



Working Paper No. 7

**The Effectiveness of Individual Casework  
on Human Rights Defenders:  
An Empirical Study of the UN Special  
Procedure Cases 2004–2015**

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In her PhD research, she focuses on human rights defenders, studying their emergence as a category in international human rights advocacy, as well as the effectiveness of international efforts towards their protection. For this purpose, Janika has built a database with over 12,000 cases of defenders addressed by the UN special procedures, and carried out qualitative interviews with close to a hundred stakeholders in Tunisia and at the international level.

She previously completed a Master's degree in political science in a joint program between the University of Freiburg and Sciences Po Aix, with an award-winning thesis on the Palestinian LGBTQ movement and its ties to transnational advocacy.

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## Executive summary

Despite a growing body of literature on the UN special procedures, we still know very little about the effectiveness of one of its core instruments, namely the use of communications to raise individual cases of human rights abuse with the government concerned. Focusing on the mandate of the UN Special Rapporteur on the situation of human rights defenders, this working paper explores new data to answer the controversially discussed question of whether or not communications generally make a difference in the situations of individual defenders.

The first part of this paper analyses data obtained from a survey of involved advocates, assessing the UN mandate's impact on a random sample of cases among the Special Rapporteur's communications between 2004 and 2015. The second part is concerned with external factors that may impact the further development of a case, suggesting alternative explanations of – but also possible conditions for – the medium term effectiveness of communications. For this purpose, the author uses a logistic regression to analyse a sample of almost 500 cases in order to investigate possible explanations for improvement or deterioration among cases addressed by the Special Rapporteur.

The systematic analysis of impact assessments provided by involved advocates convincingly suggests that individual casework is very often effective in providing protection to defenders whose cases are raised. However, the study of predictors of positive case developments also shows that the effectiveness of individual casework is highly contextual and therefore requires strategic adaptation and creative responses.

### Implications for practice

- In considering only direct impact, the finding that the Special Rapporteur's individual casework very often positively influences defenders' situations provides an important argument for continued, or even increased, support for the special procedures' communications activity.
- Based on the sample cases, it can be concluded that international attention paid to cases with business involvement did not result in any substantial improvements in the medium term. The recently increased efforts by the Special Rapporteur to raise cases with companies directly, rather than only through the government concerned, may prove more effective.
- Regime type matters with regard to case development, although only as an indirect effect on the predictive value of certain variables. This includes the previous violations, a country's aid dependency, and a forthcoming UPR process. Such variables should be taken into account when considering the potential impact of a communication on a certain case.
- The Special Rapporteur often refers to 'follow-up' on cases, however, rarely if ever does this reflect repeat communications regarding the same violation against a given defender. In reality, further communications serve instead to highlight new violations against the individual involved. The data suggests that these – often 'high profile' – defenders have a very

low chance of seeing their situation improved. This finding makes the case for a more detailed assessment of the likely added value that repeated mentions by the Special Rapporteur can or cannot provide.

- The main leverage in terms of possible impact relies on the selection of cases. However, both the ethical implications and multiple purposes of casework should be acknowledged and respected. While a focus on increased impact can be useful, the documentation function and more indirect protection effects should also be taken into account during case selection.
- What remains unclear in the dataset is the extent to which 'improvements' in a defender's situation following a communication also reflect a restored ability to carry out their work, and to what extent the experience of violations, or the continued threat thereof, inhibits this. Further research into the effects of case-specific improvement on defenders' ability to effect change is needed.

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## Introduction

At first sight, the creation of the United Nations' first independent thematic human rights procedure in 1980 looked, ironically, like a diplomatic victory for the Argentinian military junta. The repressive regime's negotiators at the UN had successfully averted the establishment of a group of experts who would have been mandated to scrutinize Argentina's human rights situation, a demand that the emerging NGO community at the UN had forcefully advocated in response to reports of thousands of citizens disappeared in the country. Instead, the UN established an expert working group on the broader issue of disappearances. This was initially seen by human rights advocates as a setback, but it quickly became evident that the expert group would claim a greater competence by not settling for a purely theoretical role. One of its major achievements was the establishment, within the first months of the mandate, of an innovative urgent appeal procedure for individual complaints inspired by Amnesty International's emerging Urgent Action network (Clark 2001: 81-82). This laid the groundwork for the communications process central to today's UN special procedures; numerous thematic mandates have since been established, many of which incorporate the procedure of direct communications with governments on cases of alleged human rights abuses into their working methods.

Despite the steady growth of special procedures, and numerous high-level endorsements, including being termed the "crown jewel" of the UN human rights system by Kofi Annan in 2006 (see Alston 2011: 571), these expert bodies have received relatively little attention by academia. The few scholarly works that have been published since the 1980s, often authored by (former) Special Rapporteurs themselves, tend to examine the strategic position of independent human rights experts, give accounts of the historic emergence of respective mandates, as well as decisions taken at certain crossroads, or draw attention to the various functions performed by the mandates.<sup>1</sup> What has seldom been analysed in those studies, however, is the mandates' communications procedures, let alone the effectiveness of those communications. One notable exception is the recent study published by Ted Piccone (2012), who quantitatively analyses the communications of various UN special procedures between 2004 and 2008, although his evaluation of effectiveness is limited to government replies received by the mandates. The omission of those questions in the wider literature is intriguing for two reasons. First, communications are a core component of the working methods of many mandates, which should be adequately reflected in research into their role and effectiveness. Second, the systematic analysis of these rich and publicly available records holds significant potential for furthering our understanding of human rights casework more broadly.

The mandate of the UN special procedure on human rights defenders (HRDs), henceforth 'the mandate', is of particular interest for two key reasons. On the one hand, in comparison with other UN procedures, the mandate is one of the most active in terms of the number of communications issued every year (cf. Piccone 2012: 36). It therefore lends itself to a systematic study of the effectiveness of such communications. On the other hand,

<sup>1</sup> See for example Alston (2011), Bode (2015), Gutter (2006), Kamminga (1987), Nifosi (2005), Nolan et al (2017), Rodley (2003), Subedi (2011), Subedi et al (2011).

the protection of human rights defenders has become a topic of growing concern in international human rights (case)work since the adoption of the UN Declaration on Human Rights Defenders<sup>2</sup> in 1998, with the mandate itself being established in 2000. The Special Rapporteur on the situation of human rights defenders continues to be one of the most prominent and influential actors in the field today, and the mandate's communications procedure includes information on hundreds of cases submitted by NGOs and other stakeholders each year. Indeed, in their "research agenda for the protection of human rights defenders," Nah et al (2013: 412) highlight research into the effectiveness of different protection mechanisms, including the UN mandate, as a central area requiring further study.

The question of effectiveness needs to be differentiated from the mandate's internal efficiency, which I have dealt with in detail elsewhere and will occasionally refer to (Spannagel 2018). These two dimensions should be studied separately but in relation to each other, as the level of internal efficiency will affect the communications' *potential* impact, while the forms and conditions of external effectiveness should determine the mandate's internal working procedures. To analyse the communications procedure's external effectiveness, we first need to establish the purpose it is supposed to serve. The reports issued by the mandate over the years make it clear that the "main purpose of communications is to provide some degree of protection to defenders whose rights are violated or at risk of being violated" (Jilani 2008, 12). However, it remains largely undefined who or what exactly defenders should be protected against and how the communications procedure is thought to contribute to that. In order to help clarify this, one should first differentiate between the following:

- 1) Direct (or immediate) protection benefits to a defender that might originate from a communication, spurring a government into action (or preventing further violations) through the display of attention given to the specific case.
- 2) Indirect protection benefits that might derive from the documentation of patterns of abuse against defenders, the mandate's support of legal protection frameworks, general awareness-raising towards the plight of defenders, and other activities that are facilitated by the communications procedure.

When looking at the development of an individual case of human rights abuse, it is always difficult to establish which cause (such as a UN communication) acted as the determinant that explains the observed outcome (such as a release from prison). This is because there are always a range of possible causes, some of which may have worked in concert to produce a certain outcome. The further removed the expected cause is from the actual outcome (ie the more indirect the studied effect), the more difficult it is to plausibly trace back that chain of causality and to isolate the effect of a specific event of interest. The present study will therefore focus on the empirical evaluation of the existence, extent and possible conditions of *direct* protection benefits of communications on the cases of individual defenders.

<sup>2</sup> The original title is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (United Nations 1998).



The paper is divided into two main parts, which explore different angles of the research question and rely on different but overlapping databases. The first part aims at systematically evaluating communications' direct and immediate effect on the situation of individual defenders that were mentioned therein. This is largely based on qualitative assessments provided through a survey of advocates involved in the case. The analysis in the second part looks beyond immediate effects and into the further development of a large number of UN cases, in order to investigate possible explanations for improvement or deterioration under the same condition of a previous UN intervention. The goal of this part is to discuss alternative explanations of – but also possible conditions for – the medium term effectiveness of communications and practical implications for the strategic use of individual casework in human rights advocacy.

## The impact of UN communications


### Theoretical considerations and hypotheses on the impact of communications

Present expectations regarding the direct impact of communications on individual defenders rely on conclusions drawn based on governments' engagement with the mandate, theoretical considerations and anecdotal evidence. Regarding governments' direct responsiveness to communications, the fact that around half of all communications across all mandates go unanswered is variably seen as "mixed at best" (Alston 2011: 576), or even "alarming" (Piccone 2012: 33). If we look more precisely at responses in reference to individual cases (instead of communications which may comprise of several cases), the response rate for the HRD mandate drops further, to below 50 per cent. However, the analysis also shows that there has been an overall increase in the rate of replies over the years: under the first post holder, Hina Jilani, substantive replies were received in 37 per cent of all individual cases addressed, under Margaret Sekaggya, the number rose to 42 per cent, and most recently under Michel Forst, it was 47 per cent for cases until 2016 (Spannagel 2018: 16). At the same time, both Alston and Piccone are right to point out that while government responses are the only basis for empirical analysis we have so far, they do not provide much information as to the impact on the individual. Piccone appears somewhat optimistic in citing anecdotal accounts from government officials, NGOs and special procedures "that some communications have prompted action on a matter even though the government provided no official written response" (2012: 35), however the opposite is certainly also true: a response does not imply a positive action on a defender's case. This is most clearly evidenced by the fact that more than 66 per cent of state responses are in fact rejections of the allegation raised in the communication, often on the grounds of domestic legislation and national sovereignty.

However, even if a state claims to have taken steps to address a violation, such a response cannot be seen as a guarantee that the defender's situation has in fact improved. In a considerable number of cases, for instance, police

protection offered by the state is insufficient or even rejected by the defender in question due to police complicity in previous abuse. In more general terms, if we only consider the incentive structure of the communications procedure, we can assume that most states have a greater interest in responding to a communication (and having their version of events reflected in the official report) than in acting to positively influence a defender's situation. This might explain the relatively high response rate by some of the most repressive governments, likely in the absence of other meaningful actions. A further problem in relying on government responses in determining the mandate's effectiveness is that any deterioration in the situation, possibly even resulting from the UN's intervention, are likely masked from view. Anecdotal evidence, mostly with regard to Special Rapporteurs' country visits or defenders' travels to Geneva, indicates that defenders regularly experience reprisals for interacting with UN mechanisms.

On the other hand, it is generally accepted in political science human rights literature that international attention often has a protective impact on individuals.<sup>3</sup> The concept of public 'naming and shaming' plays a significant role in past research on explanations for human rights compliance. From a practical viewpoint, authors from the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) also assert that:

 increased visibility... has been seen to contribute to a stronger profile reducing the risk of intimidation and attack for fear of a strong response by various stakeholders nationally and internationally. (EHAHRDP 2013: 529)

However, in evaluating the leverage of the mandate in this regard, it should also be considered that communications are not made immediately public, but rather are kept confidential from the time of issuance for a period of several months, to the point that not even the source of the original complaint is notified that their case has been acted on. While a certain 'shaming' effect could occur when the Special Rapporteur's annual communications report is published, or when the number of unanswered communications is raised during the respective state's Universal Periodic Review (UPR) at the Human Rights Council, by this stage the possibility for building momentum on a specific case is long gone. Research into states' specific compliance with international human rights institutions has so far largely focused on the effectiveness of human rights treaties. Insights from this literature, however, and specifically the identified mechanisms through which treaties influence national human rights compliance (Simmons 2009, Dai 2013), cannot be applied to the special procedures communications either: they do not offer a substantial basis for litigation, nor do they provide a sufficiently time-sensitive basis for mobilization within the country. Past scholarship on human rights compliance does not therefore offer conclusive arguments as to why special procedures communications should be effective in bringing about change.

And yet, many practitioners seem to be convinced of the effectiveness of the communications procedure. This includes special procedures staff and mandate-holders themselves – evidenced by the fact that a large amount of their humble financial and human resources are dedicated to communications.

<sup>3</sup> See for example Risse and Sikkink (1999), Clark (2001), Murdie and Davis (2012), Piccone (2012), Risse et al (2013), Sikkink (2017).

But support is also found among experienced international NGOs dealing with the cases of individual defenders on a daily basis, and which also invest staff time to continuously alert the UN special procedures system to such cases. When directly questioned about this, most affirm that they believe in the effectiveness of communications and sometimes cite anecdotal evidence, although they concede that the procedure cannot be effective in all cases and that there is no systematic data available to determine specific impact. One interviewee working for an international NGO experienced in interacting with the UN said that he “absolutely” expects communications to bring about change on individual cases, and that sometimes it is possible to directly link positive developments to a UN communication. According to the same interviewee, only a minority of countries do not care about receiving such communications (Geneva, 6 May 2016). A representative of another international NGO, reflecting on their own casework, said that sometimes they “need” additional pressure by the UN to effect a defender’s release from prison (remote interview, 9 March 2016). A staff member of a Geneva-based organization described the mandate’s attention as “one of the most important contributions on individual cases and systemic change” (remote interview, 30 March 2016). Some voices, however, are more sceptical regarding the effect on individuals. An NGO researcher focusing on cases in the Middle East affirmed that “in the long run, [the communication] does have an impact, but not on individuals” (Geneva, 1 March 2016). This view was echoed by a former high-level staff member of OHCHR who asserted that the communications are “not about individual relief, but about pushing countries to change globally”, although “some people get lucky” (Geneva, 4 March 2016).

Discrepancies between expectations regarding the effectiveness of communications on individuals that emerge from the analysis of government responsiveness, theoretical considerations, and the differing assessments put forward by practitioners, present a research puzzle that will be further explored in the following section. To do so, I adopt two competing hypotheses:

- **H<sub>a0</sub>** The mandate’s communications do not have a direct effect on the individuals on whose behalf they are issued, or only on rare occasions.
- **H<sub>a1</sub>** The mandate’s communications do frequently have a direct (and positive) effect on the individuals on whose behalf they are issued.

It should be reiterated at this point that the lack of such a direct effect would not support the idea that the procedure’s work, or even the communications, are meaningless, as the focus on direct and immediate protection benefits only represent a very narrowly defined notion of impact. The next subsection specifies the research design and data collection method used to approach the research question.

### Research design to investigate the impact of communications

To determine the mandate’s impact in terms of direct protection benefits, the question to be addressed is whether or not the situation of an individual defender is improved following an intervention by the Special Rapporteur, and what the mandate’s specific effect on this development was. Considering the paramount challenges in approaching such a question, the main goal

in this section is to establish systematic evidence that allows for a more comprehensive and reliable assessment of the causal relationship than is provided by the anecdotal evidence offered by many practitioners so far.

Answering the first part of the research question, namely the change in an individual's situation, is more straightforward than the second part regarding the mandate's specific effect, but remains conceptually challenging and resource-intensive. The starting point is a database I compiled as part of a larger doctoral research project, comprising of details on all individual cases of defenders that were mentioned in communications sent by the mandate since its inception in 2000 until November 2016. The caseload amounts to approximately 12,000 cases in some 4,500 communications (see also Spannagel 2018). In order to investigate case developments, I took a random sample of 661 of the mandate's cases between 2004 and 2015.<sup>4</sup>

With the support of the Office of the High Commissioner for Human Rights, as well as the Special Rapporteur on the situation of human rights defenders, I identified the original sources for 552 of the 661 cases. Through a secure online questionnaire, source organisations or individuals were then surveyed about the developments in each case within one year of the communication.<sup>5</sup> The year-long period was chosen in order to record a more comprehensive and accurate picture than simply the immediate aftermath of the communication being received, given that immediate and superficial responses extending as far as short-term improvements for individuals can be a tactic of states used to diffuse international attention, which may be followed by subsequent deterioration. Respondents were asked to assess developments in relation to the original incident described in the communication and assign a rating to these developments, while taking into account possible new incidents within that year. To maximize consistency across the data, detailed guidelines with examples were provided in the questionnaire (see Appendix) and qualitative descriptions of further developments were requested, against which the ratings were later compared and slightly adjusted in a few instances. I received in-depth information on 89 cases through the survey and conducted online research on the 572 remaining sample cases, in an effort to establish the information basis for a more thorough analysis of case developments. Based on reports from reputable NGOs and news sources, sufficient details on incidents within the one-year period were gathered to assess further developments in 382 additional cases, bringing the total number to 471.

The second part of the research question comprises two essential and interrelated challenges. On the one hand, it is necessary to clarify the fundamental problem of the benchmark (or criteria) of the mandate's external effectiveness, while on the other hand, the available information (not to mention systematic data) is limited. As Kathryn Sikkink (2017: 214) notes, the effectiveness of human rights advocacy depends on the location of the compliance decision and the kinds of individuals making choices about whether to (continue to) violate rights or whether to put an end to a particular violation. These individuals, often government agents, are impossible to access systematically and the question of whether or not their decision was partly influenced by the UN communication is therefore not measurable at this level. For this reason, we need to find other ways to approach the question. Sikkink

<sup>4</sup> The period was restricted for reasons of information availability. The selection was made on the basis of communications, and limited to those containing less than 11 individual names. The final sample contains 471 cases for which sufficient information could be identified. As the availability of information is likely not randomly distributed across cases, the final selection can not be statistically regarded as entirely random. However, efforts were made to include as many cases as possible, even where limited information was available, often suggesting that the situation had not changed. Although it can be argued that having little information could lead to the wrongful assumption that no relevant developments took place, the opposite is also true: a lack of change in a defenders' situation often means that no update will be published. For this reason, it seems coherent to include such cases in the analysis rather than discard them entirely for lack of certitude – providing that there is at least some credible indication that nothing changed.

<sup>5</sup> In order to avoid over-burdening organisations with large submission numbers, some high-profile cases were left out of the survey as comprehensive information was widely available.

(Ibid: 31) also identifies the issue of benchmarks to determine effectiveness as the “single biggest unrecognised and unnamed source of disagreement among human rights scholars and within human rights movements.” She specifies the problem as a discrepancy between those who compare the observed reality to an “ethical ideal” and those who make empirical comparisons taking into consideration what is possible to achieve in a non-ideal world. The ethical ideal would, without question, call for an improvement in all defenders’ situations. The fact that reality is certainly falling short of this ideal, however, is no indication as to whether the mandate’s work is effective or not.

In recognizing that the mandate’s power is limited, we need to find a more appropriate benchmark to compare these case developments to. From an empirical research perspective, the optimal comparison would be between the development of the mandate’s cases and of a control group of similar cases of abuse against defenders on which the UN did not take action. Such comparable data is currently not available, which prevents the use of more powerful inferential designs at this stage. For this reason, the survey submissions are of particular importance. Several of the questions inquire about the *perceived* impact of international attention, of the Special Rapporteur’s communication specifically, and relevant comments about this perception. The consultation of those organizations that originally submitted the case to the mandate is the closest one can get short of asking the affected defenders themselves (some of whom were indeed surveyed as they had authored the original complaint). Thus, the information about perceived impact allows us to establish more systematic evidence in the absence of a control sample, based on which we can evaluate hypotheses  $H_{a0}$  and  $H_{a1}$ .

### Findings on the impact of communications

Analysis of the case development data on the 471 cases suggests that in approximately 24 per cent of defenders’ cases taken up by the mandate, the overall situation improved in relation to the incident(s) addressed in the communication. For half of all defenders, the situation remained unchanged or both positive and negative developments occurred. In the remaining 26 per cent of cases, the situation became either ‘somewhat worse’ or ‘much worse’ after one year, with the latter assessment of ‘much worse’ appearing in 17 cases in the sample. These figures are rather sobering, albeit not entirely surprising considering that at least 85 per cent of all of the mandate’s cases either go unanswered or receive a dismissive reply. Figure 1 shows the distribution of case assessments over six types of further development. At the same time, it indicates how the respective assessments are distributed according to the data source (external survey submissions or collected through desk research) as well as the level of information for both source types (complete/good or limited information available).

An important observation is that the case development categories are relatively evenly distributed, both across sources and levels of information. This finding provides a positive indication regarding the overall reliability of the data; the development of defenders’ cases should not be substantially different for those submitted through the survey and those researched independently.

### Distribution of case assessments

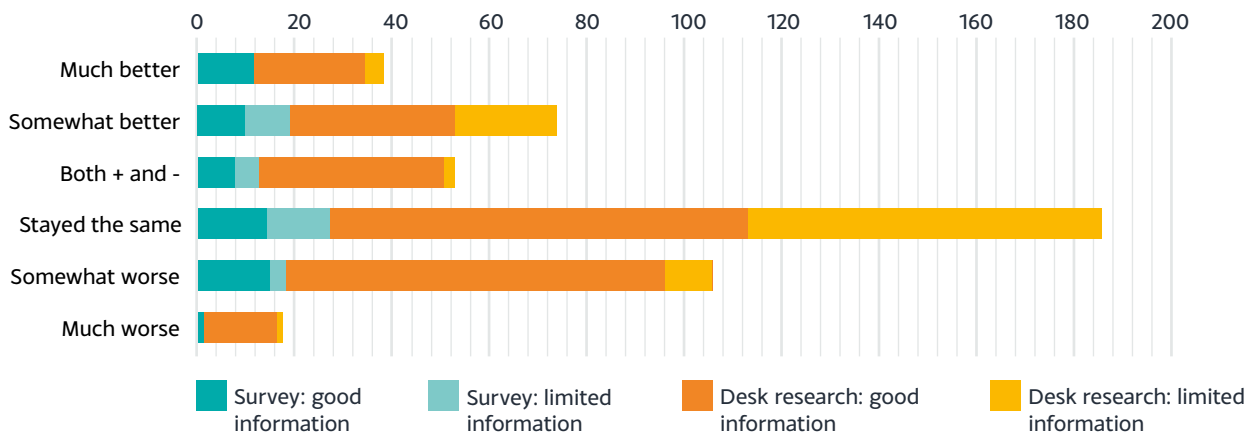


Figure 1. Distribution of case developments, according to source and level of information available (n=471)

However, these findings do not shed light on the potential impact of UN communications on the development of cases. The Special Rapporteur does not send his or her communications in a vacuum, but often takes action alongside range of other actors using both similar or entirely different advocacy strategies on the same cases. This includes action by international or local NGOs, foreign diplomats, other UN agencies, newspapers, local lawyers, family members, or even state agents. In an attempt to isolate the impact of UN communications, the survey distinguished between the perceived impact of the international attention generally, and of the mandate's impact specifically. By formulating the question openly, the survey gave the opportunity to also relate negative impacts on the case. These were subsequently assessed by way of the comments supplied. In three cases in Colombia (which had been named in the same communication), a negative impact of international attention was indicated as reportedly having "resulted in increased risks" for the individuals concerned. In 57 other cases for which an impact resulting from international attention was perceived as 'probable' (29) or 'definite' (28), that impact was considered positive, amounting to a perceived positive effect of international attention on 64 per cent of all cases assessed through the survey.

### Did the Special Rapporteur positively impact this case?

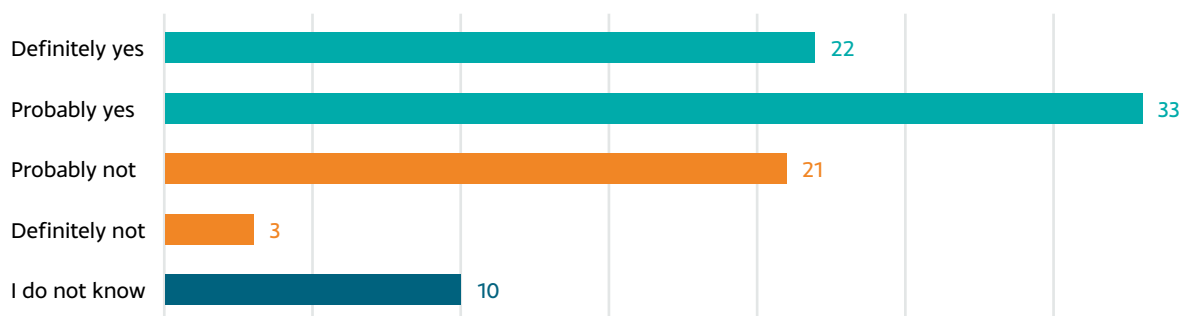


Figure 2. Impact assessment by external respondents (n=89)

Figure 2 shows the distribution of case assessments with regard to the positive impact by the Special Rapporteur specifically.<sup>6</sup>

As expected, respondents found it more difficult to attribute a definite and distinct impact to the mandate than to international attention more generally, but interestingly, the overall rate of likely impact was assessed to be almost the same. By way of example, two defenders in India commented on their own cases by stating that “we believe it is queries and interjections, especially by the UN and special mandate holders, that keeps the attention focused on our plight and possibly urges caution to the Indian authorities.” In around 62 per cent of cases, respondents attested a likely *distinct* and positive impact by the mandate’s intervention. This result is remarkable, given the complex nature of such cases, the often simultaneous advocacy by other international actors, the relative remoteness of the UN from local developments, and the fact that, since communications are kept confidential for months, an intervention can only be verified by victims long after the fact.

In the evaluation of these responses, it is important to highlight that respondents might be inclined to put forward positive outcomes and even overrate the mandate’s direct impact on the case, as they may have interests in maintaining the procedure. Alternatively, they might simply misjudge the impact, given that respondents, too, do not usually have access to direct information on perpetrators’ decision-making. Further, it should be noted that a tension remains between the more immediate notion of impact and the (deliberate) evaluation of medium-term developments as pursued in this study. For example, one respondent organisation observed regarding a case in Sudan, that they:


“...believe[d] that the very prompt intervention of several mandate-holders... together with interventions by NGOs, probably contributed to the pre-trial release... However, the impact has been quite limited in that judicial harassment has continued.

## Discussions of the findings and theoretical implications

The responses do, nevertheless, convincingly suggest that the mandate makes a difference in a significant amount of cases, which supports hypothesis H<sub>a1</sub>. By challenging the expectations based on states’ responsiveness and theoretical considerations, this finding raises new questions. Why do norm-violating states comply with the communications’ implicit demands, for example by releasing a defender or providing measures of protection that were not in place before? Further, what can explain why, even in the event of a positive effect, later developments may be positive in some cases but not in others? With regard to the first question, several explanations are conceivable. The large overlap between the assessment of the general impact of international attention and the specific impact of a communication by the Special Rapporteur could be a sign that the mandate’s effectiveness has to be read in conjunction with other advocacy efforts. This is also suggested by research interviews I conducted with international NGOs, as well as some of the respondents’ qualitative remarks (as quoted above). The Special Rapporteur’s voice may have important

<sup>6</sup> For the purpose of this plot, the three cases for which a negative impact was reported were moved from the original ‘probable impact’ to the ‘probably no positive impact’ category.

added value in this context, derived from his or her status as an expert appointed by states in a multilateral forum, and whose independence is widely recognized. The appointment of the mandate-holder by the very states who are being criticized reinforces what Alston (2011: 616) calls the mandate's "ability to provide an authoritative version of otherwise contested facts." Given that communications are currently kept confidential even from the defender concerned makes it difficult, however, to coordinate concerted action between different actors and enhance the overall effectiveness of the combined advocacy efforts of the Special Rapporteur and the international community. For example, an organisation working on Egypt observed in the survey that:

 It would be of great insight and help if feedback [could] be obtained after [the] generation of contact [by the Special Rapporteur] with the Egyptian government, as this would enable us to better strategise and determine what works and what doesn't.

Related to this explanation is the likely conclusion that reputation does matter and that states try to avoid (further) embarrassment at the international level, caused by the UN's attention (among others) to specific and tangible cases of abuse. As Risse and Sikkink (1999) have theorized in connection with their spiral model of human rights change, there appears to be a widely accepted conception of "appropriate behavior" among states, and governments generally aspire to being seen as complying with those principles (see also Goodman and Jinks 2013). In dismissive replies to communications, many governments question the competence of the UN mandate on the specific case and put forward arguments based on domestic legislation. However, none of the roughly 2000 replies reviewed in the context of the larger doctoral research project suggested an open rejection of the relevant human rights norms per se. On the other hand, Simmons (2009: 124-125) convincingly argues that external reputation alone cannot explain states' compliance with human rights treaties, mainly on account of collective action problems and costs to those who enforce reputational consequences. Why would it be different when it comes to the individual casework on defenders carried out by the Special Rapporteur, who mainly relies "on political pressure and moral suasion to influence state behavior" (Piccone 2012: 9)? The difference might lie in the fact that while Simmons is looking at systemic change, individual cases are primarily just that: individual. This likely alters substantially the cost-benefit equation on the part of a norm-violating regime.

Firstly, individual cases of abuse, particularly if raised by an independent expert, are much harder to deny or refute than more general accusations. Secondly, such cases are comparatively low cost for 'enforcers' to raise and sometimes even to maintain in the focus of debate, including by foreign states who often satisfy their own constituents by applying pressure to other states regarding high profile individual cases. Thirdly, and perhaps most importantly, compliance with these demands is also relatively low cost – at least in the short term. As such, if we revert to the spiral model of human rights change, those cases fall clearly in the category of tactical concessions with seemingly low costs, as compared with systemic and sustained change. What is interesting about this conclusion, though, is that the theory of change implicit in the 1998 Declaration



on Human Rights Defenders and subsequent documents, proclaims that by protecting human rights defenders, the international community supports agents of change and can thereby indirectly contribute to human rights compliance within states. If concessions on the cases of individual defenders are indeed seen by repressive governments as a cheap bargaining chip with which they can restore their tarnished image, a central question that remains is whether current protection efforts can effectively bear fruit in a more systemic way. I will come back to this question in the concluding remarks of this paper.

In the following section, I will first address the other question raised by this observation: If communications often seem to have an immediate impact on the defender's situation, what then are explanations for varying case developments in the year after a communication is sent? Can we find patterns in those developments that might help shed light on conditions for the mandate's external effectiveness?

## Predictors of positive case developments

### Research question and methodology

The question considered in this section is what might enable or hinder the positive development of a case in the event of international attention, including that of the UN Special Rapporteur. Having established that such attention has likely contributed towards initial positive developments in numerous cases, what could explain why many cases nevertheless deteriorate over the course of a year? On the basis of the available data, we cannot directly observe the medium-term effect that international attention exerts on a given case, but only whether it eventually develops positively or not.<sup>7</sup> Therefore, it is not possible to draw direct conclusions regarding the factors that predict the level of the mandate's impact. Factors found to be relevant could equally represent alternative explanations of the effect of international attention. However, if we assume that the observed positive developments were at least partly facilitated by international attention,<sup>8</sup> including that of the Special Rapporteur, then any pattern in case developments could provide tentative ideas on what type of cases may more likely be positively influenced by external action, and in which cases international attention does not seem to be effective at all.

The existence and distinctiveness of such patterns will be investigated using logistic regression models<sup>9</sup> on the 471 sample cases, with the presence or not of an improvement of the defender's situation<sup>10</sup> being the binary outcome variable. While there are some variables of interest present at the country level, the distribution of cases across countries is wide. In addition, the country-level variables are often observed on a country-year basis, which further fragments potential case groups and isolates too many observations to make meaningful use of a multilevel model. As such, although not ideal, some variables in the remaining country-year groups will therefore be disaggregated to the individual level and all cases are considered independently.

<sup>7</sup> The level of overall international attention would be very interesting to test as an additional predictor variable, notably in order to move more towards an analysis of the attention's effect on the likelihood of improvement. However, there is no adequate database that could be systematically searched for the defenders' names to determine the amount of attention their case had received at the time. We can assume, though, that all cases received a certain level of international attention beyond and after the UN communication, as the main sources solicited for information on further developments were international NGOs and media.

<sup>8</sup> Among the survey responses, for all 30 cases with 'somewhat' or 'much' improved situation, international attention was thought to have had a likely or definite impact, except in one case where the respondent indicated 'I don't know'.

<sup>9</sup> Logistic regression models are statistical models that use a logistic function to predict a (typically) binary outcome variable. On the basis of the randomly selected sample cases among the mandate's casework, logistic models can be used to predict whether or not a defenders' situation will improve, given particular values of the variables deemed relevant based on the theoretically developed hypotheses.

<sup>10</sup> Improvement is rather narrowly understood as the assessment being either 'much better' or 'somewhat better', disregarding mixed developments.

## Country-level variables

There are a number of variables we expect to predict the likelihood of positive developments within an individual case. One of the first things that might come to mind is regime type. However, it should be considered that the types of cases that exist in well-established democracies are often different from those which tend to arise under repressive regimes, and if they were taken up by the UN procedure, their further development is likely to be just as uncertain. A preliminary descriptive analysis shows that there is no clear pattern in improvements with regard to regime type: various examples emerge from democracies such as Argentina, Greece, India, Mexico or Peru, where most cases did not improve within the observation period.<sup>11</sup> At the same time, in some autocratic states such as Saudi Arabia or Azerbaijan, we observe more cases that improved than not. Nonetheless, it is relevant to look out for possible differences in the effect of other variables between more and less repressive countries. While retaining the regime type (measured by the country-year Polity IV score, Marshall et al 2017) as a control variable, we therefore add two more regressions with different subsets of the data: one restricted to cases in 'closed' regimes and one to cases in 'open' regimes (Polity IV scores of below and above zero respectively), using the same variables as in the main model.

The focus of this study is somewhat different from earlier research on states' general human rights compliance, but variables regarding states' external vulnerability and internal capacity seem equally important in this context.<sup>12</sup> External vulnerability is operationalised via aid dependency – measured by the ratio of net official development assistance received over the country's gross domestic product (GDP, World Bank 2017).<sup>13</sup> This echoes the hypothesis put forward by Risse and Sikkink (1999: 24) that "countries receiving large military and economic aid flows will be more vulnerable to human rights pressures than those not receiving such flows", as well as previous findings in the empirical literature showing that in Latin America, for instance, greater reliance on foreign aid and investment strengthens the impact of human rights criticism on a regime's compliance (Franklin 2008). Murdie and Davis (2012) on the other hand, do not find such an effect in their global study on the determinants of the impact of international shaming. The measure on aid is complemented by a new variable indicating whether or not the country is facing a Universal Periodic Review (UPR) process at the UN Human Rights Council within one year of the communication – the rationale being that cases of defenders that have recently been raised by the special procedures are regularly brought up during UPR sessions, and governments may seek to avoid such embarrassment. This idea is supported by the observation of a former diplomat relayed in an interview (Geneva, 25 February 2016), suggesting that states' Permanent Missions in Geneva tend to increase their follow-up on cases prior to participating in a UPR session. States' internal capacity to comply with human rights, ensure rule of law and accountable governance, on the other hand, has previously been shown to be instrumental in explaining human rights compliance on certain physical integrity rights (Englehart 2009). Instead of using several separate measures, we rely here on the State Fragility Index (Marshall and Elzinga-Marshall 2017), which combines multiple indicators on social, economic and political stability into an overall score of states' vulnerability to conflict or collapse.

<sup>11</sup> Although the allegations made by UN communications might occasionally be unfounded, the quality of the mandate's information is generally very high. Illegitimate claims in the first place therefore do not seem to be a plausible explanation of such unfavourable developments.

<sup>12</sup> See for example Englehart (2009), Hill and Jones (2014), Murdie and Davis (2012).

<sup>13</sup> Earlier studies have used the gross national income (GNI) rather than the GDP as a reference. However, the GDP is more widely available in the World Bank's database than the GNI, and using the latter measure would mean to drop 41 of our observations due to gaps in the available data. Since for most countries, the difference between the two measures turned out not to be substantial, aid dependency was measured on the basis of GDP. When calculating the same model with the smaller database, but using the ODA-GNI measure, the estimated effect was essentially the same.

## Case-level variables

At the individual case level, a variable was included that indicates the number of times the same individual was mentioned in the Special Rapporteur's communications during the period 2000–2016. Although the mandate often refers to such repeated mentions somewhat misleadingly as 'follow-up', it is rare that a new communication actually follows up on the same case, rather it is typically prompted by a new allegation. Instead of regarding this variable as a measure of persistence by the mandate on the violation in question, it should be understood as a proxy for the level of international visibility of the respective defender. More specifically, what is captured by this variable is the degree to which the following elements coalesce: a defender's sustained activism over time, their continued experience of repression, and continued international mobilization on their behalf. Given that it is very likely that in the event of an attack against such a defender, international outcry is already anticipated by the perpetrator, it can therefore be presumed that the perpetrator is less sensitive to external interventions. Thus, assuming that international attention generally does play a role, a negative tendency in the chance of improvement should be expected in comparison to other cases.

Furthermore, several of the mandate's reports highlight certain groups of defenders who reportedly face higher risk of being attacked or harassed. These groups notably include defenders "striving for the rights of the socially or politically marginalized, such as minorities, indigenous people and rural populations", as well as women human rights defenders who face specific risks "either because of the issues on which they are working or because of the environment in which they work" (Jilani 2003: 10). Various resolutions adopted by the UN Human Rights Council, as well as academic literature, support the idea of heightened vulnerability among these groups (Bennett et al 2015: 886), associated with the structural violence faced by members of these groups and risks specific to the types of rights they defend, in addition to the broader risks associated with their human rights work more generally. This wide-spread assumption will therefore be empirically evaluated with regard whether the situation of those defenders is less likely to improve in the year following an incident of harassment or attack. Defenders' affiliations to such identities will therefore be included in the model.

Finally, bivariate analyses also suggest that the type of violation experienced before a communication might be correlated with the likelihood of improvement. The type of perpetrator implicated in the violation could also account for such differences. All of these attributes were recorded as binary variables in the original database and it therefore makes little sense to include them all in the regression analysis, due to their large number and because the categories very often overlap. The variables of the final model on violation and perpetrator types were therefore carefully selected based on theoretical interest and relevant observation numbers. In addition, I include a case-specific measure of whether or not a government response was received by the mandate.

## Findings on predictors of positive case developments

Table 1 (below) displays the results from regressions 1-3 with the estimated coefficients for the predictor variables, standard errors in parentheses, and significance levels, as indicated by the p-values (where \*= $p < 0.05$ ; \*\*= $p < 0.01$ ; \*\*\*= $p < 0.001$ ). For each of the regressions, two different measures of the goodness of fit (Pseudo- $R^2$ ) are indicated, which specify how well the statistical model predicts the outcome variable. According to the benchmarks suggested by Hemmert et al (2018), all three regressions have a good to excellent model fit when taking sample size and outcome variable distribution into account.

**Table 1. Regression results**

	<b>Outcome variable:</b> Improvement of defender's situation		
	All regime types 1	Closed regimes 2	Open regimes 3
Polity IV score	-0.01 (0.02)	-0.11 (0.14)	0.09 (0.10)
State Fragility score	0.02 (0.03)	0.06 (0.05)	-0.05 (0.06)
Upcoming UPR	0.12 (0.34)	-0.98 (0.55)	1.22* (0.54)
Aid dependency	0.003 (0.04)	-0.08 (0.06)	0.16** (0.06)
Reply received	-0.20 (0.26)	-0.005 (0.42)	-0.07 (0.37)
Number of mentions by SR	-0.62*** (0.14)	-0.73*** (0.18)	-0.63* (0.26)
Business involved	-1.40* (0.58)	-0.77 (1.21)	-1.85* (0.72)
Viol: detention	1.02*** (0.31)	2.03** (0.67)	0.57 (0.39)
Viol: torture	-1.20** (0.37)	-1.87*** (0.51)	-0.09 (0.62)
Viol: conviction	0.97* (0.43)	1.22* (0.54)	0.74 (1.02)
Viol: discipl. measures	2.70** (0.85)	1.24 (1.55)	2.98* (1.19)
Viol: admin. harass.	-0.09 (0.70)	1.23 (1.34)	-1.33 (1.16)
Issue: minority	-0.35 (0.31)	-0.80 (0.52)	-0.19 (0.46)
Female/trans*	0.28 (0.28)	0.57 (0.46)	0.26 (0.39)
Constant	-1.36** (0.44)	-2.80* (1.34)	-1.71 (0.91)
Observations	461	223	238
Log Likelihood	-211.35	-92.31	-103.66
Pseudo-R2 (Cox-Snell)	.16	.27	.16
Pseudo-R2 (Nagelkerke)	.24	.39	.25

**Note:**

Estimated parameters (standard errors) of logit models; \* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ .

The logit models here present a binary outcome variable; therefore, the coefficients indicate an increase (or decrease) in the *likelihood of improvement* that is associated with a one-unit increase in the predictor variable. The most basic information obtained from the coefficients is the effect direction: a positive value signifies that the respective variable increases the chance of improvement, a negative value signifies that it diminishes it.<sup>14</sup> As the dataset is a reasonably randomized sample from the larger population of cases taken up by the UN, the p-value indicates whether the sample data provides enough evidence for the estimated effect so that the null hypothesis (“this variable has no effect on the likelihood of improvement”) can be confidently rejected for the larger population. The lower the p-value, the less likely it is that the measured effects are simply due to a sampling error and the less likely it is to see the same (or a stronger) effect by pure chance, even if there was no relationship at all between the predictor variable and the rate of improvement. In social science literature, estimates with p-values below 0.05 are typically considered significant, indicating that there is at least some evidence to reject the null hypothesis. For reasons of theoretical relevance, several variables were retained in the model despite their lack of statistical significance, as a failure to reject the null hypothesis nevertheless provides some information of interest. For instance, insignificant across all three datasets is the variable of whether or not the government replied to the respective case, underscoring that there is no systematic relationship between a state’s actual engagement with the mandate and the further developments in the respective defender’s situation. This fact further casts doubt on the use of state responsiveness on communications to evaluate their effectiveness, as discussed above.

As expected, regime type *per se* does not seem to predict the improvement of a case as the Polity IV variable is not statistically significant. If we think about rule of law as one of the defining concepts of regime type, we can better understand why the relationship between regime type and improvement probability is unlikely to be linear: while rule of law *can* help achieve justice in a case of attack or harassment independent of political interests, violations against defenders that stem from unjust court decisions *might* more easily be overturned in a repressive environment where executive interference in the judiciary is often common practice. Based on this rationale, we expected to see different dynamics at play in explaining case improvements in closed versus open regimes, which is confirmed by the differences between Regressions 2 and 3.

### Developments according to violation type

For instance, the effects of certain types of violation on the likelihood of situation improvement do indeed differ substantially between the two regime types: if a defender was detained or convicted per the information in the communication, we find an increased likelihood of improvement in closed regimes (compared to no detention or no conviction), but no significant effect in open regimes. Similarly, defenders who experienced torture or ill-treatment in closed regimes had a decreased likelihood of improvement, while there was no significant effect in open regimes. On the other hand, instances of disciplinary measures (such as dismissal or disbarment) had a higher likelihood of improvement than other violations in open regimes, while no significant

<sup>14</sup> The effect size itself is somewhat less intuitive to interpret, as the changes in likelihood are expressed in log odds. By exponentiating the estimated log odds of a variable, we can obtain the odds ratio, which is the proportionate change in the odds of an improvement occurring.

effect was found in closed regimes.<sup>15</sup> It is only in closed regimes that detention and conviction cases are more likely to improve than other types of attacks. Although the effects differ between the regime types only in their statistical significance and not in their direction, the findings support the idea that, in the event of international attention, regime type does matter in the typical development of a case after a given violation.<sup>16</sup>

Generally speaking, it is interesting that the overall effects of detention and conviction are positive with regards to the further development of a case. This makes sense if we consider that in instances of more severe violations such as these, there is simply more room for improvement than in cases of lower level violations, which can often be seen as early warning of further violations to come. On the other hand, the negative association of torture (or ill-treatment) cases with the likelihood of improvement also suggests that in cases of severe violations, improvements are less likely to occur. It should be noted, however, that a defender's situation after torture was only coded as improved if the torture claims were investigated. This may be considered harder to achieve than a release from detention because it requires a higher level of commitment as well as dedicated resources on the part of the authorities to implement. A second explanation could be the fact that while all sample cases received attention by the Special Rapporteur, the broader level of international attention to cases of detention or conviction is likely to be substantially higher than in other cases. If the *level* of attention alters the cost-benefit calculation, this could explain a higher level of improvement in more prominent cases. Thirdly, considering the more pronounced effect in closed regimes for cases of detention or conviction, one could also assume that improvements (such as release from custody or presidential pardon) can be part of a repressive state's intimidation strategy.<sup>17</sup> In this regard, it is of particular importance to note that a situation improvement does not necessarily mean that the defender was subsequently in a position to carry on her or his work. If a government authorizes a release from prison because the individual is no longer considered a threat, she or he might nevertheless be too intimidated to pursue their human rights work. I return to this issue in the concluding remarks.

### Aid dependency, UPR and state capacity

Further variables of relevance are being the subject of a forthcoming UPR process and a state's level of aid dependency, both of which are only found to be significant for open regimes. Each appears to affect the likelihood of improvements positively. The same variables show a negative effect in closed regimes (albeit not statistically significant and therefore unreliable); this might explain why no significant effects can be found in the complete dataset (Regression 1). The finding with regard the UPR process in open regimes is significant as no other study thus far has found a *measurable* impact of the UPR on prior human rights performance, although anecdotal evidence supports this idea. The effect is also rather strong, as a log odds of 1.22 means that the likelihood of situation improvement for a defender whose country is due to undergo a UPR is more than three times higher than if no UPR is due. This encouraging result could indicate that the prospect of a state having its human rights record exposed at the international stage makes (semi-) democratic regimes more wary of cracking down on their own population,


<sup>15</sup> Cases of administrative harassment show no significant effect in either regime type. However, it should be noted that among the mandate's cases, administrative harassment often occurs in the context of other violations, which makes it naturally more difficult to make any general statement on such cases.

<sup>16</sup> This result suggests that multilevel modelling could be very useful to examine such cross-level interactions, but a larger dataset is required to explore this possibility.

<sup>17</sup> On the one hand, repressive states frequently try to coerce activists into silence using short-term detention, often without explicit charges or formal court approval. On the other hand, it is very common even for convicted individuals to be released before the expiration of their formal sentence, as an analysis of 162 political prisoner cases across 14 countries shows (Kinzelbach and Spannagel, 2019). This can be partly attributed to the fact that high sentences represent a demonstration of power with a view to deterring activists beyond the individual in question, although the state might not actually consider a long imprisonment beneficial or necessary in a given case.

and in particular with respect to internationally connected and prominent activists. Further research is required in order to explore the mechanisms of this suggested effect and its absence in closed regimes. Regarding aid dependency, the difference between regime types is also highly interesting and could perhaps help explain some of the contradictions in previous empirical literature. One possible explanation for the presence of the effect in open regimes and its inconclusiveness in closed regimes could be the role of domestic civil society actors, who often reach out to donor countries to put external pressure on their own government. Donors, in turn, often have a vested interest in responding to concerns of civil society in recipient states, in particular if their development aid subscribes to the principles of local participation and human rights protection.

The internal capacity of states, as measured by the State Fragility Index, does not prove to have a statistically significant effect in either of the three datasets. While it is important to recall that we are not looking at state repression (or human rights compliance), but rather at the further developments in cases where a violation has already occurred, it was expected that increased state fragility would diminish the chances of improvement in a given case, mirroring the increase in physical integrity violations documented by Englehart (2009: 174-175). It should be noted, however, that Englehart did not find a clear relationship between state capacity and the level of political detention, which represents a large share of our cases. Moreover, it is quite conceivable that high-capacity in a state can actually be a double-edged sword in terms of human rights violations. In her comparison of Morocco and Tunisia in the 1990s and 2000s, Van Hüllen (2013: 193) notes Tunisia's:

 ...higher capacity for effective governance... provided the... regime with the sheer capacity to build an extensive police and security apparatus, but also to systematically use legislation and prosecution as more elaborate means of repression.

Thus, while low state capacity might account for higher levels of physical integrity violations (and lower improvement rates) in the face of armed non-state actors or security forces gone rogue, high capacity can also equip leaders with authoritarian inclinations with the necessary means of sustained oppression.

### Effects of perpetrator type and societal vulnerability

Regarding perpetrator types, a distinction between state and non-state perpetrators did not yield any significant results. However, when testing for the direct or indirect involvement specifically of businesses (mostly multinational companies) in violations against defenders, we find a very strong and significant negative effect on the likelihood of situation improvement within open regimes. Here, the odds of improvement are only 0.16 times as high as in cases without such involvement. Most cases with business involvement in the database were present in open regimes (39 out of 47), which might explain why a negative but statistically not significant effect is found in closed regimes. The overall finding has quite serious political implications, as it suggests that whenever businesses are involved in attacks against human rights defenders,

state institutions are either unable or unwilling to provide meaningful remedy and protection in the aftermath – despite international (and UN) scrutiny.

An expectation not confirmed by the data relates to vulnerable groups of defenders as suggested by former Special Representative Hina Jilani and the wider HRD risk literature. When including all suggested categories, ie those working on minority issues, indigenous or rural populations, as well as women human rights defenders, no consistent pattern could be found. However, by splitting the categories up, we do find a negative tendency for defenders working on minority issues<sup>18</sup> and a positive tendency for female/trans\* defenders<sup>19</sup> across the three datasets, although none of those effects prove statistically significant. This does not confirm, but also not reject the idea that vulnerabilities such as those identified could systematically affect further case development. It seems likely, though, that the question of vulnerability is very context-sensitive and therefore difficult to detect across a wide range of very different cases and countries. In addition, it should be considered that those defenders whose cases are taken up by the mandate usually have certain resources, including established support networks, at their disposal which enable them to make their cases heard at the international level. Although this applies to all cases analysed in this study, it might mask in particular the additional risks encountered by vulnerable defenders who cannot rely on such resources.

### Case developments among repeatedly mentioned individuals

The single most significant effect observed concerns the number of additional mentions by the Special Rapporteur over the 16-year period of the wider database. As explained above, this variable should be regarded less as a measure of persistent attention given to a single case, than as a measure of the degree of the defender's sustained activism, their repression, and international mobilization on their behalf. Among the 471 sample cases, the maximum number of further mentions is 14, while 275 of the individuals were mentioned only once; the mean number of mentions is about two. Across all three regressions, the observed effect is strongly negative, with the odds of a situation improvement essentially halving with *each additional mention*.

Before further interpreting this result, it is important to consider the possibility that the variable comprises a tautological argument: the repeated mentions captured by this variable could fall within one year of the first communication and therefore measure whether another violation had occurred within that time frame, ie measure the lack of improvement as defined by the outcome variable. However, when controlling for mentions of the same individual in the same or the next annual report by the mandate, the effect of the original variable persists. It is intriguing to see that the effect is strongest in closed regimes, while slightly weaker (and less significant) in open regimes. It may therefore be concluded that repressive governments in particular are generally less likely to comply with a communication's demands on such cases, as they have already come to include international reactions in their calculation of costs prior to committing a violation against the defender. It is important to underscore that according to this interpretation, it is *not* the repeated mentions that decrease the likelihood of improvement in such cases, but a

<sup>18</sup> Including such diverse issues as rights of ethnic, religious or cultural minorities, LGBTI, women, indigenous groups, migrants, or the issue of racism.

<sup>19</sup> While a positive tendency might be counter-intuitive for such cases, it should be kept in mind that by dividing the vulnerability categories, we are effectively controlling for work on minority issues. Still it could be interesting to further explore why female defenders who do not work on minority or women's issues might have higher chances at improvement than men, if such an effect could be confirmed using a larger dataset.



less favourable situation from the outset, which international attention seems powerless to change. Paradoxically, this finding does support the idea that international attention matters – but only in cases where perpetrators do not factor it in to their assessment of the perceived benefits and repercussions arising from committing a violation. Likewise, it is also critical at this point to emphasize that this does not *necessarily* mean that such high-profile cases should not be raised again, as attention to these individuals in particular likely sends important signals to the regime, to other activists and to the public that extend well beyond individual cases. (Indeed, these in turn, might explain why a government is less inclined to react favourably). Furthermore, it should not be overlooked that a reaction to such well-known cases can also be a matter of the advocate's credibility within the wider sphere of human rights.

These findings make the case for a more detailed assessment of the likely added value that repeated mentions by the Special Rapporteur can or cannot provide, especially in cases with a high degree of international mobilization, considering also a communication's initially confidential nature. Indeed, in one interview, an NGO representative expressed frustration over the fact that the mandate has a tendency to take up such cases although the communication is deemed very unlikely to have an impact (Berlin, 16 January 2016). Instead, one could argue, resources should be invested not so much in repeated mentions of the same defender for distinct violations, but rather could be invested in actual follow-up, whereby the Special Rapporteur sustains attention on one and the same case of violation, and serving to not let governments get away with silence or unsatisfactory replies.

### Practical relevance of the findings

These last considerations show that the practical implications of the findings are complicated. First, as mentioned at the outset, the data does not directly tell us to what extent and in what way those enabling and hindering factors might interact with the degree (or even absence of) international attention that human rights defenders' cases receive. Without comparable data on defenders who received little or no attention, it remains difficult to conclude from a positive correlation that attention indeed works in that case, even though a connection is likely. Second, most of the factors considered are out of international actors' hands and cannot be manipulated in a given case to improve its outcome. The most important leverage lies therefore in the decision of which cases to take up at a particular moment in time. Yet, dropping cases with a smaller chance of improvement in order to maximize the impact of public attention has both ethical implications, as those defenders deserve an equal chance to benefit from such attention,<sup>20</sup> and consequences for the indirect type of protection benefits that were not included in the analysis.

Indirect benefits can emanate from public attention to separate, high-profile cases, but also from the documentation of patterns of violations over time. For instance, a Geneva-based activist explained in an interview (Geneva, 3 March 2016) that advocacy at the UN on behalf of LGBTI communities benefited greatly from the fact that the mandate had continuously raised cases of LGBTI defenders, even though they entertained little hope that this could directly

<sup>20</sup> Even in the absence of tangible improvement, the fact of having one's case raised by a UN expert might have a considerable psychological effect on the individual concerned.

help the individuals concerned.<sup>21</sup> Moreover, as former Special Rapporteur Margaret Sekaggya put it, while “mindful of the limitations and partial nature of the data”, communications also serve “to offer analyses of patterns and trends” on the situation of human rights defenders (Sekaggya 2014: 8). However, an analysis of the cases taken up by the mandate between 2000 and 2016 suggests that the case selection is already quite biased and cannot be regarded as a representative picture of patterns and trends on the ground (Spannagel 2018). This relates for example to the types of violations addressed, which strongly favour cases of detention, or the geographic imbalance of available information. If cases were to be selected purely based on impact, the documentation aspect of the communications procedure would become meaningless.

Avenues other than case selection could also be explored in response to the findings; for example, in relation to the strongly negative association of business involvement with the further development of defenders’ cases. Quite clearly, the international attention paid to those cases did not result in any substantial improvements in the medium term. A change in the approach of the Special Rapporteur beginning in 2017 has been to increasingly send communications directly to the company accused of involvement in a given violation, instead of only addressing the relevant government. Such attempts could prove effective, especially in conjunction with other initiatives such as the UN Guiding Principles on Business and Human Rights, that work to enhance companies’ commitment to human rights principles and environmental protection. However, further analysis of these more recent efforts would be needed to test this assumption.

## Conclusion

Although many states, like the Argentinian military junta in 1980, continue to consider the thematic human rights procedures of the UN to be less controversial than country mandates, this does not necessarily mean that they are not effective in enhancing human rights protections. This paper presented results from the first systematic empirical analysis of casework conducted by the UN Special Rapporteur on the situation of human rights defenders. Based on survey responses for 89 randomly selected cases, it is possible to conclude that communications sent by the Special Rapporteur appear to positively impact defenders’ situations in a substantial number of cases. Furthermore, through a logistic regression analysis of a wider random sample of 471 cases, I was able to identify various factors that influence the further case development positively or negatively. Chances of improvement are notably smaller for cases with business involvement, as well as for individuals who stand out with a combination of sustained activism, experience of repeated violations and international mobilization on their behalf over time. Improvement is more likely in cases of certain violations such as detention or conviction, although this effect is most evident in closed regimes. In open regimes, on the other hand, being the subject of a forthcoming UPR seems to increase chances of improvement substantially, as does the state’s level of aid dependency. Although the statistical models tested show a good fit with the data, further analysis is recommended to verify some of these findings

<sup>21</sup> According to the interviewee, the same view is communicated to defenders at risk who consider reaching out to the UN.

in a larger sample.<sup>22</sup> Qualitative studies could deepen our understanding of some variables, such as the encouraging effect of a forthcoming UPR on state actions in response to a communication.

At the beginning of this paper, impact was defined as achieving direct and immediate protection for individual human rights defenders. The finding that communications do make a difference on individual cases, as states often respond to international pressure with individualized concessions, is good news at least for the humanitarian aspect of individual casework. However, if we consider the broader picture, the theory of change which underpins a majority of international protection efforts in support of defenders aims at a more systemic and sustainable effect on human rights compliance. Therefore, the findings presented in this paper raise an additional research question, namely whether individual casework on defenders can bring about such lasting effects on the overall human rights situation. This interrogation is all the more relevant as the data analysis shows that in many cases where an immediate positive impact was identified, the defender's situation nevertheless stayed the same – or even deteriorated – over the course of one year. Moreover, the definition of situation 'improvement' applied in this study did not directly measure whether a defender was actually able to carry on her or his work in an effective manner thereafter. It is, for example, possible that defenders who were released after detention or conviction did not experience further harassment simply because they were too intimidated to continue their human rights work. Similarly, the fact that a situation deteriorated may or may not translate into a defender's inability to make a difference. In order to look beyond the humanitarian motive of individual casework, further research into the effects of case-specific situation improvement on defenders' ability to make change is therefore needed.

Concerning the protective effect of individual casework, the findings presented in this paper maintain that reputation matters: whether with regard to the identified impact of communications, the positive effect of a forthcoming UPR, the negative tendency in cases where businesses as perpetrators are not (yet) in the spotlight, or the lack of improvement in cases where regimes likely anticipate international protest. These results all add nuance to the same reputational logic which underpins advocacy around human rights compliance. When it comes to practical implications, the central message, therefore, is that individual casework can be very effective in providing protection to defenders, but that case selection, timing and coordination are the core parameters of such efforts. In order to find the right balance, there are two crucial elements to consider. First, one needs to understand the strategic advantages and purposes of the respective measure. UN communications specifically rely on the weight of the expert's authority and independence, are initially confidential, and as such, outside of the pattern of public attention; yet while direct protection benefits are a central goal, communications also fulfil a documentation function that precludes an exclusive focus on immediate impact. Second, attention should be paid to the highly contextual nature of casework: the examples of cases with business involvement, or the effect of an approaching UPR, show that certain circumstances require strategic adaptation and creative responses.

<sup>22</sup> In order to further improve the dataset for similar studies, it would be highly desirable to develop a control dataset of defender cases that were not addressed in UN communications. Considering the mandate's capacity limits the amount of cases taken up to only a fraction of incoming complaints, it would be conceivable to examine those cases that were submitted but not taken up and to compare them to the present dataset. (An even better comparison could be achieved through an experimental design such as a Randomized Controlled Trial.) However, submissions are currently not systematically registered or analysed at the Office of the High Commissioner. Data on hundreds of direct submissions by Amnesty International to the mandate were gathered in cooperation with Amnesty in the context of this research project, and their possible use for this purpose is currently being explored. In addition, with a substantially larger dataset than the one used here, a multilevel regression model could help to further explore the effects of macro-level variables and their interaction with individual case characteristics.

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## Appendix: Examples for assessing the development of a case as provided in the questionnaire

This matrix provides examples on how to assess the development of a case. It is divided into different types of violations denounced in the Special Rapporteur's communications (see the case description above). If in the present case there were contradictory developments within one year (eg the defender was unconditionally released but rearrested a few months later), then select "There were equally important positive and negative developments." If in the present case more than one initial violation applies, new violations occurred within one year, or different outcomes than the ones described were observed, please use your best judgment to assess the overall outcome applying a similar logic.

Example of initial violation	Much better within one year	Somewhat better within one year	Situation stayed the same overall within one year	Somewhat worse within one year	Much worse within one year
Detention	Release without conditions.	Release with conditions (eg on bail), OR: Detention continued but conditions were improved.	Detention continued.	Detention continued, charges or threats were added.	Detention continued, X was tortured, disappeared or died in detention.
Torture in detention	Release and torture claims were credibly investigated and reparation provided.	Detention continued, but torture stopped and claims were investigated.	Detention continued and torture claims were not investigated.	Detention and torture continued.	X was disappeared or died in detention.
Put on trial	Charges were dismissed and trial was discontinued.	Trial continued, but X was acquitted eventually.	Trial went on for that period.	Trial continued, X was sentenced.	Trial continued, X received a relatively heavy sentence.
Death threats / Physical attack	Protection provided, threats were credibly investigated, perpetrator(s) were prosecuted.	Protection provided, threats were credibly investigated, no conclusive outcome.	Threats/attacks against X were not credibly investigated, but discontinued.	Threats/attacks against X were not credibly investigated and continued.	Threats/attacks against X were not credibly investigated and X was injured/killed.
Enforced disappearance / killing	Credible investigations were made (and X was found); perpetrator(s) were prosecuted.	Credible investigations were initiated.	No investigations were made into the disappearance / killing of X.	(X remained disappeared), fake investigations were made as a cover-up.	(X remained disappeared), the wrong people were prosecuted in fake investigations and/or other defenders were disappeared/killed.
Administrative harassment	Harassment was discontinued, compensation provided.	Harassment was discontinued, relevant documents issued etc.	Harassment continued on the same level.	Harassment became worse.	[If additional violations occurred]
Defamation campaign	Defamatory statements were officially condemned and/or credibly investigated.	Defamatory statements were discontinued.	Defamatory statements continued and were not officially condemned or investigated.	Defamatory statements continued to be made and were endorsed by (more) officials.	[If additional violations occurred]



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