Special Procedures of the HRC: Devalued ‘crown jewel’ or powerful tool for the powerless?

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By Catarina de Albuquerque, Executive Chair of the Sanitation and Water for All Global Partnership

Almost every statement or article about Special Procedures starts with the mantra that Special Procedures are the ‘crown jewels’[1] of the UN human rights system. According to the Oxford Dictionary the expression ‘refer[s] to something of great value among other valuable things’. Mandate holders monitor the realisation of human rights, identify and respond to violations and evaluate a State’s human rights record. To assess the ‘value’ of Special Procedures one has to scrutinise their impact in performing their functions. In this short text I will analyse recent trends, as well as examine future perspectives for the Special Procedures system.

An increase in size...

Since it was created almost 50 years ago the Special Procedures system seems to have gained weight:[2] it grew in size, in issues covered, as well as in the number of outputs produced. The Special Procedures system is today comprised of a total of 55 mandates (41 thematic and 14 country related), and covers a constantly growing range of human rights issues. Its work seems to have a greater impact at country level with a growing number of country missions (in 2015 mandate holders conducted 76 country visits to 53 States and territories) and a bigger number of countries visited (as at 31 December 2015, 167 Member States had been visited by at least one mandate holder). Their outputs have also increased. In 2015, they submitted 134 reports to the Human Rights Council and 38 reports to the General Assembly; they transmitted a total of 532 communications (urgent appeals and letters of allegation) to 123 States and 13 non-State actors; and they issued 450 media products, comprising 323 press releases, 53 media statements and 75 media advisories.[3] These figures give us an idea of the increasing size and potential impact of Special Procedures in the advancement of human rights. Many mandate holders’ actions have had significant impacts at the national, regional and global levels. There is greater transparency in mandate holders’ selection. Whereas under the Commission on Human Rights the selection process for mandate holders was somewhat unpredictable and impenetrable (because it was entirely controlled by the chair of the CHR), after the establishment of the Human Rights Council (HRC), the experience and expertise of the candidates now have a greater weight thanks to enhanced criteria. The new system of appointing mandate-holders from a shortlist recommended to the President of the Council by a
Consultative Group of ambassadors from all regions ensures greater transparency, but also greater expertise and quality of the chosen mandate holders.

…but an increase in influence?

However, and in spite of an apparent growth in size and relevance of Special Procedures, some say that the system was ‘designed to be ineffective’. Compared with articles and reports written about them decades ago, the threats and challenges the system faces seem to be pretty much the same. I will therefore look at some of the fundamental ‘determinants of influence’ of Special Procedures,[4] namely: their independence and accountability; the expertise and standing of mandate holders; the cooperation of States with the system; the implementation and follow-up to their recommendations; and finally the availability of resources and support. I will assess whether the apparently positive evolution depicted in the figures mentioned above might reflect a real strengthening of the system.

When it comes to the expertise and standing of Special Procedures, the selection process put in place by the Human Rights Council clearly gives greater assurances of expertise and quality of mandate holders. Whereas at the time of the CHR this process was entirely led by the Commission’s President (even if in consultation with members of the Bureau), now there is a competitive and transparent process which involves an application, followed by the elaboration of a shortlist and telephone interviews by the Consultative Group (composed by five Ambassadors of the five regional groups). The final candidate is then proposed by the HRC President and approved by the Council. Such an open and transparent process also gives the whole system greater assurances of independence. However the current process of merging the Office of the High Commissioner’s Special Procedures Branch with the Research and Right to Development Division might consist in a setback and represent a serious threat to mandate holders’ independence and identity, but also to Special Procedures’ visibility and consistency as a system, which will irredeemably lead to its weakening.

In terms of availability of resources to the Special Procedures system, the situation has not improved with time. If the UN’s human rights portfolio only receives 3 per cent of the organisation’s regular budget, the Special Procedures Branch within the OHCHR is allocated 12.6 per cent of overall human rights funding. The increase in mandates puts an additional strain on OHCHR as an increase in funding has not accompanied the increase in the number of Special Procedures mandates. This means Special Rapporteurs regularly seek additional support outside the UN, which might raise independence and transparency issues.[5] To aggravate this situation of lack of funds, recent trends suggest that earmarked funds raised by Special Procedures mandate-holders for their own (independent) activities are being targeted to fund regular activities at OHCHR (including RRDD) where there is a lack of resources. All mandate holders should be provided with increased support by OHCHR (ideally a true team, to enable them to prepare at least two country missions, two yearly reports and act on alleged human rights violations) and a fund to which Rapporteurs could apply to receive additional funds should also be created.

In terms of cooperation, it is a common place to say that the follow up of the recommendations of Special Procedures continues to be the biggest weakness of the system. Even though positive examples of impact of Special Procedures work exist,[6] the truth is that follow-up and implementation of recommendations is mainly unknown and probably very limited. The HRC could implement a mandatory regular reporting obligation of States that receive Special Rapporteurs’ missions. In addition the Council could more systematically include key recommendations from Special Procedures’ thematic reports into resolutions it adopts. Involving civil society organisations, including human rights defenders, in actively lobbying for the inclusion of such recommendations, but also in preparing reports and organising side events coinciding with the presentation of the report, is a promising route to ensure follow up to recommendations.

Safeguarding the jewels

The Special Procedures system’s success and reputation is the result of a difficult equilibrium between independence from and cooperation with not only States, but also UN agencies (including OHCHR), and civil society organisations. The HRC can and should do more not only to make sure that independence is
protected, but also that cooperation, support, financing and impact are strengthened. This should be one of the main ambitions of the Council for the next decades if it wants to make sure that the crown does not lose its jewel.

Catarina de Albuquerque is Executive Chair of the Sanitation and Water for All Global Partnership (SWA) and former UN Special Rapporteur on the right to safe drinking water and sanitation. Follow her on Twitter at @CatarinaDeAlbuq


[5] Special Procedures have started a very welcome (voluntary) practice of making the external funding received public. See A/HRC/31/39 of 17 February 2016, p 58 and ff.