

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

Report on LRWC participation in the 11th Session of the United Nations Human Rights Council held June 2-18 2009, in Geneva.

The United Nations Human Rights Council (Council)

The Council is a subsidiary body of the UN General Assembly (GA) whose function is to advise the GA on human rights violations taking place around the world and recommend action. 47 countries sit on the HRC, for 3 year terms: Canada's term on the Council expires this year. There are 26 independent experts (Special Rapporteurs, Special Representatives and Working Groups) mandated to report on human rights issues and to make recommendations to the Council.

The Council has initiated the Universal Periodic Review (UPR), a new process by which the Council can conduct quadrennial assessments of each state's compliance with international human rights laws and standards—including compliance with the UDHR, the ICCPR and the International Covenant on Social and Economic Rights—and recommend improvements. LRWC filed reports for the UPR of Canada and China, both of which took place in February 2009. The outcome report for the UPR of Canada came before the Council for approval on June 9, 2009.

Currently the UPR begins with the Office of the High Commissioner of Human Rights (OHCHR) producing two reports: a summary of human rights violations identified by NGO reports and a compilation of information about the state's human rights records from treaty bodies and special procedures and a summary of the UN instruments ratified. The state under review files a report some months later. There is then a three hour review before Council of those reports during which the state under review responds to questions posed by representatives of UN member states (UPR question session). NGOs may not pose questions during this session. The UPR question session is managed by a 'troika' of three states who prepare, with the assistance of the state under review, a UPR outcome report that includes recommendations for improvements of the human rights problems identified. The state responds with a written response to the outcome report indicating acceptance or rejection of the conclusions and recommendations. The UPR outcome report is then put before Council for approval (UPR approval session). The UPR approval session appears to foreclose any further input and to result in automatic approval of UPR outcome reports. For example, Council allocated a 3-hour period to consider the UPRs of Canada, Germany and Djibouti. During each hour, the state under review had 20 minutes to present the state's response to the outcome report, an unlimited number of Council members and observer states had 5 and 3 minutes respectively to make comments and any time left was allocated to NGOs. At this session even though NGO time was reduced from 3 to 2 minutes, only 6 NGOs were heard from.

The UPR process has been criticized by many NGOs, including LRWC, as offering no real potential for an accurate human rights performance assessment of any states other than the very poorest. The accurate identification of significant failures by states to comply with international human rights obligations is most likely to come from organizations that are independent of governments (NGOs) and is unlikely to come from either the states themselves or from states with or desiring good relations with the state under review. The current UPR process limits NGO input to filing written reports some 5 months before the state's UPR first comes before Council for the UPR question session. Critics claim that many of the reports provided at this preliminary stage are from groups that are not independent of government but masquerading as such (GONGOs) and do not accurately report on human rights performance. Also the process by which NGO complaints are selected for inclusion in the NGO summary report produced by the OHCHR may be arbitrary. Thirdly, even those NGO complaints included in the NGO summary provided by the OHCHR will not be

mentioned in the UPR outcome report—no matter how serious and well documented—unless states pose questions during the UPR question session on the reported violations. As reports of well documented human rights violations by a state are always politically sensitive, states wanting to maintain or create good relations with the offending state cannot be relied on to pose questions about such violations.

11th Session Council Highlights June 2-9, 2009

Reports from Special Rapporteurs (SR)

Reports were presented by the SRs on Human Rights and Transitional Corporations, Independence of Judges and Lawyers, Freedom of Expression, Right to Health, Summary Executions, Violence against Women, Human Rights and Foreign Debt and Extreme Poverty and by the High Commissioner of Human Rights, Navi Pillay. SR on Freedom of Expression, R.W. La Rue said that making defamation of religion an exception to freedom of expression separate from criminalized use of speech to promote hatred or incite the commission of offences, was not called for. Several states responded by calling for Mr. La Rue's censure and some for his dismissal on the basis that he had overstepped his mandate. The SR on the right to health talked about the extent to which patents and rights of ownership to drugs restricted rights to effective health care because the cost of the drugs was out of reach for most people in the world. The SR on summary executions again noted the failure of domestic investigations of cases involving allegations of state complicity and the resulting lack of both remedies for victims and effective prevention coupled with impunity for perpetrators. The SR on the Independence of Judges and Lawyers reported that the time has come to approve a comprehensive set of principles in order to ensure and further the independence of the judiciary in all states. He also recommended a new study on individual and institutional parameters to ensure and strengthen the independence of prosecutors, public defenders and lawyers.

UPR of Canada

The outcome report on the UPR¹ of Canada contains 68 recommendations, many of which are not controversial either because the problems identified, such as poverty and discrimination against aboriginals are ubiquitous, or because the recommendations proposed, such as ratifying existing international law instruments, are widely accepted. Included were recommendations to: ratify international instruments; continue efforts to reduce inequalities between first nations, immigrants and other Canadians, continue eradicate poverty and homelessness, and take effective measures to combat discrimination against first nations and other minorities and denounce the policy of no longer seeking clemency for Canadians sentenced to death. Canada rejected the latter recommendation and several of those to ratify international instruments²

Allegations by LRWC and several other NGOs³ that Canada was violating international law obligations under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), *Convention on the Rights of the Child* (CRC), the *Optional Protocol to CRC on the involvement of children in armed conflict* (OP/CR), the *Universal Declaration of Human Rights* (UDHR) and the Geneva Conventions by failing to protect Omar Khadr and to request his release from Guantánamo Bay and

¹ Universal Periodic Review, Report of the Working Group on the Universal Periodic Review/Canada, A/HRC/11/17 29 May 2009.

² Canada rejected recommendations to ratify the: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (p. 1&10), Convention of Enforced Disappearances (p.4), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), ILO Convention 169 (p. 6), American Convention on Human Rights and Declaration on the Rights of Indigenous People. Canada also refused the recommendation to withdraw its reservation to the Convention on the Rights of the Child.

³ NGOs alleging that Canada was violating its international law obligations by failing to protect Omar Khadr and to request his release from Guantánamo Bay and repatriation to Canada include: Amnesty International, the International Civil Liberties Monitoring Group, ACAT Canada and the International Federation of Action by Christians for the Abolition of Torture (FIACAT), Right on Canada (ROC), Ligue des Droits et Libertés (LDL), the Commonwealth Human Rights Initiative (CHRI) and LRWC. LRWC's report on Omar Khadr was endorsed by 46 NGOs.

repatriation to Canada. Although well founded in fact and law,⁴ the aforesaid allegations were not mentioned in the UPR outcome report.

Who Attended

Six lawyers attended the 11th Session of the Council with LRWC accreditation. LRWC Executive Director Gail Davidson attended daily sittings of the Council from June 2 – 9, 2009. Harini Savalingam and Sathiyasangary Anandasangaree, Toronto-based lawyers from the Tamil Lawyers Forum received LRWC accreditation to attend the May 25-29/09 special session on Sri Lanka: Harini also attended the 11th session of the Council June 2-4 to monitor responses to the special session. Judith Lichtenberg, Adrie van de Streek and Phon Van Den Biesen of the Dutch Lawyers for Lawyers Foundation (L4L) attended June 4-5 to present their June 2009 report, *The Measures Measured: Report of the International Verification and Fact Finding Mission on Attacks against Lawyers and Judges in the Philippines 4-12 November 2008*, to Leandro Despouy Special Rapporteur (SR) on the independence of judges and lawyers and Philip Alston, SR on extra-judicial, summary or arbitrary executions.

Purpose

LRWC's purpose in attending this session of the Council was to:

- 1/ speak to the written statement, *The Need for an Absolute and Non-derogable Right to Independent Courts* filed jointly by LRWC and the Asian Legal Resource Centre⁵ (ALRC).
- 2/ attend the final session on the UPR of Canada for which LRWC had filed a report on the Omar Khadr case.⁶
- 3/ hear presentations of reports by, and meet with, SRs Leandro Despouy and Philip Alston.
- 4/ explore opportunities for LRWC participation with the Council and mandate holders;
- 5/ meet with partner NGOs and make contacts for new NGO partnerships.

Performance

LRWC made three oral statements to the Council:

- a. June 2, 2009, a joint oral statement by LRWC, the Canada-based International Civil Liberties Monitoring Group and the Paris-based Arab Human Rights Commission (Arab/HRC) on the need for a non-derogable right of access to independent and impartial courts for the determination of rights and criminal charges. This statement was delivered during Item 3 Inactive Dialogue;
- b. June 5, 2009, a joint oral statement by LRWC and the Asian Legal Resource Centre (ALRC) on the need for the Council to have a mechanism to provide for investigations of significant occurrences of torture, forced disappearances and death that are independent, thorough, prompt, transparent and accountable. This statement was delivered during Item 2 General Debate;
- c. June 8, 2009, a joint oral statement by LRWC and Nord Sud XXI (NS/21) on the need to appoint a Special Rapporteur on armed conflict in Afghanistan to investigate civilians killed by foreign troops in order to accurately determine victims, perpetrators and the civil and criminal remedies required by the applicable law and to refer critical legal questions first to independent experts, and when necessary, to the International Court of Justice. This statement was delivered during Item 4: General Debate.

Written copies of these oral statements are available at www.lrwc.org. Videos are available on the UNHRC website. A copy of the statement LRWC intended to make on the UPR of Canada is also available.

⁴ On April 23 2009, Mr. Justice O'Reilly of the Federal Court of Canada ruled that the duty to protect a person in Mr. Khadr's circumstances is a principle of fundamental justice expressed in international instruments including CAT, CRC and OP/CRC, in "clear and forceful language" and ordered the Prime Minister of Canada to "request the United States to return Mr. Khadr to Canada as soon as practicable". *Khadr vs The Prime Minister of Canada et al*, 2009 FC 405, April 32, 2009 at paras. 78 & 93.

⁵ Other NGOs endorsing this written statement were: the National Lawyers Guild, Dutch Lawyers for Lawyers Foundation, International Association of Democratic Lawyers, Pro-Labour Assistance Center/Philippines and the International Civil Liberties Monitoring Group.

⁶ *Universal Periodic Review of Canada, Report by Lawyers Rights Watch Canada*, 8 September 2008, was endorsed by 45 other organizations.

Poor time management and GONGO interference limited NGO participation at this session. Poor time management resulted in a reduction of both, the time allotted for individual NGO oral statements (to 2 from 3 minutes) and the number of NGO allowed to speak to each item. For example, the list of NGOs speaking to the UPR of Canada was cut off at after the sixth presentation due to time constraints (LRWC was # 13). GONGO representatives taking up space on the NGO speaker list created another limitation. Generally only the first 10 NGOs registered are allowed to speak to any item, although for some debates, an NGO can move up the list by getting endorsements from other NGOs. During the 11th session, some states apparently used mission privileges to allow GONGO representatives entry to the Palais des Nations before opening (i.e. at 6:00 am) thereby enabling GONGO reps to take places intended for NGO making oral presentations. NGOs and UN staff are concerned by this. LRWC will attend and report on the Annual Meeting of Special Procedure Mandate Holders on June 30, 2009 as further follow-up on NGO participation.

LRWC, ALRC and L4L had an hour long meeting with Leandro Despouy. Mr. Despouy invited LRWC to provide him with information about trends of attacks on the safety and/or independence of lawyers and judges for possible inclusion in his final October 2009 report to the UNGA. L4L, ALRC and LRWC will collaborate in the provision of the information requested. Mr. Despouy asked LRWC, ALRC and L4L to send a representative to support his report. A meeting scheduled with Philip Alston was cancelled because he was not well. LRWC met representatives of many NGOs and had meetings with L4L, ALRC, NS21, General Federation of Iraq Women, the Arab/HRC and I. Piacentini de Andrade, who is taking over P. Lugon Arantes' role as Brazil monitor and LRWC representative at ECOSOC meetings in Geneva.

Recommendations

That LRWC:

1. provide Mr. Despouy with the information requested, including a synopsis of key aspects of recommendations on the right to independent and impartial court as non-derogable.
2. send a representative to New York in October for the delivery of Mr. Despouy's final report.
3. explore how to contribute to the study on individual and institutional parameters to ensure and strengthen the independence of prosecutors, public defenders and lawyers recommended by Despouy.
4. continue to support L4L work to prevent and punish killings of jurists in the Philippines.
5. continue and enhance collaboration with NGOs on critical issues. (e.g. topics in 6(b) below)
6. participate in the operation of the Council by:
 - a. attending at least one of the three Council sessions in Geneva per year.
 - b. making recommendations to Council by filing at least one report on a topic of global importance to the integrity of legal systems and one UPR report per year. Topics suggested for LRWC reports: need for non-derogable right to independent and impartial courts; international standards for emergency measures that preserve non-derogable rights and pre-emergency measures laws; effective protective measures for jurists in danger; a mechanism for providing investigations that comply with international standards of timelines, independence, competence, transparency and accountability.
 - c. making well researched complaints to mandate holders on cases involving issues of widespread importance to advocacy rights and the integrity of legal systems.
 - d. providing mandate holders with annual analyses of the trends of attacks on the independence and safety of lawyers, judges and human rights defenders in countries monitored by LRWC.
 - e. finding or creating opportunities to support and contribute to the reports of mandate holders.
 - f. participating with other NGOs in the development and reform of the UPR process.

Also available are: a summary of suggestions for effective participation in Council sessions, a list of contacts made in Geneva and a report on the cost of LRWC attendance at the 11th Session of the UNHRC in Geneva June 2-10, 2009.