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GLOBAL INSIGHTS

Musings of a UN Special Rapporteur
on Human Rights



Paulo Sérgio Pinheiro

The United Nations Commission on Human Rights (CHR) appointed its first special rapporteur in 1979 to report on abuses in Chile under the Augusto Pinochet dictatorship. This initiative established an important precedent for the institution of special procedures to examine serious human rights violations in any country. In 1982, for the first time, a thematic rapporteurship was set up to examine summary and arbitrary executions. Consequently, the fifty-three member states of the CHR have taken steps toward a worldwide system for monitoring human rights. In mid-2002, there were forty-one special rapporteurs: thirty on thematic issues, eleven working in specific countries.¹ My first appointment as special rapporteur for Burundi lasted from 1995 to 1999. In December 2000, I began a second mandate for Myanmar, a position I continue to hold.²

The selection process for special rapporteurs is somewhat inscrutable, perhaps even byzantine. It is entirely controlled by the chair of the CHR. Through direct consultations with the members of the bureau,³ the chair appoints specialists. The overall quality of appointees thus depends largely on the courage, insight, and negotiating skills of the chair. It does not suffice to want to be a special rapporteur, much less to nominate oneself, nor does having a particular interest in a given country or theme carry much weight. Vacancies arise when the CHR, which authorizes and renews mandates, proposes new missions or when someone resigns.

Country-specific and thematic mandates are reviewed annually. In April 1999, the commission instituted a term limit of six years for experts. It is extremely unlikely to assign special rapporteurs who do not have at least the acquiescence of their own governments, although some candidates may not enjoy enthusiastic support from their home countries. Many civil society organizations, at higher decibel levels since the CHR's fifty-eighth session in spring 2002, have criticized the growing

politicization of the appointment process, in which the expertise of candidates sometimes appears to be secondary to their political acceptability.⁴ In my own experience, special rapporteurs have demonstrated considerable independence of mind and action. Criticisms have also arisen related to the advisability of appointing special rapporteurs who originate from the same region in which their mandate is located. During the fifty-eighth session, for example, the African group insisted on appointing a mandate holder by name in the resolution on racism, clearly contrary to established procedures. Whatever the merits of the candidate, this initiative was criticized vociferously and appropriately by civil society organizations because of the precedent-setting implications and the perceived threat to the autonomy of appointments.⁵

A common complaint raised by the special rapporteurs themselves is the lack of availability and poor quality of support they receive from the Office of the High Commissioner for Human Rights (OHCHR). Threats to international human rights norms require the creation of new mandates each year; as a result, services quickly become overloaded, especially because they were inadequate in the first place. Quite simply, mandates proliferate without a corresponding increase in the resources to support them.

To perform their duties, special rapporteurs must secure invitations from member states. Too many governments do not reply or delay responding to requests for a mission. A small but growing group, consisting of thirty-eight forthcoming countries, has issued "standing invitations." Brazil, Costa Rica, Georgia, Peru, and Switzerland have just joined this select group. Donor governments should provide incentives for others to join the club.

Special rapporteurs take pains to maintain their independence, impartiality, and objectivity; to weigh the information on human rights provided by governments and civil society groups; and to report fully on the progress made and obstacles faced. Special rapporteurs perform a delicate balancing act. They must discharge their duties with thoroughness and sobriety, bearing in mind their essential role of protecting the interests of victims. At the same time, they must avoid high-profile appearances that draw excessive attention to their office. However, discretion sometimes has its advantages. For instance, I am able to engage in conversations, which I would label "principled engagements," with authorities in Rangoon, whereas neither Human Rights Watch nor Amnesty International has been, unfortunately, able to conduct research in Myanmar for over a decade.

For many of us, the role model remains Tadeuz Mazowiescki, former prime minister of Poland. He pushed the limits with his outspoken

condemnation of gross human rights violations and with his accessibility to the media. He struggled with his conscience and resigned as special rapporteur for the former Yugoslavia when he judged that his influence was being overshadowed by events on the ground, especially ethnic cleansing. His own integrity and forthright manner, along with his willingness to resign when his own actions proved futile, provide an exemplar.

Media exposure between missions is decisive for building awareness about each mandate. Under the right conditions, it helps special rapporteurs foster contacts between countries concerned with the human rights situation or thematic mandate of a country, and it helps inform public debate. During what would be my last mission to Burundi in August 1999 (it was followed by a serious auto crash, which left me unable to perform my duties during the last year of the mandate), I authorized Arte—a French-German television network—to cover my mission.

Very little is known around the world about the standard operating procedures for special rapporteurs. Governments and civil society organizations tend to attribute greater powers to special rapporteurs than we actually have and, at the same time, underestimate the moral authority conferred by the job. We are often regarded as yet another type of UN official in that we have the status of “experts on an official mission” and enjoy a series of privileges and immunities while in the field.⁶ In fact, special rapporteurs receive no compensation, only reimbursement for travel-related expenses. The logic behind pro bono service is to ensure that special rapporteurs are more autonomous and are less constrained than UN officials. We are, however, expected to comply with the terms of a UN code of conduct.

At numerous annual meetings of special rapporteurs, I have long argued that special rapporteurs should be compensated, like any other UN expert on an official mission. The historical record demonstrates no necessary link between compensation and political rectitude. The main advantage to be gained from compensating the work of special rapporteurs would be to alter the image—alas, one very close to reality—of appointees as an overly academic, political, and diplomatic elite. The implication is that they must be able to afford to volunteer. The possibility of offering compensation for the work of the special rapporteurs would make appointments more open to a wider range of experts and activists from civil society organizations.

During my term in Burundi, and at the time of my appointment to Myanmar, I was a university professor. In November 2001, I became a member of the Brazilian government. My consistent position, expressed

at special rapporteur meetings, was that none of us should be active members of the executive branch or diplomats in our own countries. I nonetheless retained my current position after consulting with the chair of the CHR, because my appointment had preceded my nomination for a ministerial post in Brazil, and because there was no conflict of interest between my governmental and my UN duties.

Special rapporteurs are appointed by the CHR's member states, but they are not emissaries of any country or group of countries.⁷ Owing to their close working relations with member states, special rapporteurs often encounter highly ambiguous reactions from observers and feel a certain ambivalence even among ourselves. We serve as voices for the voiceless and as spokespersons for the victims, but our effectiveness depends on maintaining a dialogue with host countries and concerned capitals around the world, and most especially with the permanent members of the Security Council.

An essential aspect of the job description is to foster contacts with other countries concerned with a particular human rights crisis. To this end, it is essential to maintain dialogue within the extended diplomatic community. In both Africa and Asia, I have sought systematically to solicit the views of neighboring countries in each region in order to cross-check my own intuition and analyses. During my trips to Myanmar, for instance, I have attempted to understand and learn from the perceptions of other Southeast Asian countries—and especially from Japan, Malaysia, Singapore, and Thailand. During the Burundi assignment, I sought to fathom the views from all countries with an interest in the area, including the Great Lakes region and Europe.

Usually, but not always, constructive dialogue has resulted, but independence remains paramount. For instance, I assumed a critical stance vis-à-vis economic sanctions imposed on Burundi by its nine neighbors, arguing that economic sanctions mostly affect poor peoples and leave elites largely untouched.⁸ My views found a certain resonance in the Security Council, which never approved the regional sanctions. One foreign minister was so annoyed by my position that he stated emphatically: "Mr. Pinheiro must stop behaving like a rogue elephant in the territory of Africa."

Our work essentially entails gathering facts and recording serious violations—indeed, it is not so very different from the function performed by many nongovernmental organizations (NGOs) working on human rights. Hence, we cannot merely assign blame but must be capable of acknowledging genuine advances made by governments. We must seek not only to make known personal views but also to express the official UN position with respect to universal norms.

In both Burundi and Myanmar, I have sought to maintain a “principled engagement” between the special rapporteur and the host government. We should demonstrate an eagerness to listen, learn, and understand. We should not merely point fingers. Though fact-finding is the essence of our duties, we should avoid heaping shame upon hosts or leveling the power of embarrassment at them—as human rights organizations do to such great effect when calling attention to gross violations in a given country. The role of a special rapporteur goes well beyond that of NGOs because we work closely with all parties interested in improving the status of human rights, especially the state. As suggested earlier, there is room for both styles of engagement—indeed, vocal and visible criticism and behind-the-scenes negotiating are complementary and often mutually reinforcing.

There is an inescapable tension between impartial fact-finding and clear and sound public assessments. Objective fact-finding does not mean neutrality; special rapporteurs will sometimes be required to denounce abuses for which there is evidence. We may conclude that the principle of impartiality contradicts a personal assessment of the problem during a mission. If special rapporteurs witness a consistent pattern of allegations of gross human rights violations, summary executions, torture, or acts of genocide, we must denounce them and not be limited to discreet documenting. However, this is an important tactical decision. The situation must be conscience-shocking enough to risk setting aside the leverage resulting from privileged access. We must always bear in mind, though, that the nature of our mandates involves fact-finding and not political advocacy, even if, for instance, some overlap between the two approaches may occur in countries undergoing processes of political transition.

Our duties encompass the analysis of problems and efforts to find solutions, as well as the transmission of support and encouragement from the international community of states. Constructive criticism is more easily accepted than tongue lashings, especially when such criticism is accompanied by concrete gestures of cooperation. If a special rapporteur seeks to achieve progress in a particular human rights situation, responsibility must be shared with the government, opposition forces, and civil society—a kind of a “joint venture” among these different actors. Special rapporteurs expect reciprocal cooperation, openness, and evidence of a serious commitment demonstrated by deeds and not merely words. We can only report progress backed by hard evidence. If we fall short—by maintaining momentum with encouraging words when they are not justified—our role is devoid of significance.

It is clearly infeasible for a special rapporteur to tackle simultaneously all the human rights problems of a given country. Accordingly, we

should be selective and pursue critical issues that have the highest likelihood of an immediate payoff and that can most easily be addressed during the course of brief fact-finding missions, generally lasting no more than fifteen days. It is thus crucial during such missions to maintain dialogue with the government while building confidence, developing a process of consultation, and fostering partnerships with other relevant players.

Without cowering or pandering, we must also be mindful of governmental priorities and areas of concern while seeking to address them honestly. At the same time, we should be careful to address those issues that are of greatest concern for the majority of the population and that may constitute long-term structural hardships. We should thus concentrate on establishing a set of operating principles and a framework for cooperation. Visiting prisons and labor camps and conducting confidential interviews with political prisoners and other detainees are certainly prerequisites for a modicum of credibility. Also essential are an overall appraisal of basic security conditions, an assessment of fundamental civil and political rights, and an investigation of the degree of compliance with basic rights to health and education.

As country mandates are renewed annually, they usually lack anything like a long-term vision; they tend to focus on attaining immediate goals. Thus, special rapporteurs may be obliged to emphasize small steps rather than more ambitious strategies. In selecting goals and priorities for a given mission, we typically isolate a set of issues for which data can be readily gathered or for which confidence building with representatives from both government and civil society seems plausible in the foreseeable future. Sometimes it is desirable to tackle issues on which the government is already taking an initiative. Incremental progress is thus far more likely than any dramatic breakthroughs.

What difference do special rapporteurs make for the promotion and protection of human rights? How effective are their actions? At the CHR's 2002 session, certain member states continued to undermine the ability of the special procedures mechanisms to function effectively. The speaking time for many special rapporteurs was cut to five minutes, too short a time even to introduce their reports let alone debate their substance in the plenary. These facts merely reinforce many of the lamentable shortcomings listed above.

Nonetheless, and after seven years in this job, I still think that the work of special rapporteurs remains a powerful tool for the powerless. Reports ask member states for clarifications about allegations, request responses to specific problems, expose perpetrators, develop analyses, and propose recommendations. They may not produce immediate

changes, but they do contribute to the struggle for human rights; they increase transparency and accountability. This is not a minor accomplishment. And the victims appreciate the effort. 🌐

Notes

Paulo Sérgio Pinheiro is the UN's special rapporteur for Myanmar and was Brazil's secretary of state for human rights from November 2001 to December 2002. He was founding director of the Center for the Study of Violence at the University of São Paulo.

1. These numbers do not include two new mandates established by the Commission on Human Rights at its fifty-eighth session (2002) and submitted to the Economic and Social Council for early approval in the document E/2002/L.7: special report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and a working group of five independent experts on people of African descent, established to study the problem of racial discrimination faced by people of African descent. The distribution by regional group and gender was: African group, 10 (7 men and 3 women); Asian group, 12 (8 men and 3 women, 1 person to be nominated); Eastern European group, 4 (2 men and 2 women); Western European and Other group, 8 (6 men and 1 woman, 1 person to be nominated); Latin American and Caribbean group, 7 (5 men and 2 women).

2. When I began my first term, there was no orientation about how to respond to frequently asked questions. Now there is *Seventeen Frequently Asked Questions About United Nations Special Rapporteurs*, Human Rights Fact Sheet No. 27. Resolutions on special procedures, mandates, and reports are available online at www.unhchr.ch.

3. The group of other officers of the commission includes representatives of all five of the UN's regional groups.

4. See Philip Alston, "The Commission on Human Rights," in Philip Alston, ed., *The United Nations and Human Rights* (Oxford: Clarendon Press, 1995), p. 166.

5. See, for instance, the report by Rachel Brett with the assistance of Daniel Rousselot, Emily Slatter, and Jeremy Smith, *Snakes and Ladders, Report on the 58th Session of the UN Commission on Human Rights*, 8 March–26 April 2002.

6. For instance, regular UN officials hold a *laissez-passer*, but special rapporteurs travel with their national passports and only a UN blue certificate.

7. When I was in Burundi, my claims that I hailed from a country in the South whose population of citizens of African descent is second only to that of Nigeria—which made me a national of an "African country" in South America—were often met with quizzical and skeptical gazes.

8. See Thomas G. Weiss, David Cortright, George A. Lopez, and Larry Minear, eds., *Political Gain and Civilian Pain: The Humanitarian Impacts of Economic Sanctions* (Lanham, Md.: Rowan & Littlefield, 1997).