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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by European Centre for Law and Justice, The / Centre Européen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 May 2021]

* Issued as received, in the language(s) of submission only.

Special procedures: the problem of mandate holders' financing

The ECLJ would like to draw the Council's attention to several serious issues affecting the effective functioning of the Special Procedures. The ECLJ studied the Reports of the Office of the High Commissioner for Human Rights (OHCHR) between 2015 and 2019 and conducted more than twenty-five interviews with mandate-holders. It appears that an increasing amount of extra-budgetary, public and private, funding is going directly to experts; that such funding remains partially opaque, that there are many inconsistencies in the reporting, and that such funding can undermine the independence of experts.

The ECLJ found significant differences between the amount of contributions received, depending on whether they were declared by the Office of the High Commissioner, the experts, or the private foundations which financed certain mandates. It appears that OHCHR reports to have received USD 14,647,735 between 2015 and 2019 in voluntary contributions allocated to special procedures for specific mandates, while the experts on the other hand only reported USD 10,629,417 in their annual report.

These funds are increasing significantly. In terms of earmarked voluntary contributions, they have increased from USD 1,741,103 in 2011, to USD 4,040,166 in 2019. The main public donors are Finland, France, Germany, Norway, Russia, South Korea, Switzerland, and the European Union. These voluntary contributions are problematic because the experts become materially dependent on public funders. They also break equality between States, and between mandates. However, the fact that they are channeled through the OHCHR, ensures a minimum standard of transparency and control by the UN administration.

In order to circumvent this UN control, experts invoke their independent status to justify financial payments that are made directly from public and private actors, bypassing the OHCHR completely. The choice of receiving funds directly, allows for easier use of the funds and avoids the control and deduction made by the OHCHR. But these direct funds are opaque. It is a "gray area" that is expanding dangerously. The reported direct donations increased from USD 2,099,503 to USD 2,646,678 every year between 2015 and 2019. During the same period of time, 57 out of 122 experts reported receiving 257 direct or in-kind payments, totaling nearly USD 11Million, mostly from private donors. One expert reported receiving more than USD 2Million, another expert reported receiving more than USD 1Million, six experts reported receiving more than USD 500,000, and 11 experts reported receiving more than USD 100,000. Direct payments are not monitored by the UN. The two largest private contributors are the Ford Foundation (USD 2,190,000 from 2015 to 2019) and the Open Society Foundations (USD 1,584,417 from 2015 to 2019). Direct payments do not appear in OHCHR's financial reports, but are only, and eventually, reported by their recipients on a voluntary basis. These payments are published in the annexes to the Special Procedures' annual reports, which we found to be lacking in rigor. The Special Procedures system can only rely on the honesty and good faith of experts. There is no guarantee that all funding has been reported. In fact, some rapporteurs have not declared anything, even though they clearly received substantial support.

Voluntary funding is usually subject to a written agreement between the donor and the recipient (grant agreement). This agreement can be very specific, especially when it is conducted with a foundation. A grant agreement describes the objectives and terms of the funding. Funding agreements between experts and donors, and the terms and conditions of such payments, are not communicated to the OHCHR, nor are they made public, and sometimes even the amount and purpose of the funding is not accurately reported. It is not possible to know who, the expert or the donor, took the initiative to ask for or to offer money. Between 2015 and 2019, there were 18 cases in which the amount of the contribution was not specified. In these cases, the titles were very vague, such as "Support in cash" or "multi-year contribution," imprecise, such as "two year cash of USD 250,000," or approximate ("Approximate amount of USD 38,000" or "Around USD 8,000"). In addition to these specific contributions, there are different kinds of in-kind donations, the

value of which is never estimated but which can be considerable when for instance space and personnel are provided. It is also common for the purpose of the contribution to be unreported. Between 2015 and 2019 of the 439 contributions (in cash or in-kind through OHCHR or not), 143 did not have an explicit purpose.

It appears that the OHCHR is not accountable to the experts for its management of the regular budget allocated to the Special Procedures, even though the experts complain about the lack of financial support. This insufficient means made available to the experts make them vulnerable to offers of “support” from public and private actors. The main beneficiaries of this precarious situation for the experts are external financiers who thus manage to penetrate the Special Procedures system and exert considerable influence.

The independence of experts is an essential necessity to guarantee them real freedom of speech and action vis-à-vis States. It also carries the risk of being abused by experts, either when overstepping their mandate they become activists, or when they are acting unethically. These two inherent risks of absolute independence, activism and corruption, led, between 2002 and 2015, to the adoption of several measures that prohibited experts from accepting awards, remuneration, and other benefits. In the ECLJ’s view, these measures are insufficient and are not properly enforced.

By way of illustration, the Open Society Foundations openly admitted to seeking to “influence” an expert, stating that it paid USD 100,000 in 2017 to the Center for Women’s Global Leadership (CWGL),[1] “influencing the UN Special Rapporteur on contemporary forms of slavery, its causes and consequences”[2] to recognize domestic work as a form of violence, as the Open Society Foundations states on its website. The rapporteur’s July 27, 2018 report[3] twice cites the Center for Women’s Global Leadership.[4] The subsequent report, presented to the 73rd session of the UN General Assembly (A/73/139),[5] cites the Center for Women’s Global Leadership 7 times and goes beyond its mandate to promote liberalization of migration policies.

Juan Méndez, Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment between 2010 and 2016 was at the same time a member of the Board of Directors of the Open Society Justice Initiative.[6] The Open Society Foundations provided him with a two-year grant worth USD 200,000 to fund his research center, the Anti-Torture Initiative, which assists him in writing his reports.[7] In 2015, Mr. Méndez received a USD 90,000 grant from the Ford Foundation to organize an expert consultation on the topic of gender and torture,[8] and to hire a research assistant to write a thematic report on gender and torture and to promote it.[9] The expert report on gender and torture was published on January 5, 2016 and promoted abortion in the same terms as the foundations that funded it.[10] In this final Report, at no point did the Rapporteur refer to the generosity of the Ford Foundation or the Open Society Foundations.

In order to restore the conditions of independence of Special Procedures mandate-holders, the ECLJ recommends that the Human Rights Council prohibits all direct funding, whether public or private, to mandate-holders, and holds OHCHR accountable for its management of Special Procedures budgetary and extra-budgetary resources.

The ECLJ’s full report on the financing of the special procedures will be available on its website.

[1] <https://sas.rutgers.edu/giving/sas-departments/programs-centers-and-institutes>

[2]

https://www.opensocietyfoundations.org/grants/past?filter_keyword=Center+for+Women%27s+Global+Leadership&grant_id=OR2017-39720

[3] Document A/HRC/39/52, July 27, 2018.

[4] https://www.ohchr.org/Documents/Issues/Slavery/SR/DomesticServitude/CSO/Reply_CWGL.pdf

[5] <https://undocs.org/A/73/139>

[6] OSF, Torture: It Can Happen Anywhere, February 13, 2014,
<https://www.opensocietyfoundations.org/voices/torture-it-can-happen-anywhere>

[7] ONU, A/HRC/31/39 Annex X - p.51.

[8] Id.

[9] Id.

[10] UN, “Gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment”, A/HRC/31/57.