

26 April 2020

Dear Members of the Consultative Group,

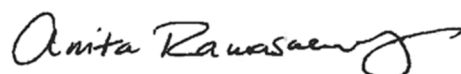
On behalf of the Coordination Committee of Special Procedures, I am writing to you in connection with the selection of new mandate holders, in particular the selection of several of our future colleagues at the upcoming session of the Human Rights Council in June. As you have just commenced this important task, I would like to assure you of the full support of the Committee. As with your predecessors, the Committee would be happy to meet with you at a mutually convenient time to exchange views on good practices for the identification of a broad range of suitable candidates for mandates, and the selection process itself.

The high quality and integrity of mandate holders are crucial to ensure the effectiveness and credibility of the system of special procedures. I recently invited the relevant outgoing mandate holders to provide information on the skills they consider essential for the new mandate holders to discharge the mandate. I sought their views in line with Human Rights Council resolution 5/1, paragraph 51, which says that “the Consultative Group should take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant requirements for each mandate”.

I am therefore pleased to share with you the contributions received from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Annex I), the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Annex II), the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (Annex III) and the Special Rapporteur on trafficking in persons, especially women and children (Annex IV).

I trust that you will find these suggestions useful as you undertake the selection process. I am at your disposal to discuss this matter further if you have additional questions or require additional feedback. As indicated earlier, special procedures mandate holders have decided that these contributions should be made publicly available as a way to enhance transparency. This letter will therefore be posted on the public website of special procedures. I wish you success in your deliberations.

Sincerely yours,



Anita Ramasastry
Chair of the Coordination Committee of Special Procedures

cc: H.E. Ms. Elisabeth Tichy-Fisslberger
President of the Human Rights Council

Annex I

CONTRIBUTION FROM THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

I understand that it has become part of Special Procedures practice for an outgoing mandate-holder to provide input to the Consultative Group in accordance with Human Rights Council resolution 5/1, paragraph 51, which provides that “the Consultative Group should take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant requirements for each mandate”. By this letter I am delighted to provide some thoughts.

Since my appointment in June 2014, I have worked with a range of mandate-holders with diverse expertise, experience and skills who have succeeded in the objectives that the Human Rights Council has set out for us. I do not perceive one set of factors that can be laid out as a requirement. Thus, rather than highlight specific “requirements” for the mandate on freedom of opinion and expression, it may perhaps be more helpful to highlight the kind of work that I have pursued as Special Rapporteur. It may be that others would identify approaches and activities alternative to the ones noted here, or specific expertise of particular value, and I think that kind of creativity should be welcomed given the ever-changing dynamics of human rights monitoring, technology, and external forces (as we are witnessing today in the context of the pandemic). I also believe it is particularly worthwhile to take into account the views of stakeholders, including those civil society organizations that have played a constructive role in the work of the mandate over a period of years, if not decades. (For instance, please see the statement of multiple organizations, Selection and Appointment of a New Mandate Holder on the Promotion and Protection of the Right to Freedom of Opinion and Expression, published on 9 March 2020, available at <https://www.article19.org/wp-content/uploads/2020/03/Selection-and-appointment-criteria-for-a-new-Special-Rapporteur-on-the-promotion-and-protection-of-the-right-to-freedom-of-opinion-and-expression.pdf>.)

That said, I will make one general observation pertaining to relevant expertise. I have found it particularly important to enjoy an understanding and appreciation of and engagement with human rights law in general – its substantive law, its enforcement through UN, regional and national mechanisms, and its application in a dynamic environment of multiple actors (Governments, civil society, private business, the media, regional institutions, other UN bodies and agencies, treaty bodies, and so forth).

Independence from States, private actors and civil society is obviously critical in order to interpret and apply the law to the range of situations presented – and to do so without the perception of undue influence by any particular actor. Further, it is not that a mandate-holder must have expertise in each of these various elements of human rights law and practice. Rather, I have found it valuable (and enriching, personally and professionally) to be ready to deepen one’s expertise in these areas and to be prepared to learn from others, particularly given the scope and depth of the mandate’s issues.

Among the main areas of work have been the following three:

Communications with Governments and non-State actors: The mandate receives hundreds of communications annually concerning threats to and violations of the right to freedom of opinion and expression. In turn, the mandate – often in coordination with other mandate-holders – issues allegation letters, urgent appeals and other letters and legislative comments. Through 9 April of this year I have

sent or participated in at least 1375 such communications to Governments or, in a small number of instances, private companies. Such letters often involve core issues of concern to the mandate, as defined by the Council, such as the protection of media workers, the promotion of expression of women, censorship of dissenting voices, and so forth. It constitutes a significant workload for the mandate-holder and OHCHR officers, and it bears keeping in mind this workload during the selection process.

I would note that the response rate to communications has often been limited. According to the latest communications report of Special Procedures (A/HRC/43/77 (2020)), from June 2006 through November 2019, of 3526 communications sent, the response rate was only 54%. Many of those responses, moreover, are not substantive but merely confirm receipt. I have sought to find ways to encourage increased engagement with our communications, and I am sure that there is additional work that future mandate-holders can do to encourage a stronger response rate.

Country visits: A mandate-holder typically conducts two official country visits annually, though this may vary depending on funding, invitations, and other factors. These official visits serve as a basis for reporting to the Council, and they have been extraordinary opportunities to evaluate how States implement their obligations in their domestic legal frameworks. But they are not the only opportunities to develop the kind of expertise that the Council has long found critical to the human rights mandates. In addition, the mandate enjoys the attention of numerous stakeholders worldwide, resulting in regular invitations to visit countries on academic bases or in the context of policy and legislative developments in countries and regions. Such ‘academic visits’, lectures, engagements with inter-governmental organizations and regional bodies, consultations with other stakeholders, and other mandate-related work produce a significant travel agenda. This kind of engagement has been an essential feature of the mandate, predating my appointment, and it has been a major source of learning for me as mandate-holder.

I would also add that country visits highlight for mandate-holders the reality that the implementation of human rights law involves a complex set of factors. For instance, the protection of freedom of expression often depends on an independent judiciary, the protection of human rights defenders who engage with the mandate, non-discrimination in the implementation of laws, a safe and secure media environment, access to an uncensored internet, a professional and independent broadcast regulatory body, a government that refrains from propaganda and disinformation, and many other factors. The willingness to consider the range of issues, and to engage with other mandate-holders on them, contributes to the depth of the work of this mandate.

Thematic reporting: Over the course of my appointment, I have aimed to focus on issues that have been at the core of increasing restrictions on freedom of expression. As so much expression has moved from physical to virtual spaces, I have also followed the lead of my predecessor, who reported on the internet (2011) and surveillance (2013), and expanded the work on technology and freedom of expression. The focus on the private sector, technology and freedom of expression has led to a number of findings concerning the increase in various forms of government regulation and criminalization that has undermined online speech as well as private actor policies that enable space for incitement to violence, harassment of vulnerable communities, and gender-based attacks of all sorts.

The preparation of thematic reports has generated further engagements with governments, private business and civil society. This has also been a positive aspect of the work of the mandate, deepening my ability to articulate the way in which human rights law may be applied in the context of a changing technological environment. It could not take place without the active support of those

stakeholders, in particular the expert support of human rights officer at OHCHR's Special Procedures Branch. The eagerness of stakeholders and OHCHR experts to participate in consultations and other research leading to annual thematic reports depends upon the mandate-holder's engagement with them, clarity about the goals of any particular consultation, and a willingness to listen and learn from them. I may not have always succeeded at that, but it has been a principal objective that, in my view, has deepened the value of the reporting.

Annex II

CONTRIBUTION FROM THE SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

Based on my experience after having served as a Special Rapporteur on the right to physical and mental health since August 2014, I would like to propose that the Coordinating Committee conveys the following. These are suggestions for the consideration of the Consultative Group in its assessment of the nominations for the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (right to physical and mental health):

1. Proven record of work experience in human rights protection and advocacy in the area of public health at the international, regional and national levels. Good knowledge of the social and underlying determinants of physical health, mental health and sexual and reproductive health. Good understanding of the societal, cultural and political context in which the realization of the right to physical and mental health can be promoted or hindered.

2. Solid expertise in human rights, especially economic, social and cultural rights, as well as knowledge of medical ethics and public health. Validated ability to formulate legally-informed opinions on health-related issues.

3. Extensive experience of working with healthcare workers, patient groups, civil society organizations, and groups in vulnerable situations. Understanding of the situation of persons in need of protection of their right to health, and ability to empower them.

4. Established expertise in the consultation, formulation, negotiation and implementation of public policies. Record of effective engagement with authorities and decision-makers in addressing human rights concerns related to health.

5. Knowledge of current global discussions in the area of mental health, as a new global priority, including advances by the Human Rights Council (Resolutions 32/18 and 33/13) which have stressed the relevance of mainstreaming human rights into mental health-care understanding and practice.

With regard to professional background, I would suggest not to give preference to any relevant professional background. The mandate holder may have legal, medical, social sciences or other related background. The most important aspect is his/her experience and expertise in the areas and activities mentioned in points 1 to 5. However, should the candidate have a medical background, it is important that he/she is independent from powerful medical industries (such as pharmaceutical companies or companies producing medical equipment) that traditionally have strong links with representatives of specialized biomedicine and the biomedical model which usually dismiss human rights.

I would like to draw the attention of Consultative Group that since establishment of the mandate in 2002, three persons have been appointed as Special Rapporteurs on the right to physical and mental health, and all three were men. My suggestion would be that should there be two equally

competent and experienced candidates, a man and a woman, preference is given to the female candidate.

In addition to the above suggestions, the mandate of the Special Rapporteur on the right to physical and mental health involves frequent and strenuous travel, including country visits during which remote healthcare facilities, social care institutions, prisons and communities are visited. In that context, the mandate holder should be able to devote sufficient time for such visits, be physically able to undertake them and also be willing to travel in extreme physical conditions.

Annex III

CONTRIBUTION FROM THE SPECIAL RAPPORTEUR ON THE IMPLICATIONS FOR HUMAN RIGHTS OF THE ENVIRONMENTALLY SOUND MANAGEMENT AND DISPOSAL OF HAZARDOUS SUBSTANCES AND WASTES

Thank you for the opportunity to offer a few comments on my successor under the UN Human Rights Council's mandate on "hazardous substances and wastes." I would like to reiterate my thanks for the confidence placed in me by the Human Rights Council and its Member States over my past two terms. I am pleased to reflect back on the progress made under the mandate over these past six years, although much more remains to be done and, in many States, the status is of deep regression. I look forward to watching the mandate continue to evolve and respond to these challenges. I offer the following as factors for consideration in the selection process, and hope they are of use to you in your deliberations.

Female rapporteur – Not since 1995 has a woman been appointed the rapporteur on hazardous substances and wastes (toxics). The past six selections of rapporteurs on toxics and the environment have all been male (please see Table below). Women have a unique perspective and relationship with the hazards and risks of toxic chemicals. The issues raised by toxics are intimately connected with women's rights and the role of women in modern society, not simply as mothers and caregivers, but also in the type of work they often perform that places themselves and their children at grave risks of exposure to toxic substances. A woman's voice must be heard more clearly by the UN Human Rights Council on the issue of hazardous substances. From my perspective, a very strong preference should be given to qualified female candidates by consultative group, perhaps even to be viewed as a requirement for my successor.

Medical, epidemiological or other biotechnical expertise – The mandate is by-and-large addressing impacts on human health. Thus, the next mandate holder should have training and/or expertise in medicine, epidemiology, biochemistry or molecular biology to help ensure their credibility in health related debates around toxic exposures. If they do not, in my view, the mandate holder will neither be able to effectively engage in debate the experts in government and industry that will undoubtedly have differences of opinion, nor comfortably communicate with the public-at-large on these issues.

Law degree not necessary – Many of the most impressive and effective individuals working on toxic chemical and waste issues are not lawyers. The issues that most urgently must be addressed under the mandate are actually not legal issues. They are primarily scientific, technical, economic, political and moral issues. Practically speaking, there is such a wide gap between the science and the law, and rates of compliance with the law remain so abysmal, that experience with specific or general environmental laws will not be of much help in addressing human rights violations and abuses that are encountered under the mandate. Because of the breath of this mandate and the specialization of lawyers, in practice it would be difficult to find a lawyer-candidate with the necessary breath of expertise. Of the past six holders of toxics and the environment mandates, four of them have also been lawyers.

Low and middle-income countries – Given the genesis of this mandate in exploitation of the resources, people and environment of low- and middle-income countries, it is long-overdue that the next mandate holder be from the global South. Not only have the past three mandate holders have

been white, male and lawyers, but they have also been from wealthy, western countries. Never has there been a mandate holder from the GRULAC region.

Experience in government and/or business – I found my decade of experience as a scientist in the relevant industries extremely useful in being able to have detailed discussions with relevant interlocutors in the private sector and to gain some degree of confidence from them. Equally, I found my previous experience negotiating and engaging in dialog with governments very useful. At the very least, the relevant mandate holders should have some experience with both, ideally significant experience working in industry and/or government, while being mindful of conflicts, which I address separately.

Conflicts of interest, and the perception of such – As this mandate has become more deeply engaged in the activities of the private sector, I am concerned that relevant industries may nominate friendly candidates. Candidates should be thoroughly screened to avoid corporate capture and to preserve its independence. Furthermore, I must caution against nominating someone with exclusive or even significant recent relationships with civil society and advocacy organizations, given the strong connection of this mandate with the impacts of the private sector. In my case, I had nearly ten years of experience in the private sector that balanced my four years of work with a civil society organization, helping to alleviate some of the perception of there being a conflict of interest and establish trust. This was extremely important in discussions with certain companies.

These are few thoughts that I hope you will find useful in your deliberations on my successor. It has been an honor and a privilege serving as the Rapporteur on toxics and thank you for the opportunity.

Table: Profile of holders of environment-related mandates of the Human Rights Council and former Commission on Human Rights.

Rapporteur	Mandate	Gender	Training	UN region
Fatma Zohra Ouhachi-Vesely	Toxic waste	Female	N/A	Africa
Okechukwu Ibeanu	Toxic waste	Male	Political Science (PhD)	Africa
Calin Georgescu	Toxic waste	Male	Agricultural scientist (PhD)	WEOG
Marc Pallemarts	Toxics	Male	Lawyer	WEOG
John Knox	Environment	Male	Lawyer	WEOG
Baskut Tuncak	Toxic waste	Male	Lawyer & Chemist	WEOG
David Boyd	Environment	Male	Lawyer	WEOG

Annex IV

CONTRIBUTIONS FROM THE SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

Profound knowledge of the main international instruments on trafficking, and of those international instruments that have a significant impact on issues related to trafficking, such as CEDAW, the Convention on the Rights of the Child, Slavery Conventions, and Forced Labour Convention and Protocol. Good understanding of the differences and connections between trafficking in persons, slavery and practices similar to slavery, and forced labour, with a view to ensuring equal protection of the rights of victims and potential victims.

Profound knowledge of trafficked persons' rights, including victims' rights in criminal proceedings, non-punishment for illicit activities committed as a direct consequence of their trafficking situation, right to assistance and protection, right to residence status, right to effective remedies including restitution, restoration, compensations and guarantee of non repetition.

Good understanding of differences and connections between trafficking in persons and smuggling of migrants, especially concerning the fact that a smuggling scheme can become trafficking during the journey of a migrant, and that the consent of a person to migrate irregularly cannot be used to disqualify the person from being considered a trafficking victim, if the relevant grounds have been found.

Good understanding of the connections between anti-trafficking and issues related to migration policies such as, for example, restrictive migration policies as factors exacerbating social vulnerabilities, and the need to establish regular channels for migration.

Good understanding of the connections between anti-trafficking and asylum regulations, in particular regarding the possibility to ensure early support to victims and potential victims of trafficking in the course of asylum procedures.

Good understanding of issues relating to trafficking for the purpose of labour exploitation, its massive dimension, the need to engage with the private sector, trade unions and NGOs to eradicate trafficking from companies' operations and from their supply chains.

Good knowledge and understanding of the need to make remedies effective, especially with respect to compensation as a means to promote long-term social inclusion of survivors. Balanced approach to issues concerning the relationships between anti-trafficking and prostitution policies and regulations. Since Member States have different prostitution laws, it is crucial to ensure that the prevention of and fight against trafficking for sexual exploitation, and the rights of concerned persons, are always prioritised under any regulation on prostitution.

Good understanding of the need to prioritise the prevention of child trafficking, address the specific vulnerabilities of children, and in particular of children on the move. Children, even when there are indication of trafficking, must enjoy protection under the child protection systems, and if appropriate additional protection under the anti-trafficking regulations, which could be of crucial importance when they are close to adulthood.

Good understanding of the connections between child protection, migration regulations, and child protection in conflict context, in particular with respect to the campaign to ban child detention, which the mandate joined, and the proposal - put forward jointly by the Special Rapporteur on trafficking and the Special Rapporteur on the sale of children - of including trafficking among the six grave violations and abuses against children that should be considered as grounds on which to bar countries from contributing troops to United Nations operations.

Gender-based approach to anti-trafficking, which includes deep understanding of a) root causes such as gender discrimination, limited access to material and cultural resources, domestic and sexual violence etc.; b) gender-based vulnerability factors during the migration process or the victimisation process such as rape, pregnancy, forced abortion, and sexual exploitation; c) transformative social inclusion programmes, not based on traditional gender roles but exploring new areas of skill acquisition, based on women's aspirations and preferences.

Good relationships with CSOs active in the field of anti-trafficking such as, among others, GAATW, La Strada International, Free the Slaves, Anti-Slavery, Caritas Internationalis etc.