

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
www.lrwc.org; lrwc@portal.ca; Tel : +1 604 738 0338 ;Fax : +1 604 736 1175

Report on the 13th Session of the Human Rights Council (1-26 March 2010)

by

Isabela Piacentini de Andrade

The following issues of the 13th Session of the Human Rights Council received special attention and follow-up by LRWC:

1. Torture and other cruel, inhuman and degrading treatment or punishment and the role of the legal profession
2. Respect of Human Rights and Fundamental Freedoms while countering terrorism
3. Protection of Human Rights Defenders
4. Draft Declaration on Human Rights Education and Training
5. Optional Protocol to the Convention on the Rights of the Child
6. Universal Periodic Review of Cambodia

1. Torture and other cruel, inhuman and degrading treatment or punishment and the role of the legal profession

Reports

The reports of Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment, Manfred Nowak (A/HRC/13/39, A/HRC/13/39/Add.5) maintain that torture remains a global phenomenon that is widely practiced in many countries. When presenting its reports to the Council, Mr. Nowak said the main structural reasons for the widespread practice of torture was the malfunctioning of the administration of criminal justice systems and corruption.

Side-event: Torture and accountability: the role and responsibility of the legal profession

In the side-event *Torture and accountability: the role and responsibility of the legal profession*, professor Nowak further explained the importance of proper administration of justice and of the role of the legal profession in combating torture. He said 90% of the victims of torture are members of disadvantaged groups, especially poor people, that have no access whatsoever to legal representation or justice. Most arrests are by police officers and evidence indicates that people are kept in police custody for weeks or years without access to a lawyer or judge, even though the law requires that police custody should be for the shortest possible time and after short interrogation the person should be brought before a judge or lawyer. According to the law, after 48 hours the suspect should be brought before a judge that should be allowed to speak to the suspect in private because it is probable that the suspect was tortured. In practice, police officers call a judge and say they want to keep the person until the person confess, and sometimes judges agrees. If the suspect talks to the judge, it normally is in the presence of a police officer, therefore there is no way of reporting torture, Professor Nowak said. He also reported that most detainees have no access to a lawyer, or the possibility to call or inform one of his situation. If represented, normally the lawyer is appointed by the State and does not represent the defendant's interest. In the opinion of the Special Rapporteur allegations of torture in police custody should be investigated by independent police, a judge or national institutions created for that purpose. He thinks prosecutors are not the best suited to investigate torture committed in detention facilities.

It is a very negative picture, Mr. Nowak acknowledged, but it is based on his experience of more than 5 years and visits to 16 countries. Exceptions exist in a small minority of countries. To eradicate torture, major reforms of the administration of justice are needed, as well as the eradication of the corruption within justice administration systems. Often prosecutors and judges are corrupted because they are not paid well. Sometimes detainees are «released on bail» by paying bribes, a course not available to prisoners without

money. Finally, he called for a convention on the rights of detainees because they are one of the most affected by this situation.

Meeting with the Special Rapporteur

LRWC's representative Isabela Piacentini met with the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment to discuss the Omar Khadr case (see [LRWC Report to the 13th Session of the Human Rights Council](#)). LRWC also filed a petition to the SR detailing Khadr's situation and asking for his release and repatriation to Canada. The petition highlights the gravity of the case given the fact Khadr's was a child when he was arrested and detained; this condition was ignored by American agents that subjected him to torture, as well as by Canadian authorities that interrogated him after being informed that we had been subject to sleep deprivation for three weeks.

HRC Resolution

The Human Rights Council adopted a Resolution on *Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers*. Submitted by Denmark, the text emphasizes the critical role played by judges, lawyers and prosecutors to prevent torture, urges States to ensure that the judiciary can ensure compliance with legal and procedure safeguards against torture and ill-treatment, and condemns any action or attempts by States or public officials to legalize, authorize or acquiesce with torture and other ill-treatment under any circumstances including on grounds of national security or through judicial decisions. The HRC adopted the Resolution by consensus.

During the informal discussions on the text, Denmark explained that the goal of this resolution was to highlight the role of the legal profession in combating torture and to ensure them an appropriate working environment. The approach of linking the issue of torture to the legal profession was very much welcomed by many delegations. However, some countries expressed concern with duplication of contents with regard to previous resolutions on torture and on the independence of judiciary. These countries (Russia, Algeria, Singapore, Philippines) favoured deleting paragraphs that did not have a specific link with torture. They criticized the fact that some paragraphs reproduced wording from other instruments on the administration of justice or independence of judges and lawyers, without making a specific link to torture. During the meetings this concern was addressed and a consensus was reached. Countries (Russia, Algeria, Jordan) also tried to undermine provisions making reference to the need of judicial review in certain situations and to the independence of the judiciary. The issue of financial resources to implement some provisions of the resolution, e.g. the adoption of measures to combat corruption in the administration of justice, the establishment of legal aid programs and training of the legal profession, was a concern for India that proposed a paragraph emphasizing the importance of international cooperation with national efforts to strengthen administration of justice.

2. Respect of Human Rights and Fundamental Freedoms while countering terrorism

Report

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin, presented his report (A/HRC/13/37) indicating concern with the erosion of the right to privacy in the fight against terrorism, taking place by the use of surveillance techniques without adequate legal safeguards.

HRC Resolution

The Council adopted a Resolution on the *Protection of human rights and fundamental freedoms while countering terrorism*. Mexico, the main co-sponsor, explained that the text reflects tangible actions for the advancement of human rights and fundamental freedoms while countering terrorism and: calls on States to protect the right to privacy based in international law and to guarantee person access to remedies for violations; urges the Special Rapporteur and High Commissioner to strengthen their contribution to current UN discussions regarding lists of individuals and the human rights guarantees that States must abide by. The Resolution also regrets that the SR did not the summary of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, mandated by Resolution 10/15 of the Council, and requests the SR to submit this compilation no later than the 15th Session.

This resolution was adopted by consensus, with some countries (Cuba, China) expressing reservations to paragraph 19 which invites the Office of the High Commissioner and the Special Procedures to engage in a dialogue with the Security Council and its Counter-Terrorism Committee. Countries objecting, maintained that as these organs have different functions and mandates paragraph 19 should not constitute a precedent for the work of the HRC.

During the informal consultations on this resolution, some countries (USA, Singapore) tried to undermine the content of the resolution by reducing references to international law whose application, they argued should be restricted to international obligations accepted by States, specially regarding the right to privacy. Regrettably, due to pressure of some countries (US, Singapore), part of the paragraph on the right to privacy stating that interferences with this right should be precise and proportionate to the security threat was deleted, in spite of the support for the element of proportionality by other countries (EU countries, Brazil, Pakistan).

3. Protection of Human Rights Defenders

Report

The Special Rapporteur on the situation of human rights defenders, Margaret Sekkagya, presented her second annual report (A/HRC/13/22) that focused on the security and protection of human rights defenders. She regretted that twelve years after the adoption of the Declaration on Human Rights Defenders, most defenders continue to be harassed, threatened, arbitrarily arrested, detained incommunicado and killed while peacefully defending human rights. She was concerned with the stigmatization of human rights defenders (sometimes called terrorists or enemies of the State), making them more vulnerable to attacks, especially to those perpetrated by non-state actors. Numerous attacks on HRD have been carried out by non-state actors, such as the media. She recalls that the fact that they are non-state actors does not excuse their responsibility. She also expressed concern with arrests of HRD based on ambiguous national laws and prosecutions based on false charges, as well as the widespread impunity for the perpetrators of attacks that prevents HRD from working in safety.

HRC Resolution

The Council adopted by consensus a *Resolution on the protection of human rights defenders*. When presenting the resolution to the Council, Norway (the principal co-sponsor) explained that the resolution recognizes the need for States to take concrete steps to prevent and put an end to threats and attacks against HRD, urges States to promote a safe and enable environment in which HRD can operate free from hindrance and insecurity, and urges States to publically acknowledge the essential role of HRD and to establish mechanisms to identify specific needs for protection and ensure the participation of HRD in the development and implementation of protective measures.

Russia joined in the consensus on this resolution, but explained that it understands the resolution would not change provisions of international existing legal documents regarding the implementation of national legislation as to the status of activities of HRD, nor would it create new obligations for neither States nor new legal regimes.

During the discussions on the draft text, some countries attempted to weaken the Resolution by reducing the level of protection of human rights defenders. Requests to replace the expression «human rights and fundamental freedoms» by «universally *recognized* human rights and fundamental freedoms» (Russia, Egypt, Morocco) or «universally *agreed* human rights and fundamental freedoms» (Singapore, China, Philippines) were made, in an attempt to restrict the scope of protected HRD work. Restricting the protected work of HRD to the promotion and protection of only recognized human rights would send a very bad signal to HRD. , Other countries (EU, Australia, Switzerland), took the position that any wording, according to which some attacks to HRD would be acceptable under certain interpretations of international law, should be rejected. Central in the discussions also were proposals (Cuba, Singapore) aiming at restricting the activities of HRD to national legislation. This proposal received the wide support (from Angola, Nigeria, Egypt, Morocco, Bangladesh, Pakistan, Azerbaijan, India, Lebanon, Philippines, and China) but was faced with strong opposition from European countries who interpreted the proposal as an attempt to criminalize the work of HRD and use national legislation as an instrument to restrict their activities. In order to reach a

compromise that would enable the Resolution to be adopted by consensus, the final wording adopted of this provision reads as follows: «Underscores that the legal framework within which human rights defenders work peacefully to promote and protect human rights and fundamental freedoms is that of national legislation consistent with the Charter of the United Nations and international human rights law.» (§3 of the Resolution).

Meeting with Brazilian delegation

LRWC's Brazil monitor Isabela Piacentini met with Brazilian delegates to discuss the Brazilian National Program for the Protection of Human Rights Defenders and its improvement under the 3rd National Human Rights Program.

4. Draft Declaration on Human Rights Education and Training

During the 13th Session, the Advisory Committee presented the Draft Declaration on Human Rights Education and Training (A/HRC/13/41, contained in A/HRC/AC/4/4 under recommendation 4/2, annex). The Draft Declaration sets out definitions and principles, as well as general orientations for the implementation of human rights education and training at national, regional and international levels. It also includes the concept of the right to human rights education, with regard to which some countries and NGOs expressed the view that is not a new but an already existing right¹. The Rapporteur of the Drafting Group of the Advisory Committee, Mr. Emmanuel Decaux, also said the Declaration does not create new rights; but rather reaffirms and develops the existing rights of the Universal Declaration of Human Rights.²

HRC Resolution

The Human Rights Council adopted a Resolution on the *United Nations Declaration on Human Rights Education and Training* establishing «an open-ended intergovernmental working group with the mandate of negotiating, finalizing and submitting to the Council the draft United Nations declaration on human rights education and training on the basis of the draft submitted by the Advisory Committee». The resolution, submitted by Morocco, was adopted by consensus.

5. Optional Protocol to the Convention on the Rights of the Child

The Open-ended Working Group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to promote a communications procedure presented its Report (A/HRC/13/43) on the main topics of the debate during the first session of the WG (December 2009), namely: reasons and timing to elaborate a communications procedure under CRC; existing international mechanisms, their efficiency and accessibility to children; efficiency in the protection of the rights of the child under mechanisms existing at national and regional levels; the unique nature of the rights of the child; and the implications and feasibility of a communication procedure under CRC.

HRC Resolution

A Resolution on the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure was adopted without a vote; the resolution extends the mandate of the Working Group until the Council's 17th Session and requests the Chairperson of the WG to circulate a draft proposal of the optional protocol before September 2010.

6. Universal Periodic Review of Cambodia

The Council adopted reports of the Universal Periodic Review of 16 countries, namely: Eritrea, Cyprus, Dominican Republic, Cambodia, Norway, Albania, Democratic Republic of the Congo, Côte d'Ivoire, Portugal, Bhutan, Dominica, Democratic People's Republic of Korea, Brunei Darussalam, Costa Rica, Equatorial Guinea, and Ethiopia.

¹ See the General Debate on Human Rights Bodies and Mechanisms of March 16, 2010 ([Press Release Afternoon March 16, 2010](#))

² Speech given by Mr. Decaux at the panel «Draft UN Declaration on Human Rights Education and Training: bridging the gap between standards and practice» held in parallel with the 13th Session of the Human Rights Council (Geneva, March 17, 2010).

LRWC and the Asian Legal Resource Centre presented a joint Oral Statement on the UPR report on Cambodia, expressing concern with the independence of judges and lawyers in the country. Cambodia's representative said Cambodia accepted all the recommendations of the Universal Periodic Review, despite reservations or comments it needed to make in some areas. He also said Cambodia made progress by adopting an anti-corruption law, by completing the first case at the Extraordinary Chambers in the Courts of Cambodia, by reforming the prison system and adopting a Penal Code.

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Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC campaigns for advocates in danger because of their human rights advocacy, engages in research and education and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.