THE SPECIAL PROCEDURES OF
THE HUMAN RIGHTS COUNCIL

A brief look from the inside
and perspectives from outside

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intersentia
Cambridge – Antwerp – Portland
To Catalina, Humberto and Guillermo

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I must also thank several staff members working at the Office of the High Commissioner for Human Rights in Palais Wilson, those that most of the times perform their work relentlessly in the promotion, defense and standard-setting in the field of human rights, usually backstage. They were the source of many lessons learned, of camaraderie and teamwork, and of great moments in Geneva. My admiration and gratefulness to Mara Bustelo, Laure-Anne Courdesse, Leonardo Castilho, Ramin Pejan, Madoka Saki, Juana Sotomayor, Ulrik Halsteen, Orlagh McCann, Bárbara Mateo, Lidia Rabinovich, Boris Tchoumavi and Rebaone Ferguson, who were or continue to be part of the Sustainable Human Development Section of the Special Procedures Branch.

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My recognition also goes to the Human Rights Commission of Nuevo Leon in Monterrey, Mexico, for deciding to pursue this project with me in its
original Spanish edition, and who have now extended their support to this English version. Both Minerva Martínez and Catalina Rivera have devoted many hours away of their particularly busy schedule in the defense of human rights at the local level; their contributions are particularly relevant and useful to add a local vision to the work undertaken at the international level by the Human Rights Council and its mandate-holders, as well as by Treaty Bodies and the Office of the High Commissioner.

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FOREWORD

Emmanuel DECAUX*

I am particularly happy that Mr. Humberto Cantú Rivera assembled the essays written by the best specialists in the field for this volume, previously published in Spanish and now translated to English. This work shows the dynamism of the Human Rights Commission of Nuevo Leon in the areas of awareness and research. On this note, this publication is timely and in line with the United Nations Declaration on Human Rights Education and Training, adopted by consensus by the General Assembly on 19 December 2011 following the work of a drafting group of the Advisory Committee of the Human Rights Council, where I had the honor of being the rapporteur. As it was recently recalled by the new High Commissioner Zeid al-Hussein, the successor of Navi Pillay, in his first intervention in the "High-Level Segment" of the March 2015 session of the Human Rights Council: “The most powerful instrument in the arsenal we have against poverty and conflict is the weapon of massive instruction. Respect for human rights of all, justice, education, equality – these are the strongly interlocking elements that will build fair, confident and resilient societies; true development and a permanent peace.”

It is equally welcome that the last contribution in this volume is that of Ms. Minerva Martínez Garza, President of the Human Rights Commission of Nuevo Leon, dedicated to NHRI cooperation with the Special Procedures of the Human Rights Council. These independent national institutions, "third-type actors" between the branches of State and the lively force of civil society, have conquered their place in the United Nations system. We track their progress in the fifteen years since the adoption of the Paris Principles that took place in the Center for International Conferences in Avenue Kléber in 1991, and until the creation of the Human Rights Council and the establishment of the Universal Periodic Review in 2006. The diversity of

* Professor at Université Panthéon-Assas Paris II, and President of the UN Committee on Enforced Disappearances.

1 UN High Commissioner for Human Rights, Opening speech to the High-Level Segment of the Human Rights Council (02 March 2015).
NHRIs doesn’t make collective solutions easy, but it would be useful that Treaty Bodies adopt a common approach while taking in consideration the specificities of their respective mandates. Thus, according to the criteria of the International Coordination Committee, only one “national institution” in each Member State can receive the “A Status” that guarantees full international recognition; however, this leaves provincial commissions or specialized institutions outside of their scope, regardless of their independent character or expertise, either in the areas of protection of children, on the fight against discrimination or on the inspection of detention sites. In this point, a certain degree of empiricism is necessary to avoid neglecting direct sources of information with profound field experience.

The concern of NHRIs being victim-oriented is attested by another contribution from a member of the Human Rights Commission of Nuevo Leon, that of Catalina Rivera Díaz, who targets communications and the special procedures. NHRIs can participate directly or indirectly in urgent appeals requested to special procedures, and mutatis mutandis to treaty bodies having similar competences, open to every person “having a legitimate interest”, as is the case of NHRIs in accordance with their mandate. The question of their role as amicus curiae in communications procedures before treaty bodies is more complex, given that this procedure is written, confidential and adversarial. In other words, NHRIs can only intervene if they are briefed on a case by one of the two parties in the procedure, the State or the complainant, rendering them into a stakeholder more than an independent third party. It seems to me, however, that NHRIs are better suited to participate in matters related to the follow-up of statements made by conventional bodies. A fundamental concern of the different mandate-holders is the protection of victims and their relatives, as well as of human rights defenders, against every type or measure of intimidation or reprisals. In those cases, NHRIs, as well as OHCHR offices, have an irreplaceable role to play before the responsible State authorities.

An underlying question is the articulation of the levels of protection, not only at the domestic level – between the provincial and federal levels – but also in the international sphere, between the regional and universal systems. The legitimate attachment to the Inter-American System – as to the European or the more recent African systems – cannot be at the expense of the affirmation of universal principles or UN bodies. Thus, the affirmation
of Mexico as a State governed by the rule of law and as a protector of human rights goes hand in hand with the acceptance of international procedures, including individual communications and inter-State complaints before the United Nations Treaty Bodies.

But the interest of this book is beyond the state of Nuevo Leon or even of Mexico, and I am sure that all readers will be seduced by the multiplicity and richness of perspectives on the dynamics of human rights. The creation of the Special Procedures took place during the occurrence of extreme experiences, such as the dictatorship of General Pinochet in Chile or the “Operation Condor” in Latin America, which provoked the establishment of the Working Group on Enforced or Involuntary Disappearances in 1980. Olivier de Frouville, its former Chair-Rapporteur, concentrates on the motor role of the Working Group in the progressive development of legal standards, with the adoption of the Declaration in 1992 by the General Assembly while the International Convention took form, which would enter into force twenty years later, in 2011. We must also recall the role undertaken by the Working Group on Arbitrary Detention, who under the impetus of Louis Joinet had itself a pioneering role.

The multiplication of thematic procedures, in parallel to the substantive work of the Treaty Bodies through their general comments, would lead the editor to make a choice. The introductory chapter by Humberto Cantú Rivera sets forth the collective logic of a system in perpetual movement, with its strengths and weaknesses, taking into account not only the personality of the mandate-holders, but also the precariousness of the "lease" accorded to them and which is sometimes challenged. The choices made are wise, even if the grand thematic procedures in the field of civil and political rights or of "public freedoms" are relatively eclipsed by the economic and social problems, with the exception of the overwhelming issue of enforced disappearances that we just mentioned.

This assumed bias has the merit of consistency and innovation, by juxtaposing studies on the right to food and on the right to safe drinking water by the corresponding mandate-holders, Olivier De Schutter and Catarina de Albuquerque, who make a balance of their work of six particularly outstanding years. We must also underline the essential diplomatic role of Ms. de Albuquerque in the negotiation of the Optional Protocol to the ICESCR. Two other mandates extend the work undertaken
by the Sub-Commission on Human Rights, who had the merit of inscribing in the agenda of the Commission on Human Rights the issue of business and human rights. The lengthy road travelled for the adoption of the conceptual framework proposed by John Ruggie is analyzed in the study contributed by Michael K. Addo, Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises. In addition, the Sub-Commission was also the starting point of the efforts undertaken for the adoption of the Guiding Principles on Extreme Poverty and Human Rights, which are the result of a special procedure that was spearheaded by Magdalena Sepúlveda. Another global challenge is highlighted by the new Special Rapporteur on human rights and the environment, through the study prepared by John H. Knox. How to go beyond mere procedural rights – such as access to information or the right to participation – and into the protection of substantive rights endangered by environmental harm? The issue of indigenous peoples’ rights is also pertinent to this question.

We can see that the excellent contribution presented by our authors is an invitation to reflect upon these issues, and raises as many questions as it provides answers. One of the great merits of this collection is to have given voice to independent experts, who thus explain their “vision” of their mandate. At a time when certain groups want to limit the freedom of speech of independent experts through a code of conduct, these men and women from different continents combine a high ideal in accordance with the objectives and principles of the United Nations and a resolute determination to explore new approaches in an imaginative and pragmatic way. We must hope that other volumes edited in the same spirit will continue to present all the issues at the core of the work carried out by the United Nations. It is a very opportune timing to mark the 70th anniversary of the Charter of the United Nations, whose preamble strongly reaffirms the “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”
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INTRODUCTION

Humberto Cantú Rivera*

This book is the result of a Professional Visiting Period I undertook at the Office of the High Commissioner for Human Rights in Geneva, in 2012. This period, during which I collaborated closely with the Sustainable Human Development Section of the Special Procedures Branch, included working in several of the tasks that are now reflected upon by the different contributors to the book. It allowed me to have access to the inner workings of the UN human rights machinery, and to better grasp the many challenges and areas of opportunities that – despite is gigantic work in such a tight budget – unfortunately still remain. But that is a topic for another discussion; there is no time to lose in the fight for the realization of human rights, and all the little and big efforts undertaken by the United Nations (and its frontline troops in the Special Procedures) in the field of human rights is a necessary one.

This book ‘officially’ starts (after the thoughtful foreword by Emmanuel Decaux) with a very special interview granted to me by Ms. Navi Pillay, the former UN High Commissioner for Human Rights, in early 2013. She reflects upon three different topics: freedom of expression and protection of journalists and human rights defenders in Latin America, sharing some examples of good practices in the region; the State duty to ensure access to effective remedies and reparation for victims of human rights violations, and the social effects of impunity and systematic infringements to human rights; and finally, on the role of NHRIs in preventing and sanctioning human rights abuses, and in providing integral assistance to victims. While short, Ms. Pillay provides a very clear insight as to the lines of action of her (now former) Office, and to some of the remaining challenges and good practices in the field of human rights.

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The first chapter deals with the history of human rights at the UN, and specifically with the early work of the Economic and Social Council and the Commission on Human Rights in setting up the latter’s initial procedures. It then focuses on briefly describing the beginning of the Special Procedures, first in its country-based focus and its migration to thematic assessments and investigations, which set up the basis for the development of the system of Special Procedures as it’s currently known, before addressing the politicization and demise of the Commission and the establishment of the Human Rights Council. The chapter turns to analyze the general characteristics and methods of work of the Special Procedures, to then address the flagship mechanism of the Council: the Universal Periodic Review. Several suggestions for improvement of the work of the Special Procedures and the Universal Periodic Review are shared throughout the chapter; however, it must be taken into consideration that the Universal Periodic Review is barely about to finish its second cycle, which will allow for a more complete assessment on its shortcomings and room for improvement.

The second chapter sees Olivier De Schutter, former UN Special Rapporteur on the right to food, provide his expert opinion on the status of the right to food in Latin America and the Caribbean. He divides his chapter in five subsections, where he treats many of the aspects he addressed during his mandate. The second subsection is devoted to the importance of the right to adequate food, where he briefly comments on its basic aspects and justification, and on the need to ensure effective access to this right for the most disadvantaged; a third subsection analyzes the status of the human right to food as a constitutional right throughout Latin America, and the contributions made by civil society and national human rights institutions for the establishment of this right at the constitutional level. Next, De Schutter focuses on the legal frameworks for the implementation of the right to food at the domestic level, addressing with a particular emphasis the development of nutrition and food security laws to complement the constitutional provisions establishing this right. In a fifth subsection, the former Special Rapporteur on the right to food analyzes the existing national strategies and public policies to ensure or contribute to the realization of this human right, highlighting the work of the UN Committee on Economic, Social and Cultural Rights regarding the need to adopt national strategies to ensure that nutrition and food security laws are effective. Finally, the sixth subsection concentrates on the analysis of several
key elements of legal frameworks and public policies that may contribute to
the realization of the right to adequate food, especially monitoring and
accountability (through legal oversight, the role of national human rights
institutions, regional and global monitoring, social movements, and the
protection of human rights defenders) and effective implementation (via
cross-sectoral coordination, participation, social programs’ specificity, and
budgetary allocations), before sharing some lessons learned in his
experience on the right to food in Latin America.

The right to safe drinking water and sanitation is then addressed by
Catarina de Albuquerque, former UN Special Rapporteur on the right to
safe drinking water and sanitation, in the third chapter. Her contribution is
particularly forward-looking, focusing on eliminating inequalities in
sanitation, water and hygiene in the post-2015 agenda. She starts by
analyzing non-discrimination, equality and equity as human rights
principles that need to be included in the post-2015 agenda, to then turn to
the elimination of inequalities as one of the missing pieces in the
Millennium Development Goals. De Albuquerque argues that the inclusion
of equality and non-discrimination as guiding human rights principles is
paramount to the Sustainable Development Goals, which in her opinion
should have a specific goal on ensuring equality. A final subsection in her
chapter is devoted to the analysis of the goals that need to be reached to
ensure equal access to safe drinking water, sanitation and hygiene: continue
advancing while reducing inequalities; addressing geographical disparities,
particularly between rural and urban zones and irregular settlements;
generating hope in the most disadvantaged; facing the different group
inequalities that exist in different countries; and addressing inequalities
that depend on the individual characteristics of people, with a special focus
on women and minorities. In concluding, she considers that the post-2015
agenda should explicitly include universal access to water, sanitation and
hygiene, and that equality should be the underlying principle ensuring the
right to water.

John H. Knox, the first UN Independent Expert and now first Special
Rapporteur on human rights and the environment, shares his thoughts on
moving the human rights and environment agenda forward. This article is
of particular interest, given that at the time of writing, discussions were
being held in Geneva over the possibility of extending his mandate for a
further three years. His chapter thus focuses on the establishment of his
mandate in 2012, on the relation between human rights and the environment, the historical context that led to the creation of the mandate, and on his first report to the Human Rights Council, in 2013. To achieve this, the second section of his chapter devotes some attention to two core issues: the link between environment and existing human rights, and the emergence of a human right to a healthy environment. A historical account detailing the many situations that led to the creation of the mandate appears next, relating how the Stockholm and Rio Declarations and the Ksentini Report, among others, weren’t sufficient to eradicate the doubt surrounding the human rights and environment debate. However, the gradual inclusion by the Human Rights Council of resolutions related to climate change in 2008 eventually led to the creation of the mandate now led by John H. Knox. The final section of his chapter focuses on his preliminary report to the Human Rights Council, where he shares a list of the pending issues that at that moment in time needed to be analyzed by his mandate.

Michael K. Addo, Chair-Rapporteur of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, contributes the fifth chapter of the book, where he reflects upon the mandate entrusted to this Special Procedure. The issue of business and human rights has been a relevant topic for the better part of the last two decades, but hit a milestone in 2011 with the adoption by consensus of the UN Guiding Principles on Business and Human Rights. His chapter focuses on two main areas: the mandate entrusted to the Working Group by resolution A/HRC/RES/17/11, and the strategy adopted by its five members after its establishment in November 2011. His description of the tasks entrusted to the Working Group by the Human Rights Council is particularly objective: working closely with 193 countries and millions of transnational corporations, its subsidiaries and many other stakeholders is no easy feat. However, he remains optimistic to the idea of having a collaborative approach with all stakeholders involved. In relation to the strategy of the Working Group to implement his mandate, several key issues stand out: convergence in the integration and implementation of the Guiding Principles; the holistic and interrelated character of the ‘Protect, Respect and Remedy Framework’; the issue of communications and access to effective remedies; the ‘business case’, and strategic partnerships. While this chapter was contributed barely after the first annual UN Forum on Business and Human Rights, it remains relevant in light of the extension of the mandate of the Working Group in September 2014. It can serve as a
point of comparison between what he considered that should be the focus in the early days of the Working Group, and what they have been able to achieve in its first three years.

A sixth chapter, contributed by Olivier de Frouville, former Chair-Rapporteur of the UN Working Group on enforced or involuntary disappearances, relates to the twentieth anniversary of the UN Declaration for the Protection of All Persons from Enforced Disappearance, celebrated in 2012. It is particularly interesting how the English version of this text appears at a point in time where we just celebrated the 35th anniversary of the establishment of this UN Working Group, the first thematic procedure of the former Commission on Human Rights. A convenient coincidence, in my opinion. De Frouville briefly narrates the journey leading to the adoption of the UN Declaration in 1992, where references to the participation of Julio Cortázar in a conference in Paris on disappeared persons stand out because of their poetic resonance. He then concentrates in analyzing the role of the Working Group as interpreter and guardian of the Declaration, clearly identifying the different roles that are played by the Working Group and the Committee on Enforced Disappearances. He notes that for those countries that have not yet ratified the Convention, the Declaration continues to be a leading standard, and has the competence to receive individual communications from persons all over the world on the disappearance of their loved ones, whereas the Convention has an optional mechanism for the analysis of individual complaints. He closes his chapter by addressing some of the new challenges faced by the Working Group, particularly in light of the entry into force of the Convention and the establishment of the Committee.

Magdalena Sepúlveda Carmona, former UN Special Rapporteur on extreme poverty and human rights, shares an interesting chapter devoted to her experience in the mandate. She starts the chapter by sharing some brief notes on the Special Procedures of the Human Rights Council, to then turn to the financial context during the time when she was appointed as mandate-holder. She recalls that this led to her decision to partially focus her mandate on social protection programs, as a means to provide poverty relief to people. Similarly to Catarina de Albuquerque, she considers that the principles of equality and non-discrimination, participation, transparency and accountability need to be included in the whole process of development and implementation of social protection programs. Thus, the
second section of her chapter is devoted entirely to analyze the characteristics and principles of a human rights-based approach in the context of social protection. The final section of her chapter is devoted to analyzing the Guiding Principles on extreme poverty and human rights, adopted by the Human Rights Council in September 2012. The rationale behind them lies in ensuring that public policies reach the poorest and most disadvantaged, and to give them a voice in the discussion of public policies affecting them.

The contribution of Catalina Rivera Díaz, First General Attorney on Human Rights for the Human Rights Commission of Nuevo Leon (Mexico), focuses on victims, communications and the Special Procedures of the Human Rights Council. This seventh chapter starts by making a historic narrative of the development of the communications procedure in the work of the Commission on Human Rights since its early days, which were definitely established with the creation of the Working Group on enforced or involuntary disappearances. Ms. Rivera then analyzes the development of a more or less standardized communications procedure by the early thematic mandates of the Commission on Human Rights, to then turn to a quantitative analysis based on the latest communications report issued by Special Procedures mandate-holders. As it turns out from her analysis, it appears that the system of individual communications to mandate-holders has had a middling efficacy; however, it is particularly helpful to identify, even in our day and age where human rights are virtually everywhere, the ‘top ten’ human rights issues around the world. Surprisingly, only one of the economic, social and cultural rights appears in that list. She closes her chapter by analyzing the purported role of communications as a quasi-jurisdictional procedure, before turning to an analysis of the characteristics and ‘benefits’ of this system.

The final chapter in this edited volume belongs to Minerva Martínez Garza, President of the Human Rights Commission of Nuevo Leon. Her contribution focuses on the interaction of national human rights institutions with the UN human rights machinery. She starts her chapter by revisiting the Paris Principles of 1993, from which she identifies four core functions of NHRI:s: analysis, harmonization, international cooperation, and awareness-raising. She then devotes the next section to analyze the interaction between international human rights law and domestic law, and the particularly prominent role that NHRI:s can play in promoting the use
and ensuring the effectiveness of international law at the national level. The final section of her chapter revolves around increasing the role played by NHRIs at the domestic level, with a specific focus on Mexico, where she makes clear that their work in monitoring the Government and other non-State actors is one of the keys to ensuring the effectiveness of international human rights law.

The different chapters included in this volume attest to the diversity of challenges and achievements made by the Special Procedures of the Human Rights Council. While Special Procedures mandate-holders have recently been under intense scrutiny, particularly from some Governments with dubious human rights records, their work in advancing human rights protection through monitoring and individual communications, standard setting and country visits remains the best that international human rights law can currently offer. Their coherent, coordinated work and the diversity of topics they cover has greatly contributed to the development of soft standards in this field, improving the protection of human rights and reaffirming the interrelated character of civil, political, economic, social and cultural rights.

On this note, I wish to close by once more expressing my sincere gratitude to all the contributors to this edited volume. It is to be understood that all of these contributions were made in the contributors' personal capacities, and do not necessarily reflect the views of the United Nations, the Office of the High Commissioner for Human Rights, the Human Rights Council or the mandates that they represent, nor of the Human Rights Commission of Nuevo Leon. This volume is the English version of El futuro es hoy: construyendo una agenda de derechos humanos, published in Spanish by the Human Rights Commission of Nuevo Leon and Universidad Autonoma de Nuevo Leon in 2014. While several of the manuscripts were originally delivered in English, some translation and editing work was undertaken by the editor of this volume. Of course, any mistakes remain solely my own.

Paris, France
15 March 2015
INTERVIEW WITH NAVI PILLAY,
FORMER UN HIGH COMMISSIONER
FOR HUMAN RIGHTS*

Navanethem (Navi) Pillay is the former UN High Commissioner for Human Rights. A South-African national, she started her tenure as head of the Office of the High Commissioner for Human Rights on 1 September 2008, after the United Nations General Assembly approved her appointment in July of that same year. With an original mandate of four years, it was extended for a further two years starting on 1 September 2012. After six years as High Commissioner, she finished her appointment on 31 August 2014.

Prior to her appointment as High Commissioner, Navi Pillay already had an important legal career at the international level. Between 1995 and 2003, she was a judge on the International Criminal Tribunal for Rwanda, where she served the last four years as President. Between 2003 and August 2008 she was a judge on the International Criminal Court, the first permanent international criminal tribunal.

In South Africa, she acted as a defense attorney for anti-apartheid activists, and in 1995 she was appointed as acting judge on the South African High Court. She received a BA and a LLB from Natal University in South Africa, as well as a Master of Laws and a Doctorate of Juridical Science from Harvard University.

In October 2012, the Human Rights Commission of Nuevo Leon (Mexico) requested the High Commissioner for Human Rights to grant an exclusive interview, looking to obtain her opinion and thoughts on topics of importance to Mexico and Latin America in general. The interview revolved around three particular topics. The first one was in relation to one of the

* This interview was granted to Humberto Cantú Rivera in early 2013, who was a Visiting Professional during the second semester of 2012 in the Special Procedures Branch of the Office of the High Commissioner for Human Rights. As of that moment, the UN High Commissioner for Human Rights was Navi Pillay. Since September 2014, the current High Commissioner is Zeid Ra’ad Al Hussein.
A second issue that was discussed during the interview was the obligation of the State to provide access to effective and opportune remedies, and on the right of victims of human rights violations to reparation. In addition, the question of the social effects of impunity and systematic violations of human rights was canvassed.

Finally, the High Commissioner for Human Rights shared some of her impressions regarding the role of national human rights institutions (NHRIs) in the prevention and sanction of abuses by the State or its agents, as well as regarding the integral assistance that must be provided by NHRIs to victims of human rights violations.

The following paragraphs transcribe verbatim the interview to Navi Pillay.

Q1: What do you think of the current state of freedom of expression and the protection of journalists and human rights defenders in Latin America? What kind of national systems should be put in place for their protection, in your experience? Any positive examples?

The situation of human rights defenders is a cause for concern in several countries in Latin America. Human rights defenders are frequently subjected to threats, attacks and intimidation by a variety of actors, very often from non-state actors. Many human rights defenders also face accusations and even legal proceedings because of their role in defending human rights. This amounts to criminalizing their work.

Journalists, who also play an important role in the defense of freedom of expression and human rights, have been the target of similar attacks. One important step towards improving the protection of human rights defenders is for governments to publicly recognize their vital contribution to democracy, justice and the rule of law. And equally important, those who violate their human rights must be held accountable. Attacks should be adequately investigated, and those responsible brought to justice without delay and with the full force of the law.

There are several positive examples of systems for the protection of human rights defenders, even if further improvements could still be made.
Colombia, for example, has developed some effective mechanisms for the protection of human rights defenders. And in Mexico, the adoption of the Law for the Protection of Human Rights Defenders and Journalists (Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas) offers an opportunity to address this critical issue. My office in Mexico has been working closely with the Mexican authorities on this law, and the crucial issue of how it is implemented. The mechanisms developed and lessons learned in Colombia can also contribute to the development of effective mechanisms in Mexico.

Q2: States have an obligation to ensure remedy and reparation for victims of human rights violations – can you elaborate on this obligation? What are the different approaches in this regard?

States have a wide range of obligations towards the victims of human rights violations. These rights have been established in a number of international instruments, such as the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (the so-called Remedy Principles), which were adopted by the United Nations General Assembly on 16 December 2005.

Victims’ rights include the right of access to justice, to reparations for the harm suffered, and of access to information concerning the violations committed, as well as relevant remedies. When the human rights violations committed are attributable to the State, the State should provide adequate, effective and prompt reparations to the victims. In the event that other parties are liable for the harm suffered, States should endeavour to establish national reparations programmes when these parties are unable or unwilling to meet their obligations.

Reparation programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. Reparations can include direct support such as monetary compensation, medical and psychological services, health care, educational support, return of property or compensation for its loss. They may also include important overarching acts such as official public apologies, the construction of museums and memorials, and establishment of days of commemoration. Reparations programmes can also form quick, visible and effective
complements to truth-seeking processes and prosecution initiatives, by providing concrete remedies to victims, promoting reconciliation, and restoring public trust in the State.

What are the social effects of impunity and systematic violations of human rights?
Impunity arises from a failure by States to meet their obligations to investigate, prosecute, try and sanction those responsible for human rights violations; a failure to provide victims with effective remedies and to ensure that they receive reparations for the injuries suffered; and a failure to satisfy their right to know the truth about violations. Ending impunity is the best guarantee to prevent a recurrence of violations, as it sends a powerful message that they will not be tolerated. On the contrary, allowing impunity to prevail simply perpetuates crime and encourages further violations against the population. It emboldens those who commit such crimes, thus corroding the rule of law and undermining the democratic fabric of the nation.

Q3: What should be the fundamental role of national human rights institutions in the prevention and sanction of abuses carried out by the State or its agents, as well as in providing integral assistance to victims?

The Principles relating to the status of national institutions adopted by the UN General Assembly in 1993 – also called the Paris Principles – establish internationally accepted standards on the role and functions of National Human Rights Institutions (NHRIs). According to these Principles, monitoring is a key element of NHRIs’ mandate. NHRIs can monitor domestic human rights situations, government policy and action, make inquiries into human rights issues and violations, and handle individual complaints. No public entity should be excluded from the monitoring function of NHRIs. In particular, law enforcement agencies such as the police, the army, intelligence services and other security services, should be subject to NHRI scrutiny.

NHRIs should also have the power to visit all places of detention, including those run by the police, the army and the intelligence services. NHRIs’ regular visits to such places of detention, with minimal notice, contribute to the prevention of human rights violations, especially torture and other forms of cruel or inhumane treatment, as well as violations of due process guarantees.
NHRIs mandated to receive complaints should have broad powers to deal with them. No relevant public body should be excluded from their jurisdiction. Consequently, victims of human rights violations by the State or its agents should be able to file complaints to the NHRI. The NHRI shall investigate all complaints received, assess and analyse them, collect information and evidence as required, refer cases to the judicial system and cooperate with the concerned authorities in finding remedial solutions for these cases. The NHRI shall indicate to the victims all remedies available to them and promote victims’ access to these remedies.

The Paris Principles state that NHRIs should make recommendations to the competent authorities and should propose amendments to laws, regulations and administrative practices, especially if they lie at the root of the difficulties encountered by the people filing the petitions in order to assert their rights. NHRIs should also monitor government departments’ compliance with their advice and recommendations.