

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 LRWC attendance at the 16th Annual Meeting of Special Procedures of the Human Rights Council - Open Meeting with NGOs and NHRIs held in Geneva from June 29 to July 3, 2009.

Report prepared for LRWC by Isabela Piacentini and Lois Leslie.

Special Procedures of The United Nations Human Rights Council (HRC)

The HRC 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.

“Special procedures” (SP) is the general name give to the mechanisms established by the Commission on Human Rights and assumed by the HRC to address either specific country situations or thematic issues in all parts of the world. Currently, there are 30 thematicⁱ and 8 countryⁱⁱ mandates. Special Procedures mandate holders may be individuals (Special Rapporteurs (SR), Special Representatives, Representatives of the Secretary-General or Independent Experts) or a Working Group.

16th Annual Meeting of Special Procedures Mandate holders of the HRC (June 29-July 3, 2009) – Open meeting with NGOs and NHRIs (National Human Rights Institutions), June 30, 2009.

There was no formal agenda or structure for the meeting. NGOs and NHRIs were invited to make short presentations, which were interspersed with comments made by SP mandate holders. LRWC did not make a presentation at this meeting.

1. The *International Coordinating Committee of National Human Rights Institutions* (ICC) welcomed the progress made in the implementation of the draft paper on the interaction between NHRIs and SP, and made the following recommendations:

- 1) the development by some SP mandate holders of mechanisms for follow up, which ICC suggests has generated more continued dialogue between SP and States, should also provide opportunities for the involvement of NHRIs and other institutions ;
- 2) any follow up exercise should include a qualitative assessment rather than a simple recall of States obligations;
- 3) a potential monitoring role of the HRC could be developed;
- 4) further development of all phases of the Universal Periodic Review (UPR) process is required, particularly in relation to interactive dialogue, adoption of recommendations and follow-up. With respect to UPR recommendations of the HRC, ICC stressed the following: i) governments cannot simply disregard recommendations, but rather should operate under the assumption that any rejection of a recommendation should be treated as an exception and explained; ii) the UPR should be seen in conjunction with other SP.

Those UPR recommendations based on the findings of SP or on the concluding observations of treaty bodies (TB) deserve special attention; and iii) NHRIs have an important role in implementing UPR recommendations, including synthesizing UPR and TB recommendations with national human rights agendas and actions plans, hosting formal consultation mechanisms with all stakeholders and reporting to the HRC.

2. The *International Disability Alliance (IDA)* is committed to promoting the full and effective implementation of the *Convention on the Rights of Persons with Disabilities*. IDA welcomed the attention given to the question of persons with disabilities by the HRC, in its first interactive debate on the rights of persons with disabilities (March 6, 2009) and the HRC resolution 7/9 of March 2008, and was happy to acknowledge the improved work on this issue made by the SR on the right to education and the SR on torture and by the SRs for the Democratic People's Republic of Korea and for the Palestinian territories. IDA stressed the importance of consulting with representatives of persons with disabilities and generally ensuring more meaningful participation by them to facilitate the work of SP and provide input in country visits. IDA suggested that SP cross-cutting themes could include that of Persons with Disabilities. IDA noted that the SR on Disability of the Commission for Social Development is working to find ways to bring its mandate closer to the work of the HRC.

3. The National Human Rights Commission of India, established in 1993, called for greater transparency in the process of selection and appointment of SP mandate holders. The Commission recommended that:

- 1) there should be at least two candidates put forward for each mandate, taken from different regional groups to ensure geographical equity;
- 2) mandates should be limited to two terms, consistent with HRC Resolution 5/1; 3) more geographical representation is needed;
- 4) there should be clear reasons for choosing someone not on a nominating group's list;
- 5) the public list of experts should be expanded, based on specific expertise;
- 6) the Coordinating Committee of Special Procedures should ensure that statements made by it are endorsed by all its members;
- 7) working methods of mandate holders should be regularly reviewed;
- 8) SP mandate holders should raise issues at the country level before calling for a special session of the HRC;
- 9) mandate holders should consider UPR recommendations in their deliberations and in communications to States;
- 10) it is important to consult with NHRIs, particularly where information obtained from witnesses and victims conflicts with that from governments; and
- 11) SP should engage more with NHRIs and send them their reports.

4. The Coordinator of the *National Institutions Unit, OHCHR*, Mrs. Gianni Magazzeni, responded, saying that NHRIs attach great importance to the coordination of SP, including mandate holders, and to the interaction with treaty bodies and the UPR. She said that the Unit shall ensure cooperation with SP missions and the follow up of SP recommendations, as well as those from treaty bodies and UPR. She emphasized that the cooperation with the human rights system is an important aspect to be considered

when issuing accreditation and reaccreditation to NHRIs. She noted that there have been threats to staff members of NHRIs and commissioners in the context of the work of the SP.

5. Tania Baldwin-Pask, *Amnesty International* (AI), raised the issue of reprisals against individuals cooperating with SP mandate holders, recalling killings in Colombia and Kenya. AI welcomed the responses of SP mandate holders who brought the issue to the HRC and welcomed the inclusion of the question of reprisals in the SP Annual Meeting agenda. AI urged all SP mandate holders to pay attention to the possibility of reprisals, to establish their own procedures for dealing with reprisals and report all cases for action. AI suggested that the Coordinating Committee of SP can play a role by, for instance, bringing incidents of reprisals immediately to the attention to the HRC and exploring ways to prevent their occurrence. AI suggested that SP seek the advice of NHRIs regarding engaging with witnesses and victims and ways in which to prevent reprisals.

With respect to country visits, AI welcomed the information on the SP website regarding visit requests and maintained that mandate holders should pursue visits in the country once requested, unless there is a serious change in the country situation. AI encouraged colleagues from NHRIs to encourage country visits and also emphasized the important follow-up role of NHRIs in facilitating the SP work and in encouraging the government to comply with recommendations.

6. The President of *Comision Juridica para el Desarrollo de los Pueblos Originarios Andinos* (CAPAJ), Tomás Alarcón Eyzaguirre, advised that CAPAJ has participated in the process of development of the *UN Declaration on the Rights of Indigenous Peoples* as well as in the work of the SR on the situation of human rights and fundamental freedoms of Indigenous People and the work of the UN Permanent Forum on Indigenous Issues. He recalled the recent events in Peru, in which an excessive response from the authorities resulted in over 30 deaths, and motivated the visit of a Special Rapporteur. CAPAJ urged SP mandate holders to give greater coverage to Indigenous Peoples and recommended that mandate holders address the issue of indigenous peoples in their mandates, even where their mandates are not specific to Indigenous Peoples. For instance, the SR on violence against women should consider the specific issue of violence against indigenous women, and other rapporteurs should similarly adapt their mandates to focus on Indigenous Peoples and to promote full implementation of the *UN Declaration on the Rights of Indigenous Peoples*.

7. The SR on the situation of human rights defenders, Ms. Margaret Sekaggya, spoke to the issue of the role of NHRIs in SR country visits, UPR, etc. The SR advised that she had presented a report on this matter. She stressed that NHRIs are important players and have important data and she therefore welcomed their commitment to collaborate with SP. She emphasized the importance of good practices and lessons learned for future work, and stated that it is very important for NHRIs to set up focal points for follow up and to put strategies in place for disseminating recommendations so that they can be implemented. The SR said the protection of victims and witnesses is very crucial to her

mandate, and hoped that the meeting could identify measures and procedures which could be taken to protect them.

8. The SR on freedom of religion or belief, Mrs. Asma Jahangir, stated that it is essential to work with NHRIs, but that the SP must always be independent. The SR advised that NHRIs have not always been a key to successful SR visits; on the contrary, their work has sometimes been misled by them. The SR advised that there have been situations where reports from NHRIs and Commissions have been completely conflicting. The SR warned that national interests must not prevail over the basic objective of the NHRI, which is to protect and promote human rights. She complained that this behaviour of NHRIs undermines the independence of the SP and said that NHRIs cannot tell mandate holders how to operate; instead they should work in cooperation with SP in the promotion and protection of human rights.

9. The SR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Anand Grover, endorsed the statements made by the SR on freedom of religion and belief, stressing that the SP mandate holders must be careful in how they evaluate NHRIs, that their effectiveness and independence often depend upon individual appointees. The SR stressed that NHRIs are there to protect human rights and if they fail in their duty it is the role of SP mandate holders to raise this.

10. The SR on Haiti, Mr. Michel Forst, emphasized the important role of NHRIs and affirmed that when the peacekeeping mission in Haiti leaves that country, there must be strong national institutions in place to promote and protect human rights in Haiti. He advised that one of the tasks for NHRIs is to compile all the recommendations made by UPR, treaty bodies and SP and to publish annually how these recommendations have been implemented by the State.

11. The *Friedrich Ebert Stiftung* (FES) raised the issue of the impact of climate change on human rights and called on those who are affected by climate change to highlight this issue to SP mandate holders. FES stated that the relationship between climate change and human rights should be taken into account by most, if not all, mandate holders. FES has prepared a report on the impact of climate change on human rights, in which two chapters are devoted to the role of SP in dealing with this question. FES has also held a workshop on the issue, chaired by Mary Robinson. FES will make these reports available to NHRIs and urged all stakeholders to cooperate on this issue.

12. The *Arab Commission for Human Rights* (ACHR) stated that NGOs should be given a greater role in the selection process of mandate holders and asked that appointment criteria for new mandate holders be sent to NGOs. ACHR expressed concern that the Code of Conduct for mandate holders is being interpreted by HRC member States to threaten the independence of mandate holders and ACHR would like to know the views of the SP on this matter.

ACHR asked what strategies were to be adopted to follow up the Durban recommendations. ACHR expressed disappointment on the UPR process and asked for

an immediate follow up to its recommendations. ACHR also asked the SP to take into account other UN conventions in order to strengthen the interdependence and complementarities of human rights and suggested that the President of the HRC and the High Commissioner meet with SP mandate holders before their country visits and ensure a cooperative approach. Finally, ACHR asked the SP for their views regarding anti-terrorism as a new form of discrimination

13. The *World Organization against Torture* (OMCT) reiterated its full support to SP and welcomed the appointment by the SG of Marta Santos Pais as his Special Representative on violence against children. OMCT urged all SP mandate holders to address issues of violence against children not addressed in other SP, stating that close cooperation among mandate holders is essential on this issue. Areas of cooperation could include: joint fact-finding, joint thematic research, mainstreaming violence against children and providing the Special Representative with relevant information. OMCT pledged to make itself available to meet regularly with the SR on issues of violence against children and to provide her with information and reports and encouraged SP mandate holders to proceed with follow-up in a more systematic way, including common reporting on communications at each HRC session.

14. The *Cercle de Recherches sur les Droits et Devoirs de la Personne Humaine* (CRED) said it was disappointed with the observations made by the independent expert on Somalia in the last HRC session, where CRED asked for the suspension of its mandate. CRED advised that the participation of civil society in appointing country mandate holders is not always honoured, especially in post-conflict situations. CRED cautioned that country mandates must be established with great seriousness, taking into account the views of all stakeholders and that the NGOs should propose candidates.

15. The *Women's International League for Peace and Freedom* (WILPF) pointed out the discrepancy between the lack of financial means available for SP and the great expenditure on armaments and encouraged the SP mandate holders to advocate for further disarmament, freeing up resources for human rights efforts. WILPF expressed disappointment that the mandate of the SR on violence against women does not make the linkages with Security Council Resolutions 1325 (on women, peace and security) and 1820 (sexual violence in armed conflict). Finally, WILPF asked about the success of the fact-finding mission to Gaza and when NGOs would be informed of the results.

16. The *Asamblea Permanente por los Derechos Humanos* (APDH) submitted that there is a need to strengthen follow-up to recommendations and conclusions of SP mandate holders. APDH suggested that states be invited to express a position on deadlines and the implementation of recommendations. This information should be made public. Follow-up communications should continue until all actions have been taken. Statistics on pending communications should be made available. On the matter of potential threats to victims and witnesses, APDH suggests that special protection and feedback mechanisms are required. The APDH representative suggested that information on the follow up of recommendations be included on the SP website.

17. The Chairperson remarked at this point that it was his impression that the SP mandates were very wide, with SRs and Working Groups working on the same issues, with interconnected mandates and a lot of overlapping. But, listening to the submissions of NGOs today, the mandates appear to have shrunk! The Chair commented on the issue of reprisals, stating that mandate holders must be very careful in dealing with their sources, keeping them protected and confidential, as they may be in danger just by communicating with SP mandate holders. He said the Coordinating Committee needs to determine how it can help all mandate holders to act in a more consistent manner. The Chair expressed appreciation to NGOs and NHRIs for raising a lot of very important and relevant topics, such as the important role of NHRIs in the follow up of recommendations.

18. The Independent *expert on the Situation of Human Rights in Burundi*, Mr. Akich Okola thanked Amnesty International for raising the subject regarding allegations of 2 killings in Kenya and the reporting of them to the HRC. He made the point that where the police have themselves been involved in the reprisal, any investigation carried out by the police is of limited value. In that case, the NHRI played an exemplary role. There is a parallel in the case of Kenya and Burundi. Unfortunately, unlike Kenya, Burundi has no NHRI that might have assisted in the investigation.

19. The Special Representative on Violence against Children, Mrs. Marta Santos Pais, expressed her appreciation for the support from civil society and pointed out that most of the issues raised by OMCT had been discussed by the SP mandate holders in the morning. With respect to the relevance of NHRIs to the SP mandates, the Special Representative advised that, where NHRIs have the ability to act independently, this can benefit not only the national situation, but also further the international promotion and protection of human rights. On the potential overlap between mandates, the SR responded that the potential of human rights cannot cope with a restriction of mandates; rather, one should look for further mechanisms and further solutions involving collaboration between mandates, rather than focus on possible overlaps.

20. The SR on the Situation of Human Rights in the Democratic Republic of Korea, Mr. Vitit Muntarbhorn, said that 3 years ago a joint statement of SP mandate holders had noted the importance of linking the work of SP with the new UPR mechanism that was to be set up. The SR stated that he welcomes linkages between NHRIs and the UN as a whole, especially with SP. Other actors, e.g. courts, should also not be overlooked in making these linkages. Regarding the issue of reprisals, the SR welcomed any input from NGOs/NHRIs in this matter, and pointed out that sometimes victims do not want to be classified as victims, but rather as survivors. He also seeks guidance on the issue of consent to release names, as the SR may be faced with situations where detainees do not agree to talk or when the family does not agree. The SR expressed the view that the “best interests of the victim” should prevail in such an instance.

21. The SR on the Independence of Judges and Lawyers, Mr. Leandro Despouy, commented on the importance of the linkage between disabilities and human rights,

noting that there had been a reluctance to make this link in the past, and the need that this issue be reported not only to ECOSOC but also to the HRC as it has a great impact on HR. With respect to the role of NHRIs and SP, the SR noted that good practices should be studied and shared, that some NHRIs play a very important role whilst others do not. An important role is performed by NHRIs when they are independent, when there is real dialogue and respect between them and the authorities. The SR stressed the importance of compiling all recommendations made by SP and Committees, not only from the UN but also from the regional systems, in order to have convergent recommendations. The SR affirmed that the activities of NGOs are very important and provide input for HR bodies. SP and NGOs work very closely in the defence of human rights.

22. The SR on Torture, Mr. Manfred NOWAK, said that the whole Charter-based human rights system only functions because of cooperation among states, NHRIs, NGOs and experts. All have legitimacy because they are independent. The SP role would be much more difficult without the input from NGOs who are active in the country and play a very key role. NHRIs have more recently become key players, something between civil society and government, but they take their legitimacy from the Paris Principles and, therefore, they must be independent. The SR commented that his experience with NHRIs was mixed. In some countries, NHRIs are independent and do very important and vital work. In others, NHRIs are more closely tied to government and adopt the government position, becoming more and more dependent as a result of pressure from governments. It is therefore critical to periodically review the status of NHRIs regarding their ongoing independence. He suggested there could be a more institutionalized process of exchange regarding the review of NHRIs. The SR welcomed the points made regarding reprisals and supported a more formalized reporting of reprisals, including input from NHRIs, NGOs, etc.

23. The SR on extreme poverty, Ms. Magdalena Sepulveda Carmona, stated that the dialogue with NHRIs and NGOs was very important because they are in a better position to monitor the country situation. The SR suggested that there is a need for more dialogue with a view to improving monitoring and implementation of recommendations and a need to find new ways to cooperate with new or broadened mandates. She asked NGOs to expand the group of SP mandate holders with whom they work in order to collaborate with more SP. In her case, this is very important because her mandate involves several themes, such as indigenous women and migrants. The SR supported the participation of civil society in the selection of mandate holders and also in the UPR process. She suggested that member states of the HRC need to be pressed to facilitate greater participation of NGOs and civil society in SP.

24. The SR on freedom of opinion and expression, Mr. Frank La Rue Levy, expressed the concern that States are trying to undermine the SP mandates under the allegation of violation of the Code of Conduct. He stated that it is international law standards which must guide an interpretation of the mandates. The SR invited NGOs to join them in this debate and emphasised the role of academic centres and NGOs in the protection of human rights and on the debate about freedom of expression. The SR advised that

priorities for next year include: Freedom of the Press, Protection of Journalists; Discrimination and Freedom of Expression; and Legitimate limitations on Freedom of Expression.

25. The SR on freedom of religion or belief, Ms. Asma Jahangir, said the Code of Conduct is a manual for the SR and there was no need for it to be written because SRs know they have to work with integrity and independence, and they don't necessarily think of the Code of Conduct while they are working. The SR admitted that there had been incidents with the HRC, but that they have been worked through and that, on the whole, the relationship with the HRC was positive, although it can be improved. The SR dismissed the criticism raised by State members of the HRC against SP mandate holders based on supposed infringement of the Code of conduct, as any kind of threat, asserting that the Council is wise enough to continue working with SP.

26. The *Asian Forum for Human Rights and Development* (Forum-Asia) called for further strengthening of the relationship between regional human rights bodies and SP. The representative for Asia-Forum advised that an ASEAN regional human rights body that is to be established, for which the terms of reference are not yet public, is apparently missing a requirement for independence. Forum-Asia asked that SP mandate holders engage themselves in the process of development of the ASEAN HRI Terms of Reference.

27. The *Arab Commission for Human Rights* suggested that a retrospective review of mandates and experience of mandate holders should be carried out by the Coordination Committee in order to compile all the work that has been done and select good practices.

28., The Independent Expert on the situation of human rights in Somalia, Mr. Shamsul Bari, expressed the view that the international community is not doing as much as it should be doing in Somalia. The mandate holder expressed his appreciation for the amount of good work NGOs are doing in countries such as Somalia, which is facing one of the most difficult situations in the world. Because of the limitations on his travel in the country, Mr. Bari depends a great deal on information he receives from NGOs.

29. In closing, the Chairman urged NGOs to expand their areas of work and to increase reporting. He stated that the problem of underreporting leads to incomplete reports and may provide a misleading view of the situation in a country. The work of NGOs is very important, therefore, to ensure a more accurate picture and more effective implementation of recommendations.

ⁱ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Working Group of Experts on People of African Descent; Working Group on Arbitrary Detention; Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur on the right to education; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on human rights and extreme poverty; Special Rapporteur on the right to food; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the Independence of Judges and Lawyers; Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people; Representative of the Secretary-General on the human rights of internally displaced persons; The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on the human rights of migrants; Independent Expert on minority issues; Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on Contemporary forms of slavery; The independent expert on human rights and international solidarity; Special Rapporteur on the promotion and protection of human rights while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights; Special Rapporteur on trafficking in persons, especially in women and children; Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises; Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation; and Special Rapporteur on violence against women, its causes and consequences.

ⁱⁱ Independent Expert on the situation of human rights in Burundi; Special Rapporteur on human rights in Cambodia; Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Independent Expert on the situation of human rights in Haiti; Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; Independent Expert on the situation of human rights in Somalia; and Special Rapporteur on the situation on human rights in the Sudan.