

## SPECIAL PROCEDURES IN THE DIGITAL AGE

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### INTRODUCTION

The established practices of UN Special Procedures, like those of the wider human rights community, are being challenged by the rise of information and communication technologies (ICTs). Special Procedures mandate-holders need to be able to embrace the opportunities that new ICTs – namely the hardware and software that facilitate the production, storage, transmission and reception of digital information – can provide.<sup>1</sup> If used sensitively, it seems ICTs present an opportunity to increase the pluralism of participation in human rights protection and promotion, and thus strengthen one of the core aims of human rights.<sup>2</sup>

An early example of this opportunity came in 2009, when the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, and then in 2010 his successor, Christof Heyns, were approached with mobile phone footage purporting to show grave human rights violations in Sri Lanka. After evaluating the footage, both Special Rapporteurs called on the Sri Lankan government to investigate the documented executions.<sup>3</sup> Without the mobile phone, this documentation would not have been possible, yet the use of this footage was not without its challenges.<sup>4</sup>

Based partly on this experience, and building on Alston's earlier work on the topic<sup>5</sup>, Heyns chose to dedicate one of his 2015 thematic reports to the question of how ICTs

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<sup>1</sup> David J McKenzie, 'Youth, ICTs, and Development' (World Bank 2007) <<http://documents.worldbank.org/curated/en/2007/03/7458887/youth-icts-development>> accessed 28 January 2016.

<sup>2</sup> Molly K Land, 'Democratizing Human Rights Fact-Finding' in Philip Alston and Sarah Knuckey (eds), *The Transformation of Human Rights Fact-Finding* (OUP 2016); Ella McPherson, 'Digital Human Rights Reporting by Civilian Witnesses: Surmounting the Verification Barrier' in Rebecca Ann Lind (ed), *Producing Theory in a Digital World 2.0: The Intersection of Audiences and Production in Contemporary Theory*, vol 2 (Peter Lang Publishing 2015).

<sup>3</sup> Thomas Probert 'Pursuing accountability in the UN Human Rights Council for violations of the right to life in armed conflict' in Dan Kuwali & Frans Viljoen (eds.) *"All Means Necessary": Protecting Civilians and Preventing Atrocities in Africa* (Pretoria University Law Press, forthcoming).

<sup>4</sup> For technical analyses of the verification of the video evidence see: Philip Alston, 'Technical Note Prepared by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr Philip Alston, in Relation to the Authenticity of the "Channel 4 videotape"' (January 2010) <<http://www.extrajudicialexecutions.org/application/media/SL%20Technical%20Note.doc>> accessed 11 February 2016 and UNHRC, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns: Addendum' (27 May 2011) UN Doc A/HRC/17/28/Add.1, Appendix.

<sup>5</sup> UNHRC, 'Interim Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston' (23 August 2010) UN Doc A/65/321 paras.3-11.

could be used better to secure human rights, focusing in particular on the right to life.<sup>6</sup> The report was well received by the Human Rights Council; many States expressed agreement with the observation that ICTs were transforming various dimensions of human rights work, and several underlined the report's key recommendation to the Office of the High Commissioner for Human Rights that it develop its capacity to evaluate digital evidence so as to support both the High Commissioner and the Special Procedures mechanisms.<sup>7</sup>

In this chapter, drawing on the research we contributed to Heyns' report, we outline ICTs' implications for Special Procedures' practices to protect and promote human rights. Though mandate holders undertake a variety of activities, we have chosen, in this chapter, to focus in particular on their formal communications, though many implications of the use of ICTs apply more broadly to Special Procedures' work. The communications mechanism is an element of the monitoring role of Special Procedures, in which they support States in their human rights responsibilities through pressing for accountability and preventing violations by recommending reforms.<sup>8</sup> Victims or those acting on their behalf may submit petitions documenting human rights violations to Special Procedures, who then evaluate these submissions and convert those deemed actionable into communications to implicated States.<sup>9</sup> ICTs have the potential to transform each of these three stages, but with each opportunity come risks that are both familiar and unprecedented in their extent. In this chapter, we outline ICTs' implications for each stage in turn and make recommendations for Special Procedures on how they might mitigate associated risks.

## PETITIONERS' SUBMISSIONS

Special Procedures provide official guidelines for petitioners on submitting information, asking that they transmit it via postal mail, fax, or email to an urgent appeals address. Some provide questionnaires that steer petitioners towards the provision of information specific to their mandate, but all ask for a minimum of information in order for the petition to be considered for evaluation.<sup>10</sup> We would argue that with the rise of ICTs,

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<sup>6</sup> UNHRC, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns: Use of Information and Communications Technologies to Secure the Right to Life' (24 April 2015) UN Doc A/HRC/29/37.

<sup>7</sup> UN Web TV, 'Clustered ID: SR on Executions & WG on Discrimination - 16th Meeting 29th Regular Session of Human Rights Council' (19 June 2015) <<http://webtv.un.org/search/clustered-id-sr-on-executions-wg-on-discrimination-16th-meeting-29th-regular-session-of-human-rights-council/4307581035001?term=heyns#full-text>> accessed 11 February 2016.

<sup>8</sup> OHCHR, 'Manual on Human Rights Monitoring' (United Nations Human Rights Office of the High Commissioner 2011) <<http://www.ohchr.org/Documents/Publications/Chapter02-MHRM.pdf>> accessed 28 January 2016, p 4.

<sup>9</sup> For a detailed explanation of the communications mechanism, see Marc Limon and Ted Piccone, 'Human Rights Special Procedures: Determinants of Influence' (Universal Rights Group and Foreign Policy at Brookings 2014) <<http://www.brookings.edu/~media/research/files/reports/2014/03/19-un-human-rights-experts-evaluation-piccone/un-human-rights-experts-evaluation-piccone.pdf>> accessed 28 January 2016.

<sup>10</sup> This includes details of the victim(s); location, date, and description of the documented event; details and possible motive of the perpetrator(s); petitions made to and actions of other national and international agents, if undertaken; and details on the petitioner, which are confidential. See Special Procedures of the Human Rights Council, 'Urgent Appeals and Letters of Allegation on Human Rights Violations' (Office of the United Nations High Commissioner for Human Rights n.d.)

Special Procedures will see an escalation in the variety and volume of petitioners as well as in the variety of formats and channels by which petitions are made.

Historically, knowledge about the communications mechanism has been sparse, so an escalation in the variety and volume of petitioners would be a positive change<sup>11</sup> – though, of course, this escalation may challenge Special Procedures’ oft-stretched capacities. ICTs that can connect mandate holders with potential petitioners offer an opportunity here. By publishing, interacting and networking on social media, for example, mandate holders can build awareness not only of their mandates but also of the work special procedures do and its relevance for the victims and witnesses of violations. Mandate holders should note, however, potential gaps arising in the uneven adoption of ICTs among and within populations; for example, the number of Twitter users per capita is correlated with GDP per capita.<sup>12</sup>

An ICT-enabled rise in the variety of petitioners would be in line with wider trends in the human rights fact-finding arena. We are now in the ‘third generation’ of human rights fact-finding, a generation born of ICTs and characterised by a growing number and diversity of players – in contrast to the first generation, dominated by intergovernmental organisations, and the second generation, dominated by large, international human rights nongovernmental organisations (NGOs). This third generation is also characterised by an ICT-fuelled proliferation in the formats of human rights information and evidence.<sup>13</sup> Despite Special Procedures’ official guidelines for petitioners, they can expect to be contacted via any communications medium in which they have a presence, in any format supported by that medium. Of course, some of these mediums, such as Twitter with its 140-character tweet limit, are at odds with the extensive information required by Special Procedures, but they can be gateways for interactions leading to formal petitions. Some formats, like the mobile phone video mentioned above, may be departures from the usual evidence received by mandate holders, complicating the evaluation of these petitions – a challenge we return to in the next section. Furthermore, many of these mediums and formats create new security risks for petitioners.

Digital literacy concerning security is not as high for human rights defenders as one would hope, which is understandable given the time and effort required to keep abreast of new developments<sup>14</sup>; it seems reasonable to suspect that in many cases it is even lower for civilian witnesses. Special Procedures therefore cannot assume that petitioners are aware of the risks they create for themselves when they submit information digitally, and, given the experiences human rights defenders have had around the world with surveillance, these risks can be significant. In the spaces where Special Procedures ask for civilian witnesses to submit information via the OHCHR’s urgent appeals email address, they should therefore also point them to resources on how to do so securely.<sup>15</sup>

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<[http://www2.ohchr.org/english/bodies/chr/special/docs/communicationsbrochure\\_en.pdf](http://www2.ohchr.org/english/bodies/chr/special/docs/communicationsbrochure_en.pdf)> accessed 28 January 2016.

<sup>11</sup> Limon and Piccone (n 8), p 28.

<sup>12</sup> Delia Mocanu and others, ‘The Twitter of Babel: Mapping World Languages through Microblogging Platforms’ (2013) 8(4) PLoS ONE e61981, Figure 3.

<sup>13</sup> Philip Alston, ‘Introduction: Third Generation Human Rights Fact-Finding’, *Proceedings of the Annual Meeting (American Society of International Law)* (2013), pp 61-62.

<sup>14</sup> Stephanie Hankey and Daniel Ó Clunaigh, ‘Rethinking Risk and Security of Human Rights Defenders in the Digital Age’ (2013) 5 Journal of Human Rights Practice, p 542.

<sup>15</sup> UNHRC (n 6), p 19 para 98. Examples of guides tailored to human rights defenders include Surveillance Self-Defense, produced by the Electronic Frontier Foundation, and Security in-a-Box, by Front Line

In the preparation of our research for the Special Rapporteur's report it became clear that over the past several years, OHCHR has been developing an updated mechanism for petitioners to submit information to Special Procedures – a welcome development, given the challenges outlined above. This updated questionnaire will be designed so as to lower thresholds to participation, offer greater security to the individual submitting information, and at the same time make the content of submissions more useable.

## **SPECIAL PROCEDURES' EVALUATION OF SUBMISSIONS**

The proliferation of information from the field produced and transmitted with the aid of ICTs enhances fact-finding not just because it enables a greater variety of petitioners, but also because it helps fill what traditionally have been informational gaps. These may arise because fact-finders cannot visit the location in question, either because of security risks<sup>16</sup> or because the corresponding State has not issued an invitation.<sup>17</sup> They may also emerge in rapidly unfolding situations where fact-finders are not yet on the ground. That being said, this ICT-fuelled proliferation of information also poses challenges for Special Procedures' evaluation practices.

Little transparency exists around how mandate holders select the petitions they will transform into communications to States, in part because this selection process is at the discretion of each mandate holder.<sup>18</sup> However, in general, ICT-enabled information from the field creates similar problems for Special Procedures as it does for the wider human rights fact-finding community. One such problem is volume<sup>19</sup>; it is possible that a swelling tide of digital petitions will swamp the resources mandates have for fact-finding. In this case, Special Procedures can turn to ICTs to manage the information and workflows related to submissions and communications, boosting transparency in the process.<sup>20</sup> These tools also support the security of digital information, mitigating the risks of data corruption and deletion, the latter particularly a problem when content contravenes the community standards of social media applications.<sup>21</sup>

A second problem is the complication of information verification, whether this information is part of a submitted petition or is information used to corroborate a petition. Mandate holders are instructed, in their Code of Conduct, to 'rely on objective and dependable facts based on evidentiary standards that are appropriate to the

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Defenders and the Tactical Technology Collective. Of course, civilian witnesses should also be cautious with deploying these technologies, as this has been used to identify and target individuals.

<sup>16</sup> UNHRC (n 5), p 3, para 4.

<sup>17</sup> Limon and Piccone (n 8), p 24.

<sup>18</sup> Ted Piccone, 'Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights' (Foreign Policy at Brookings 2010) <[http://www.brookings.edu/~media/research/files/reports/2010/10/human-rights-piccone/10\\_human\\_rights\\_piccone.pdf](http://www.brookings.edu/~media/research/files/reports/2010/10/human-rights-piccone/10_human_rights_piccone.pdf)> accessed 28 January 2016, p 22 para 28.

<sup>19</sup> Ella McPherson, 'ICTs and Human Rights Practice: A Report Prepared for the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions' (University of Cambridge Centre of Governance and Human Rights 2015), p 15.

<sup>20</sup> Limon and Piccone (n 8), p 38. For example, Martus, developed by Benetech, and OpenEvsys, developed by HURIDOCS, are open source, no cost information management tools designed for human rights defenders.

<sup>21</sup> Madeleine Bair, 'Navigating the Ethics of Citizen Video: The Case of a Sexual Assault in Egypt' (2014) 19 Arab Media & Society 1, p 3.

non-judicial character of the reports and conclusions they are called upon to draw up'.<sup>22</sup> While the specifics of evidentiary standards may vary depending on whether the information is being evaluated for use in Special Procedures communications, NGO advocacy, or the courtroom, in general verification involves the corroboration of information with other methods and sources. Specifically, it is the information's content and metadata – namely data about the information, such as the place, time and source of production – that are corroborated, and it follows that the more metadata available, the easier corroboration is. The verification challenge presented by digital information is that the structures and affordances of the ICTs with which it is produced and transmitted can alter and restrict the metadata that accompanies the information.<sup>23</sup> For example, though digital cameras can embed metadata such as time and place, social media applications tend to strip these details out at the point of upload. This feature, as well as social media users' ability to create pseudonymous accounts, facilitates the disembodiment of information from the context of its production.<sup>24</sup> The disembodiment affordance also enables the manipulation of metadata, as when YouTube videos are scraped and re-published with different claims as to their locations, dates and subjects.<sup>25</sup>

The potential for metadata paucity as well as the risk of manipulation underscore the importance of developing and deploying robust and defensible digital verification practices. Though the basic tenets of verification do not change with the introduction of digital information, the relevant tactics and tools do evolve relatively rapidly – as do the regulations and features of the largely commercial technologies on which the production and transmission of this information depends. This shifting terrain requires a level of expertise to master confidently, and, as mentioned above, Special Rapporteur Heyns has recommended that the OHCHR employ an expert in the evaluation of digital evidence. This appointment would likely be of significant benefit to Special Procedures evaluating digital information for transformation into communications to States, especially if accompanied by more thoroughgoing efforts on the part of mandate holders and staff supporting them to enhance their own digital verification literacy.<sup>26</sup>

## **SPECIAL PROCEDURES' COMMUNICATIONS TO STATES**

Special Procedures evaluate submissions with an eye towards sending related communications to States. These communications take two forms, namely urgent appeals, which detail imminent or anticipated grave violations, and allegation letters,

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<sup>22</sup> UNHRC, 'Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council' (2007) <[www.ohchr.org/Documents/HRBodies/SP/CodeofConduct\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/SP/CodeofConduct_EN.pdf)> accessed 28 January 2016, Article 8(c).

<sup>23</sup> Christoph Koettl, 'Citizen Media Research and Verification: An Analytical Framework for Human Rights Practitioners' (University of Cambridge Centre of Governance and Human Rights 2016), p 12.

<sup>24</sup> Ella McPherson, 'Advocacy Organizations' Evaluation of Social Media Information for NGO Journalism: The Evidence and Engagement Models' (2014) 59 *American Behavioral Scientist* 124., p 15.

<sup>25</sup> For an example of one such case, see Madeleine Bair and Vienna Maglio, 'Video Exposes Police Abuse in Venezuela (Or Is It Mexico? Or Colombia?)' <<http://blog.witness.org/2014/02/video-exposes-police-abuse-venezuela-mexico-colombia/>> accessed 28 January 2016.

<sup>26</sup> Examples of resources for digital verification literacy include Amnesty International's Citizen Evidence Lab (<http://citizenevidence.org>) and the European Journalism Centre's *Verification Handbook* (<http://verificationhandbook.com>).

which address past violations.<sup>27</sup> These letters, without making accusations, request that an investigation take place and that the outcomes be communicated to the Special Rapporteur. The communications remain confidential for several months before being published as part of a digest presented to the Council at every session. However, mandate holders may decide to take additional measures when they deem the State responses to be inadequate, when new information surfaces, or when the urgency of the situation warrants it. Though the communications are generally sent through diplomatic channels, these additional measures may involve press releases and conferences.<sup>28</sup>

Mandate holders tread carefully, however, when speaking with the media, as historically, this has been a significant cause of soured relationships between Special Procedures and States.<sup>29</sup> The Special Procedures' Manual of Operations states that mandate holders should, in all cases, first deploy the communications mechanism before engaging the media and should give the State in question advance warning of any press interactions, as well as the content of any press releases.<sup>30</sup> These measures are intended to create trust between Special Procedures and States.<sup>31</sup> That being said, it is important to note the increasing salience of the media role for contemporary working methods of many of the mandate holders; they are no longer primarily rapporteurs to the UN Human Rights Council but rather are now also thought of as the designated voice within the UN on a particular subject.

In general, Special Procedures should be circumspect about their use of ICTs such as social media in concert with their communications work. The same considerations as apply to their use of the mainstream media should apply here, namely that information related to the communications should only be posted online if and when the information has been made available to the press. This approach stands in contrast to the behaviour of their colleagues at human rights NGOs, many of whom have embraced social media for their advocacy work, using it for direct targeting and for public mobilisation.<sup>32</sup> It also runs contrary to the dominant cultures of social media, often characterised by speed, informality and spontaneity – not by deliberateness. These characteristics, however, layer on additional risks for the human rights community at large, as they increase the likelihood of error – anathema to institutions whose power depends on their credibility.

## CONCLUSION

As outlined in this chapter, ICTs can provide significant opportunities for Special Procedures with reference to their communications mechanism. They allow Special Rapporteurs to raise awareness of their mandates, which in turn may increase the pluralism of petitioners submitting information on violations – thereby broadening access to human rights accountability. Though a rise in digital information submitted to

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<sup>27</sup> Limon and Piccone (n 8), p 28.

<sup>28</sup> OHCHR, 'Manual of Operations of the Special Procedures of the Human Rights Council' (United Nations Human Rights Office of the High Commissioner 2008) <[http://www.ohchr.org/Documents/HRBodies/SP/Manual\\_Operations2008.pdf](http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf)> accessed 28 January 2016, p 12 para 28.

<sup>29</sup> Limon and Piccone (n 8), p. 32.

<sup>30</sup> OHCHR (n 28), p 15 paras 50-51.

<sup>31</sup> Limon and Piccone (n 8), p 32.

<sup>32</sup> McPherson (n 19), pp 28-32.

the communications mechanism does raise challenges in terms of security, volume overload and verification processes, ICTs can also mitigate these challenges. Encryption and anonymity technologies support more secure information transmission, while information management tools and verification applications can facilitate faster and simpler information evaluation.

That being said, getting to grips with these emergent and continually evolving technologies requires levels of digital literacy that do not yet seem to have permeated UN human rights mechanisms, though OHCHR appears well aware of its need to catch up.<sup>33</sup> As mentioned, significantly augmenting in-house expertise, whether through a consultancy or through digital literacy training, would support this process, in part by familiarising and thus demystifying the use of ICTs and digital information within international human rights machinery. Special Procedures, and other mechanisms, (such as Commissions of Inquiry) are already confronted by the challenge of digital information on human rights violations that they are not equipped to analyse appropriately, as well as by the challenge of the sheer volume of such information.<sup>34</sup> Given the trajectory of the usage of digital technology to document and report on human rights violations, this situation is likely to become a more serious capacity gap if not addressed proactively.

At the same time as Special Procedures invest in the opportunities of these technologies, however, they must remain aware of their opportunity costs. Devoting resources such as time and money to the understanding and use of ICTs, in the context of a resource-scarce environment like the Special Procedures system, means that other activities must be foregone. Furthermore, an overreliance on ICT-enabled petition information can carve new boundaries of inclusion and exclusion vis-à-vis human rights accountability that map onto power relations embedded in offline characteristics, such as gender, wealth and education levels. Victims and violations on the other side of the digital divide should not be overlooked simply because they are not documented digitally. As such, the use of ICTs should complement rather than supplant traditional practices within the Special Procedures communications mechanism and more broadly.

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<sup>33</sup> The Office has for example been collaborating with organisations such as the ICT4Peace Foundation to develop a strategy to this end, see ICT4Peace, ‘OHCHR Meeting in Geneva: Using ICTs to Strengthen Human Rights’ (28 March 2014) <<http://ict4peace.org/ohchr-meeting-in-geneva/>> accessed 11 February 2016.

<sup>34</sup> UNHRC (n 6) paras. 37-42.