

25 April 2023

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 human rights and fundamental freedoms while countering terrorism (Annex I), the Special Rapporteur on minority issues (Annex II) and the Independent Expert on human rights and international solidarity (Annex III).

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. This letter will also be posted on the public website of special procedures. I wish you success in your deliberations.

Sincerely yours,



Tlaleng Mofokeng
Chair of the Coordination Committee of Special Procedures

cc: H.E. Mr. Václav Bálek
President of the Human Rights Council

Annex I

CONTRIBUTION FROM THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM

I am writing to you in connection with the selection of the new mandate holder for the mandate of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism at the upcoming session of the Human Rights Council in June 2023. I give this input consistent 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”. As the current mandate holder, I identify some key qualifications, attributes, and capacities the appointed mandate holder should have to discharge this role effectively. I hope 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.

The counter-terrorism and human rights mandate is a highly politically sensitive and work-heavy mandate which requires consistent and sustained capacity and resource mobilization from the mandate holder. This mandate is the sole special procedures mandate which is a formal entity within the New York security architecture and must regularly attend to both its Geneva Human Rights Council and New York Global Counter-Terrorism Co-Ordination Compact obligations. Deep legal expertise in both counter-terrorism and human rights, flexibility, travel capacity, and the ability to work with all stakeholders, particularly and including Member States and UN entities is essential for successful discharge of this mandate.

The following are pre-requisites to ensuring the appointment of a qualified individual:

1. The appointed individual must be competent in **a number of overlapping legal fields**, specifically international human rights law, public international law, international humanitarian law and the specialized law and practice related to counter-terrorism. General knowledge of human rights alone is not sufficient to prepare the mandate holder for the sustained knowledge and practice of human rights and counter-terrorism across these legal regimes and the interface of counter-terrorism in national contexts with increasingly overlapping legal intersection.

2. The appointed individuals must have familiarity with a sizeable number of these subfields; interrogation, detention and fair trial in counter-terrorism contexts, national legislative frameworks on counter-terrorism, countering terrorism finance, repatriation and reintegration, new technologies and counter-terrorism (including AI, biometrics), cybersecurity, critical infrastructure, victims of terrorism, intelligence gathering, the use of force (including drones), the use of evidence and prosecution of terrorism crimes, the gendered effects of counter-terrorism measures, sanctions, preventing and countering violent

extremism, maritime law and counter-terrorism, as well as the impact of counter-terrorism on traditional areas of human rights concern e.g. privacy, association, assembly, freedom of religion and belief, family life, as well as social and economic rights. The mandate holder is regularly called upon to give technical advice to Member States and other stakeholders across this full spectrum of issues. A qualified individual will have familiarity with the majority of these issues and practice or academic experience in a core and diverse number of these sub-fields.

3. The appointed individual must have an evidenced history of capacity to work with and engage with diverse civil society in a productive, authentic, and diligent manner. The counter-terrorism context requires engagement with civil society actors in multiple national and regional contexts. The mandate holder must be capable of sustaining existing relationships and building new relationships with civil society actors. Given that many civil society actors in many parts of the globe are accused of ‘being terrorists’ or engaging in support of terrorism, the political astuteness and capacity of the mandate holder to engage civil society and governments, often in the same oppositional national context will be essential.

4. The appointed individual will require the demonstrated capacity to mobilize resources and funds to support the mandate. No previous mandate holder, including the present incumbent has been able to discharge the work of this mandate without external support, particularly in the New York arena where OHCHR support capacity does not formally exist for the mandate’s role in the Global Counter-Terrorism Co-Ordination compact. A mandate holder without external resources, including the ability to travel regularly to New York as required for the obligations of the mandate will not be able to undertake the requirements of the mandate.

5. The appointed individual should be a nationally and internationally respected legal figure whose knowledge of counter-terrorism and human rights is undisputed. This has been true for all previous mandate holders and would be expected for this new appointee. Experience in relevant sectors (judiciary, legal sector/assistance, non-governmental sector, academia and other related professional areas) would be a basis for this kind of reputation.

6. Carrying out of the duties of the mandate holder entails an extremely burdensome time commitment. It may not be compatible with full-time working obligations that have limited flexibility or an inflexible working situation. In addition to the two country visits per year; participation in General Assembly and Human Rights Council sessions, engagement with victims, travel to regional fora (cf. the AU, OAS, EU), meeting with civil society organizations and Member States, as well as meeting a high turn-over of day-to-day work of communications the mandate is expected to engaged in regular working group meetings for eight Global Counter-Terrorism Coordination Working Groups of which the Special Rapporteur is a member, quarterly high-level meetings of the Global Counter-Terrorism Coordination Compact and is regularly requested to engaged at the request of Member States in other counter-terrorism fora (FAFT, GCTF). Ideally, the selected candidate should not come from a diplomatic background or have previous direct roles as a governmental official, in order to ensure the officer holder’s independence and impartiality.

7. The appointed individual must have a capacity to engage in a meaningful way with the victims of terrorism. Both the present and previous mandate holder have demonstrated

significant commitment to advancing the human rights of victims of terrorism including survivors of terrorist attacks and family members who have lost a loved one. To do so requires a skill-set that treats victims as rights-bearers but is also cognizant of the trauma and challenge many victims face.

8. The appointed individual must have a demonstrated capacity of collegial and cooperative working. The work of a Special Rapporteur increasingly requires collective, cooperative work with other Special Procedure colleagues. Singularly individuals do not always best advance the overall interests of the full protection of human rights regarding intersectional human rights challenges. In particular, this mandate holder must work as an entity within the Global Counter-Terrorism Coordination Compact in New York. Here the mandate holder is expected to work closely with other UN entities on collective work from the working groups (UNOCT, UNCTED, UNICEF, UN WOMEN, IOM, Interpol). An ability to engage productively, respecting the UN confidential nature of much of this works, requires an individual who guards their independence but also understands the unique balance that must be exercised by this mandate.

9. The appointed individual engages directly with the security sector of multiple States (police, military, prison officials, intelligence officials, and security actors of different forms) and often has access to highly sensitive national security information. The mandate holder must balance independence, discretion, trust-building capacity, and good judgement in the exercise of the position. A mature candidate with evidence of this important skill-set will be an asset to this position.

Annex II

CONTRIBUTION FROM THE SPECIAL RAPPORTEUR ON MINORITY ISSUES

In response to your recent invitation to the Special Rapporteur to contribute to the process of selecting our successors, in terms of the “necessary expertise, experience, skills, and other relevant requirements for each mandate” and what is “essential for new mandate holders to carry out successfully their mandate”, please find below a few of my observations:

1. The global and extensive scope of the mandate dealing with national or ethnic, religious and linguistic minorities requires someone who is not based in Western Europe and “Others”. Until now, all Special Rapporteurs on minority issues have been located in Europe or North America. This is not representative of where most the largest groupings of vulnerable minorities are based. Some better representation, understanding and expertise of where most of these are militates for a Special Rapporteur from another region.
2. While English is the usual language for day-to-day operations of the mandate, it is not in itself sufficient or representative. It would be preferable that the next Special Rapporteur be fluent in a number of languages to ensure greater accessibility, including specifically in a language beyond English, French and Spanish.
3. Direct experience on minority issues in the field, particularly outside of Europe and outside of academia, would be beneficial to add much needed sensitivity to growing threats to the protection of minorities worldwide.

Annex III

CONTRIBUTION FROM THE INDEPENDENT EXPERT ON HUMAN RIGHTS AND INTERNATIONAL SOLIDARITY

1. The successful candidate should be a senior scholar with strong expertise in international human rights.
2. The successful candidate should have a strong record of already working in the area of “human rights and international solidarity”, especially in regard to the UN.
3. The successful candidate should have experience in working on issues concerning a diverse range of the world, especially the Global South.
4. The successful candidate should have already demonstrated a strong commitment to the area of this mandate, and to its promotion and strengthening.