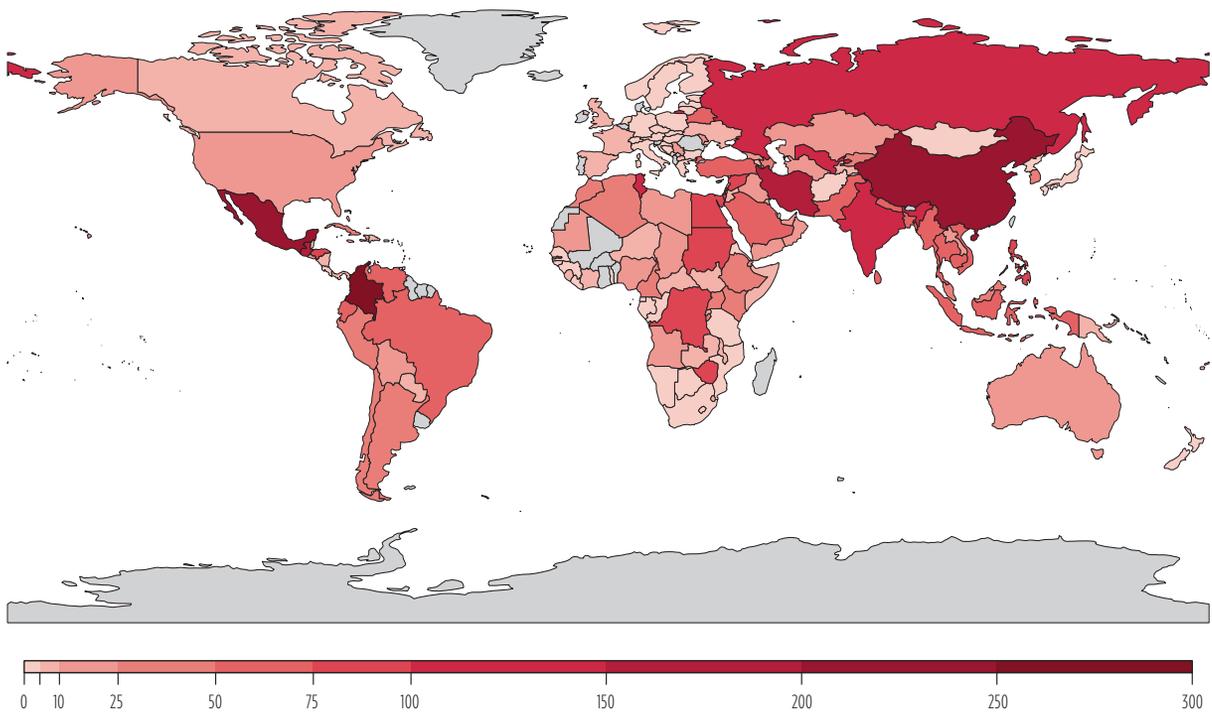


Figure 3: Geographic distribution of communications (n=4,511) (grey indicates that no communication was sent to this country). Source: own data.

Geographic Distribution

Considering the geographical distribution of communications (Figure 3),⁴ we find both hot spots and blind spots on the map. This distribution, notably at the two extremes, is likely not a direct result of violation patterns around the world, but rather a consequence of successful advocacy networks or the lack thereof. International attention is generally driven by a combination of access to information and activists’ networking ability as well as public interest and country expertise, including the language abilities of international actors. Largely contingent upon external submissions, the mandate’s cases are necessarily a product of these filtering mechanisms. It is very difficult to adjust for such bias, as all internationally available information is shaped by it to some degree. However, it should be within the power of a UN mandate to actively seek out information on the situation of human rights defenders in countries that seem to be consistently underrepresented among submitted cases and to prioritize them over other countries that receive disproportionate attention.

⁴ In addition to 3,807 communications addressing individual cases, the map also includes other communications (e.g., on draft legislation and mass violations) as well as press releases, insofar as they refer to a specific country.

Capacity, Efficiency, and Accountability to Victims

The Mandate's Caseload Over the Years

The number of communications sent out under the mandate increased steadily over the first seven years before reaching an all-time high in 2008, with 468 appeals and letters. However, the number decreased thereafter – to just 236 in 2010 and 2011 – and has increased only slightly since then (see the black curve⁵ in Figure 4). This development suggests that the caseload in the mandate's early years was partly submission-driven and has increasingly become a question of capacity and resource allocation.

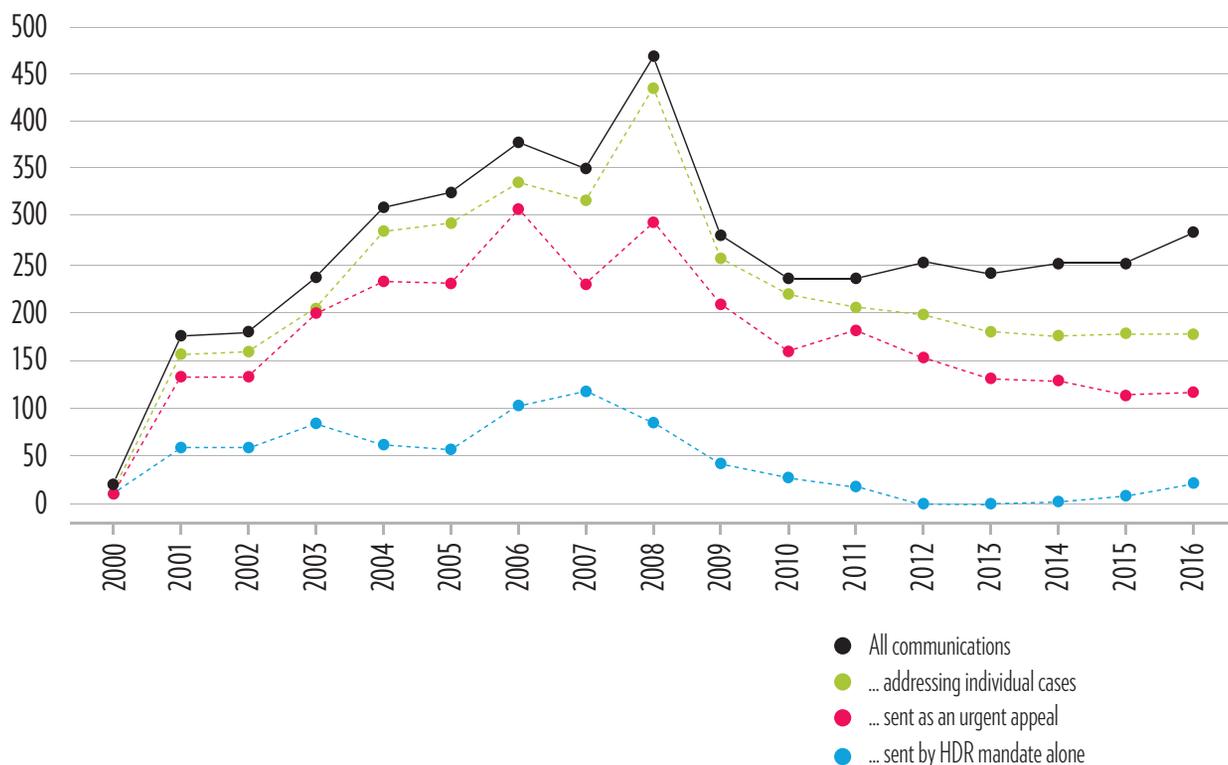


Figure 4: Number of communications issued per year (n=4,498) (13 undated communications were omitted). Source: own data.

5 Press releases are included in this curve.

Although the overall number of communications has increased slightly since 2011, this is not true for communications addressing individual cases, which have slowly declined during the same period (see the green curve in Figure 4⁶). Instead, the mandate increasingly emphasized communications addressing mass violations, legislation, or NGOs as well as press releases. The corresponding numbers of individual cases raised under the current mandate-holder, Michel Forst, has in fact dropped to a level of 545 cases per year on average – compared to an average of 862 cases annually under Margaret Sekaggya.⁷ Furthermore, communications sent as “urgent appeals” have also decreased during the same period (see the red curve in Figure 4), indicating a more frequent use of allegation letters, even for individual cases.

The Cost of Sending Joint Communications with Other Rapporteurs

Communications are seldom written by the HRD mandate alone. Urgent appeals, allegation letters, other types of letters, and press releases can all be sent jointly with other Special Rapporteurs or Working Groups among the currently 44 thematic and 12 country mandates. This means that after one mandate initiates a communication,⁸ others can add their legal perspective on the case and co-sign the appeal.

The number of communications sent by the HRD mandate alone has always been relatively low, but it dropped to zero in both 2012 and 2013, and very few such communications have been sent since 2014 (see the blue curve in Figure 4). There is a deliberate strategy behind this trend of sending all communications jointly, which is primarily driven by the special procedures staff at OHCHR. The two main reasons given are that it helps avoid the duplication of work by different procedures and that a communication sends a stronger message if it is signed by multiple rapporteurs. Empirical data show that there is a high cost attached to joint communications. Figure 5 illustrates the average time it took in each year for the special procedures to send out an urgent appeal (measured in days from the date of the last incident, as mentioned in the case summaries) as well as the average number of mandates that signed urgent appeals. The result not only suggests that the two aspects are highly correlated, but indicates that with each additional mandate, an urgent appeal is delayed by more than a week on average.

Together with a trend over the last decade to combine efforts with ever more mandates, this has led to a situation in which, over the last four years, the special procedures have been so busy exchanging communications among themselves that urgent appeals took on average an entire month to be issued.

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6 Press releases are excluded from this curve.

7 These average figures take into account the fact that the mandate was handed over to new leadership not at the beginning of the year, but in May 2008 and June 2014 to Sekaggya and Forst, respectively.

8 The data analyzed in this policy paper do not differentiate between whether the communication was initiated or co-signed by the HRD mandate.

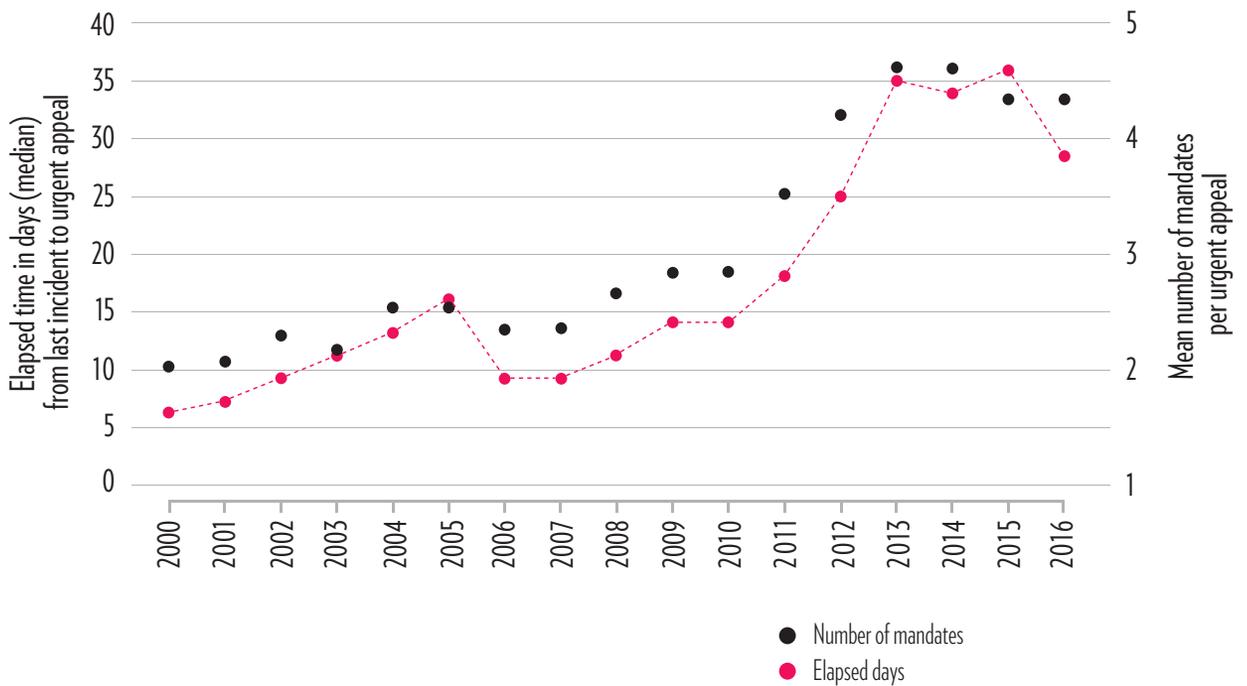


Figure 5: Urgent appeal cases: UN reaction time and number of signing mandates (n=7,417) (1,234 cases with missing or imprecise last incident dates were omitted). Source: own data.

When it comes to the argument for reducing the duplication of work between mandates, this is certainly achieved by the very frequent use of joint communications. Having said that, the increased work time that goes into each of those communications also means that the special procedures as a whole can issue far fewer communications – and therefore address fewer cases overall – than they could if each mandate was working on its own. Furthermore, raising the same case multiple times may even arguably have its merits. Uncoordinated duplication, however, should be avoided through the systematic use of the common special procedures database, rather than by deliberately maximizing joint communications.

With regard to the supposedly increased effectiveness of joint communications, we can question whether this assumption holds true if joining forces also means that the appeal arrives four weeks rather than one week after the incident of concern occurs. This cautionary note on joint communications is also supported by the impact study, which is detailed below. Data collected on the further development of 471 individual cases reveal an overall improvement in 30 percent of the cases addressed by the HRD mandate alone,⁹ while the situation improved for less than 24 percent when joint communications were sent. While this does not clarify whether or not joint communications are perceived by recipient governments as a stronger message, it raises further doubts about the idea that adding mandates must work in favor of the defender, primarily in view of the long delays involved.

Accountability to Victims

Before or during the process of drafting a communication, the mandate sometimes contacts the author of a case submission for clarification, further information, or – if the submission was made on behalf of someone else – to verify the consent of the victim. However, after a communication has been issued to a state, no update or confirmation

is sent to the victim or the representative. The rationale for this lack of feedback is that states should have adequate time to respond to the communication before it is made public. In this regard, the communications procedure is fundamentally different from the “shaming” approach of NGOs, which build their case advocacy around the momentum of publicity, but it also differs from the approach of other special procedures, such as the UN Working Group on enforced or involuntary disappearances. Even if one accepts the temporarily

confidential nature of the communication between mandate and state, it is not acceptable that the delay in publication can take anywhere between three and nine months, simply depending on the month in which the communication was issued. Since 2011, communications have been published three times a year in the special procedures collective communications report.¹⁰ Publication coincides with the Human Rights Council’s sessions in March, June, and September. With a minimum delay of three months after each communication, this means that cases addressed after May 31st will only be published in the March report the following year. This arbitrary disparity could be resolved by releasing communications on a rolling basis three months after issuance (or whenever a reply is received).

Even if one accepts the temporarily confidential nature of the communication between mandate and state, it is not acceptable that the delay in publication can take anywhere between three and nine months, simply depending on the month in which the communication was issued.

⁹ Note that they represent only 50 (11 percent) of the sample cases, as there have been only a few over the years.

¹⁰ Prior to 2011, they were only released annually in the respective mandate’s observations report.

Moreover, the victim – on whose behalf a communication is sent, and who might be directly impacted by it – should have privileged access to that information and not be required to wait until the communication is formally published. The Working Group on enforced or involuntary disappearances notifies the source about the issuance of an urgent action immediately and also transfers the state’s response for further comment. The Working Group on arbitrary detention communicates its decisions to sources 48 hours after transmittal to the state. At least insofar as urgent appeals are concerned, there is no substantive reason why the HRD mandate should withhold this information from victims or those acting on their behalf.

States' Responses and Follow-up on Cases

Upon the creation of the mandate in 2000, the Commission on Human Rights urged all governments¹¹ to cooperate with the mandate and to provide all the information it requested. However, mandate-holders have repeatedly criticized the high rate of state non-cooperation. Only 44 percent of all 12,086 individual defender cases received a reply from the respective government and that number decreases to 40 percent if we disregard cases that received only an immaterial reply (such as an acknowledgment of receipt). Interestingly, there has been an overall increase in the rate of replies over the years. Under Hina Jilani, substantive replies were received in 37 percent of all individual cases addressed; under Margaret Sekaggya, the number was 42 percent; and under Michel Forst, it has been 47 percent so far.

However, the number of replies rejecting the mandate's allegation has increased. Such rejections can vary from a simple denial of the alleged violation to a justification of the incident under domestic law. It should be noted that in some instances, the rejection of an allegation is legitimate. That said, it should be acknowledged that the quality of the mandate's information is generally very high. In most cases, rejection on the part of the state is merely a sign of non-compliance and a lack of cooperation.

The level of constructive engagement with the mandate is mapped in Figure 6, combining response rate¹² and rejection rate.¹³ Uncooperative states (low levels of response and high levels of rejection) are shown in red, while cooperative states (high levels of response and low levels of rejection) are represented in green. India, for example, replied to only 70 out of 247 individual cases (28 percent) over 17 years, and 82 percent of those responses were a rejection of the allegation. Argentina, on the other hand, replied to 42 percent of 113 cases, and only 4 percent of the responses were rejections. States depicted in yellow have a rate of rejection similar to their response rate. In most cases, this means the state is responding diligently, while also maintaining a high rejection rate.

11 As a general rule, mandate communications are addressed to states. Out of the 4,511 communications sent as of November 2016, only 37 were sent to non-state entities.

12 The response rate disregards immaterial replies, such as acknowledgments of receipt and other replies that do not address the allegation.

13 The rejection rate is the share of replies rejecting the allegation out of all replies which were not immaterial and for which the content is known, disregarding those in translation and those that were inaccessible at the time the data were collected. States are classified according to their response rate alone in cases where the content of all replies is unknown.

In addition, countries often take an excessive amount of time to reply to communications. While the overall average is 104 days across all cases,¹⁴ Saudi Arabia took an average of 8 months to respond, India took 7.6 months, and the United States took 6.8 months. On the other hand, Oman, Mauritania (both 24 days on average), and Angola (43 days) are among the faster respondents.

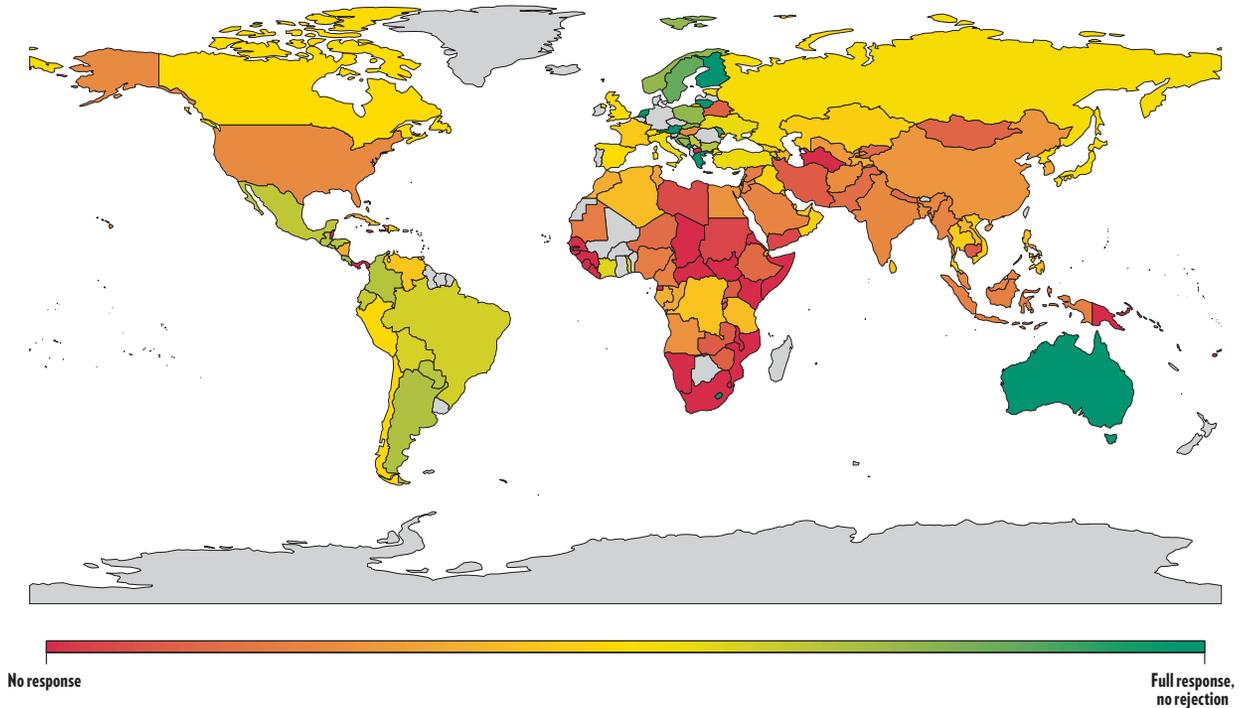


Figure 6: Level of constructive engagement by states with the mandate on individual cases (n=12,086) (grey indicates that no individual cases were raised for this country). Source: own data.

What are the consequences if no satisfactory reply is received by the mandate within a reasonable amount of time? For now, there are none except for the public disclosure of this fact in a summary report that receives little attention once it is published. All three mandate-holders have pledged to implement or improve follow-up on such cases. Nevertheless, implementation and improvement appear fragmentary at best. Some defenders show up repeatedly in the mandate’s communications over the years, so that among the 12,086 registered cases approximately 9,800 individuals are represented. However, repeated mentions refer almost exclusively to new developments in a defender’s situation, whereas 85 percent of all individuals were mentioned only once over the entire 17-year period. Considering that, on average, only 40 percent of all cases

¹⁴ The figures on state response times do not take into account immaterial replies. It might be interesting to note, however, that immaterial replies in fact took longer on average than substantive replies.

receive a substantive government reply, the majority of which reject the allegation raised, it is clear that there is no systematic follow-up on cases with unsatisfactory replies. The unanimous desire for better follow-up among mandate-holders and other stakeholders, combined with the absence of any improvement in reality, highlight the trade-off between addressing the maximum number of cases and raising cases more persistently.

While constructive engagement with the mandate is a key responsibility for states, this alone cannot be seen as an indicator of improvement for the individual concerned. First, it should again be noted that in at least 60 percent of the mandate's

Mandate-holders and other stakeholders have voiced a desire for better follow-up, yet in reality there has not been much improvement. This highlights the trade-off between addressing the maximum number of cases and raising cases more persistently.

cases, no information at all has been received from the states concerned.¹⁵ Secondly, even if the state claims to have taken steps to address the violation, such a response cannot be seen as a guarantee that the defender's situation has in fact improved. For instance, in a considerable number of cases, police protection offered by the state is insufficient or even rejected by the defender in question due to police complicity in previous abuse. Thirdly, any deterioration in the defender's situation will naturally not

be reported in the state's response. Fourthly, some defenders' situations do improve, despite the fact that the allegation was formally rejected by the state. One curious fact the data reveal is that, over the years, 65 state responses that justified an alleged violation under domestic law (typically the detention of a defender for an alleged crime) simultaneously reported an improvement in the defender's situation, such as his or her early release from prison.

15 Replies where translation or access were lacking were provisionally counted among those containing case information.

The Impact of Communications

The collection of independent information on the further development of cases raised is the only reliable method for investigating the impact of communications. To allow for general conclusions on all of the mandate’s cases, at least to some degree, I drew a random sample¹⁶ of cases for further study. For these sample cases, I examined the situation of each individual defender within one year after the Special Rapporteur’s communication and in relation to the abuse(s) reported in the communication. Based on the information collected, I classified case developments into the following categories: much better, somewhat better, stayed the same overall, somewhat worse, much worse, and both positive and negative developments. 89 such case assessments were provided via a survey sent to the organizations and individuals who had originally filed the respective case with the mandate. I also evaluated 382 additional cases through reports available online.

What is Impact?

The question of impact is naturally very difficult to address, for two main reasons. First, the mandate does not send its communications into a vacuum. The UN procedure often takes action amidst a wide range of other actors using similar or entirely different advocacy strategies on the same case, such as international or local NGOs, foreign diplomats, other UN agencies, newspapers, local lawyers, family members, or even state agents. In all likelihood, if any impact is achieved, then it is the result of the joint effort of all of these actors. Ideally, such action should be coordinated to achieve maximum pressure on the state and the perpetrators concerned. Such coordination is complicated by the semi-confidential nature of the communications procedure, as other actors learn about the mandate’s intervention only after three months at the earliest. However, dedicated efforts can be made to file cases with the mandate only when a positive effect as a result of a UN communication is at least likely.

The organizations and individuals surveyed in assessing case development were also asked about their perception of whether the Special Rapporteur’s communication had a distinct impact on the respective defender’s situation. In 25 percent of the 89 cases, respondents claimed that the intervention had “definitely” had a distinct impact, and in 40 percent of cases, they indicated that it “probably” had. In 24 percent of cases,

16 Cases were sampled on the basis of a random selection of communications that mentioned a maximum of 10 individuals and were issued between January 2004 and November 2015. Out of 661 cases in the sample, information was identified for 471 cases. The final sample is therefore not entirely random, as the availability of information is probably not randomly distributed across all cases.

Remarkably, in about two-thirds of cases surveyed, respondents said it was likely that the mandate had a distinct impact.

such a distinct impact was seen as rather or definitely unlikely.¹⁷ While respondents had incentives to highlight positive outcomes and possibly overrate the mandate's role in order to support the continuation of its work, the fact that they attested to the likelihood of a distinct impact in about two-thirds of the cases is rather remarkable. The second problem in evaluating impact is the definition of the intended outcome and its appropriate measurement. As indicated above, the mandate's casework sometimes aims to generate outcomes beyond an impact on the individual case, such as setting a thematic agenda or opening a dialogue about the issue of human rights defenders with the state concerned. Even if we focus on the individual, however, a positive outcome is less clear-cut than it might seem at first glance: for example, should a short-term improvement be considered a success even if the individual's situation deteriorates (shortly) afterward? Should improvement with regard to severe violations be prioritized over the (less tangible) absence of deterioration in cases of less severe repression?

This policy paper does not seek to give conclusive answers to these questions, but it tries to shed light on observable developments and discernible patterns therein. To incorporate not only short- but also medium-term developments, the individual observation period was extended to one year after the mandate's communication.

A Comparison of Case Developments Over Time

Among the 471 cases for which sufficient information was identified, around 24 percent experienced an improvement in their situation ("somewhat better" or "much better") with regard to the violation(s) addressed in the communication. In 50 percent of cases, the situation either stayed the same over the course of one year (i.e., the violation continued) or equally important positive and negative developments were reported. Furthermore, 26 percent of all defenders experienced a deterioration in their situation. In 17 such cases, their situation was much worse after one year. The variation of this distribution over time is shown in Figure 7. It emerges that the share of cases for which the situation stayed the same is relatively large in most years. In 2005 and 2013, situations deteriorated within one year in more than 40 percent of all the sample cases. It is interesting to observe that a high percentage of negative developments in 2013 coincided with a particularly hostile climate at the international level, where debates about reprisals against defenders for cooperating with the UN were conducted in open confrontation.¹⁸ On the other hand, in 2005 as well as in 2009, 2010, 2012, and 2015, there was significant improvement or even a complete recovery in about one-third of all cases. This finding is particularly encouraging given that, after the low point in 2013, the share of cases where defenders experienced improvement has again increased considerably. Although we cannot determine whether this distribution of developments is typical for defenders at risk around the world, it at least suggests that among the cases taken up by the mandate, the situation is not continuously going from bad to worse.

¹⁷ In 10 cases, respondents said they "did not know" whether the communication had a distinct impact.

¹⁸ Including, for example, the rejection of Resolution 24/24 in the General Assembly's Third Committee.

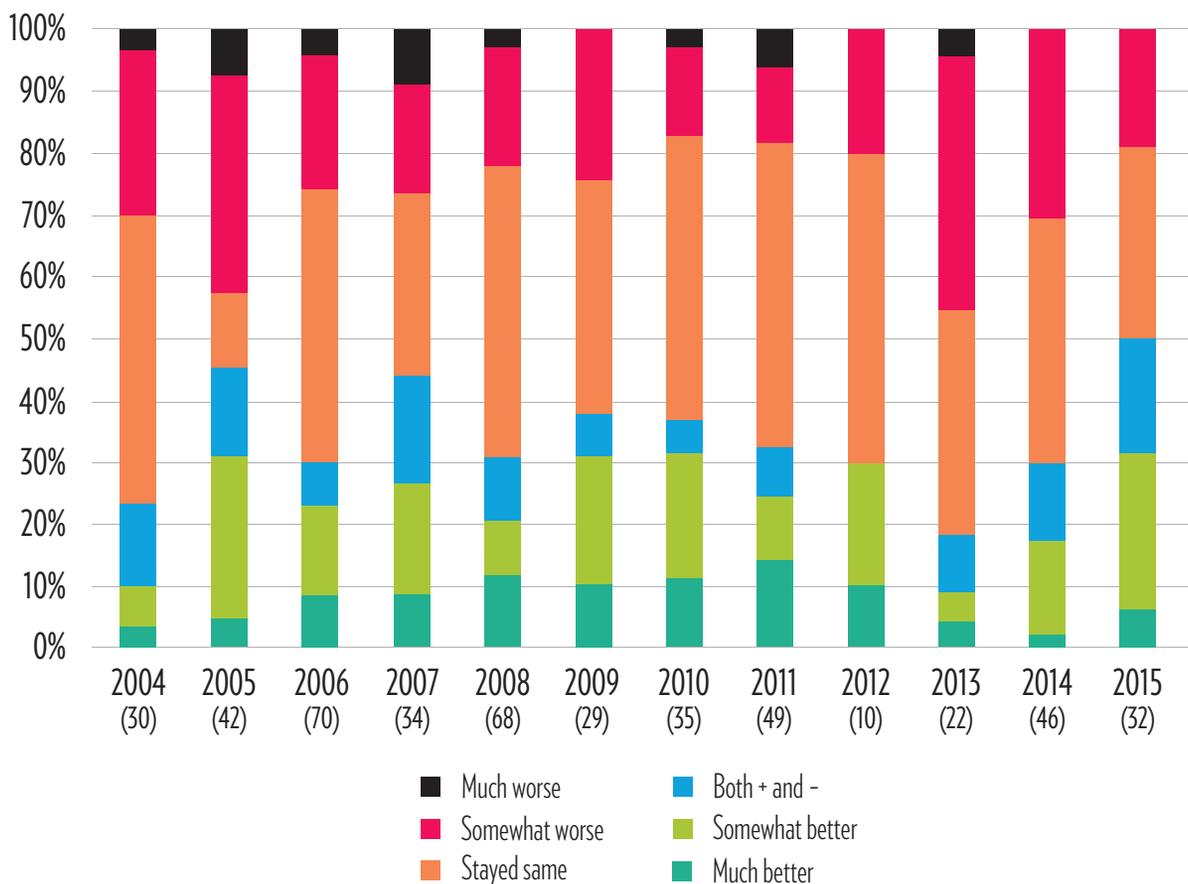


Figure 7: Distribution over time of case developments within one year (n=471). Source: own data.

Case Development and Geographic Location

The evolution of the situations of defenders according to their geographic locations is illustrated in Figure 8. The map indicates the share of sample cases which had a “much better” or “somewhat better” development.¹⁹ The first finding is that the observed developments are sometimes in stark contrast to the level of overall constructive engagement by the state concerned (cf. Figure 6), both for the better and for the worse. In Latin America, for example, state cooperation with the mandate is generally quite good, but cases in several countries – such as Mexico, Honduras, Ecuador, and Peru – were found to stay the same or deteriorate more often than improve. On the other hand, in countries such as Saudi Arabia, Kenya, Uganda, Niger, Pakistan, and Mongolia, there were more positive developments among the sample cases than would be expected

¹⁹ It should be noted that, although the sample consists of a total of 471 cases, that number represents fewer than five cases for many of the countries on the map and can therefore only be taken as a cautious indication of typical developments.

based on the state’s generally poor engagement with the mandate. Furthermore, it is interesting to note that the map indicates no clear pattern that would help explain the level of improvement in defender’s situations. While regime type would seem to be a relevant predictor, we find a range of democracies – such as Greece, India, Peru, Argentina, and Mexico – where the (majority of) sample cases did not improve over a one-year period. On the other hand, a higher share of improvements were observed in autocratic countries, such as Saudi Arabia or Azerbaijan.

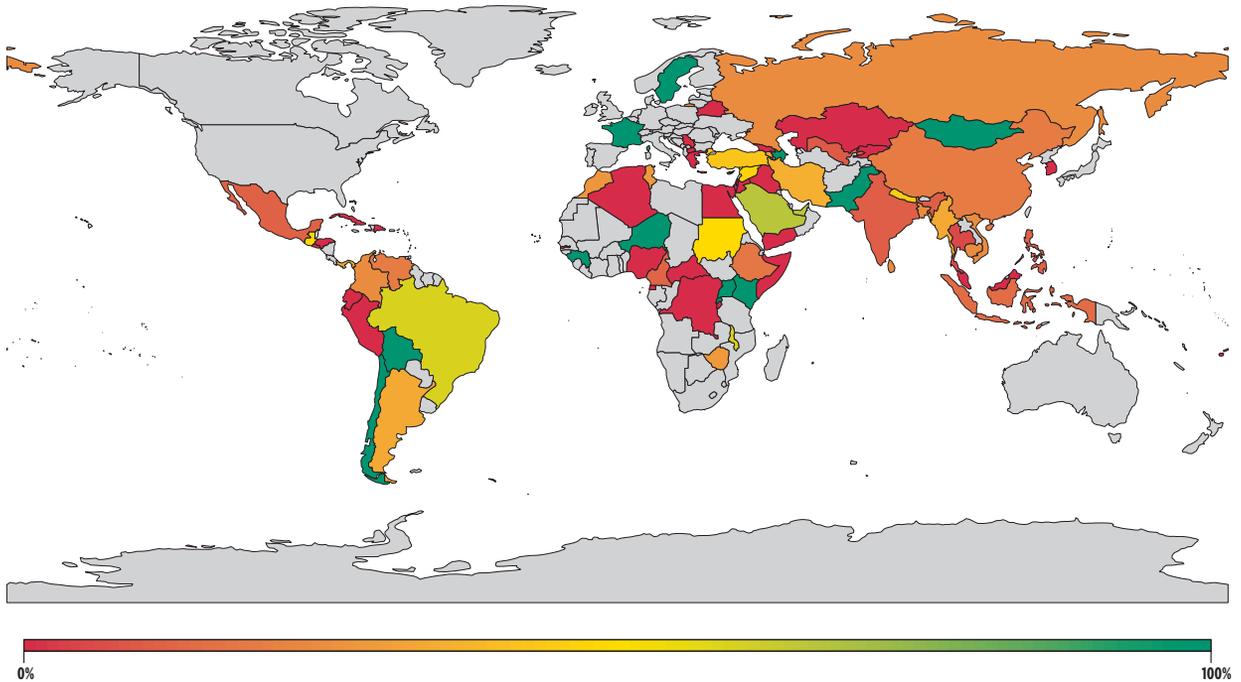


Figure 8: Percent of sample cases per country showing improvement within one year (n=471).
Source: own data.

Case Development and Initial Violations

As demonstrated above, detention cases are visibly overrepresented in the mandate’s individual casework. It is noteworthy that the distribution of the 471 sample cases across violation categories²⁰ suggests quite clearly that individuals who (also) experience detention have a much higher rate (30 percent) of situation improvement over one year than non-detention cases (16 percent). On the other hand, detention cases also showed the highest level of a combination of positive and negative developments within one year (14 percent), which points to the problem of short-term success – often in the form

²⁰ It is important to note that, since the development was recorded at the level of the individual and not the violation, and since there were often several violations per individual reported in the communication, it is not possible to determine the specific rate of improvement for each of the violation categories.

of release from detention – and subsequent deterioration, such as renewed detention or sentencing. Among defenders who were convicted by a court (according to the communication), there is also a relatively high share for whom the situation improved (36 percent, compared to 23 percent for those who were not convicted). Examples of such improvements after conviction include release on bail pending appeal, a favorable decision by an appellate court, or a presidential pardon.

At the same time, it does seem quite intuitive that the rate of improvement in the situation is generally higher for more severe violations, as there is simply more room for improvement than in cases of low-key violations, which can often be taken as early warnings of more severe infractions down the road: more than half of the cases of administrative harassment not only failed to improve, but even deteriorated within one year. Moreover, it is also worth considering that improvements following severe violations, such as a release after detention or a presidential pardon following conviction, might be part of a repressive state's intimidation strategy and do not necessarily serve as evidence of successful external influence. In many cases, it could arguably be a mix of both, as the political cost of prolonged detention might be too high precisely because of international attention.

NGOs and the mandate should consider that a more successful and preventative approach would require more emphasis on implementing concerted action in response to low-key incidents of repression against human rights defenders.

In addition, if we presume that international pressure makes a significant difference in how a case develops, the generally higher level of attention by NGOs, the media, or foreign diplomats to more severe violations could explain the higher improvement rate among detention cases.²¹ As a consequence, repressive states might deliberately opt for softer forms of repression. Soft repression is less risky, because as long as attacks on human rights defenders remain under a certain threshold, they will not attract much international attention at all. NGOs and the mandate should, therefore, consider that a more successful and preventative approach would require more emphasis on implementing concerted action in response to low-key incidents of repression against human rights defenders.

21 One exception to this rule seems to be cases of professional restrictions (such as disciplinary proceedings against lawyers), where six out of eight sample cases reported improvement – however, the number is too small to draw general conclusions. In fact, three of those cases were dismissed by the same court ruling and might therefore distort the picture.

Recommendations

To do justice to both its protective purpose and the unique opportunities inherent in a UN special procedure, the mandate on human rights defenders should aim to strike a balance between potential impact and balanced documentation of abuse cases. The mandate-holder, the Office of the UN High Commissioner for Human Rights, states, and civil society actors should each take a number of steps to facilitate such an approach and to enhance the efficiency of the UN communication procedure with regard to human rights defenders under threat.

Recommendations to the Mandate-holder and OHCHR

- Register and monitor submitted cases that were eligible but were not taken up in order to account for internal selection biases and to provide a compelling argument for the allocation of further resources.
- Inform victims or sources immediately upon the issuance of an urgent appeal or allegation letter. Consider forwarding communications to human rights focal points at relevant embassies located in the state concerned to facilitate follow-up.
- Change the policy on joint communications in light of the unequivocal evidence on resulting time lags, consequences for the overall number of cases taken up by the UN, and the likely effect on the potential impact of communications. Joint communications should be the exception rather than the rule, used only when circumstances dictate.
- Make systematic use of the common special procedures database in order to avoid uncoordinated case duplication instead of maximizing joint communications.
- Monitor the distribution of cases taken up according to geographic locations, defender profiles, and violations in order to build awareness of underrepresented areas. Actively seek out such cases instead of relying exclusively on submissions.
- Consider implementing more concerted action to counter low-key violations, which are often an early warning sign but are seldom met with adequate international pressure.
- Release communications publicly on a rolling basis, after three months or whenever a reply is received.
- Automatically remind states of outstanding cases if no reply is received after two months.

- Classify state responses (and lack thereof) systematically and make this data publicly accessible. Be aware of the possible misuse of replies and make sure not to publish sensitive information contained therein.
- In cooperation with civil society actors, pool strategic knowledge of different country contexts and thematic issue areas to better assess what type of intervention is likely to work in which situation (e.g. follow-up communications, a maximized number of new cases, press releases, or simultaneous intervention by various actors).

Recommendations to States

- Live up to the responsibility to cooperate with the mandate by answering cases systematically and providing substantial information in a timely manner. Set a good example for other governments.
- Participate in following up on individual cases through diplomatic channels.
- Hold other states accountable for their engagement with the procedure, including but not limited to the Universal Periodic Review process.
- Send the relevant cases that embassies become aware of to the mandate for action if an intervention by the UN seems potentially helpful.
- Increase the resources available to the mandate so that more defenders can benefit from the procedure as well as to facilitate better monitoring and systematic follow-up on cases.

Recommendations to NGOs and Defenders

- Only file cases with the mandate when a positive effect as a result of a UN communication is at least possible, if not likely. Provide details of your assessment together with your submission.
- Contribute your strategic knowledge on specific country contexts or thematic areas to help the mandate identify the type of intervention that is most likely to work in the case you submit.
- Help the mandate cover areas that are underrepresented in its casework by providing actionable cases pertinent to those areas.
- Instead of relying exclusively on international NGO partners, defenders should submit their own cases to the mandate for immediate action, even when it comes to softer forms of repression.

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