



## TRANSCRIPT

Source: [Louv2.01x] Interview with Miloon Kothari

**Olivier De Schutter:** First of all, Miloon Kothari, many thanks for joining us. You've been special rapporteur on the right to housing between 2000 and 2008.

**Miloon Kothari:** That's right.

**Olivier De Schutter:** It's been a very important mandate that you assumed then. And I would like to ask you which of the tools you felt that you used were most important. Special rapporteurs may use country mission. They may use their thematic reports where they can explore in depth certain issues. They also write allegation letters to governments. Which of these tools made most difference in your view and were most effective in supporting the right to housing in your case?

**Miloon Kothari:** Well, I think that all of them were useful, because each one of the tools helped me to sharpen my understanding of what my mandate was and to give it a perspective. So for example, the country missions helped me to understand better the issue of the violations of the right to housing, listening to people's voices, visiting areas. And that helped me in my thematic reports to make clear to the Commission and then to the Council what the real obstacles were to the right, which is something I saw as one of my critical roles.

And out of that work on the field, and going through the allegation letters, it became very clear to me that there was some more standard setting that was necessary, both in terms of articulating the meaning of the right to housing, so expanding what the Committee on Economic, Social, and Cultural Rights had done, and my immediate sort of response when I took over the mandate was that we really have to look at the civil and political rights dimension. So the reports helped me to expand these essential elements of the right to include freedom from dispossession and right to participation and so on.

And also using all that experience, I realized very quickly that what we didn't have at the global level were operational guidelines on what to actually do in the case of displacement and forced evictions. So the mandate actually helped me. Through the thematic reports but also through regional consultations, missions, to actually get a good understanding of what should be the content of these guidelines. And it also helped in that process of communications, developing standards, sharpening the notion of the content of the right, the dialogues that I had in the field with civil society groups, movements, the information that they sent me.

So all of that, I think what I found the most exhilarating -- although as you know it's very exhausting, mandates, but -- was the ability, through your role as rapporteur, to go to very remote areas, to meet people, to have access to the highest levels of government and to tell them exactly what was going on. And I think that -- so it's a little bit of all of that, really.

**Olivier De Schutter:** What are the conditions for a mission to be successful? Is it preparation before the mission that is key? Is it the political context that you find in the country? Is it the support given to NGOs to identify the key issues?

**Miloon Kothari:** Yeah.

**Olivier De Schutter:** How would you provide advice to a special rapporteur preparing a mission to a country for it to be successful? What are the ingredients?

**Miloon Kothari:** Well, first of all, I think it's very important to develop a criteria on where do you want to go and what type of situations do you want to see and where do you actually want to contribute. So when I became rapporteur, first of all it was very clear to me that the problem of housing rights and the violations, dispossession, problems of women's rights to land and all that, were local problems. So I sort of made a very big criteria that I'm going to not only concentrate on what the Commission at that time thought it was only going to be looking at countries in the south, but also in the north. So that was one criteria.

The second one which I thought doesn't always work but what I tried was to make sure that there were strong civil society networks in the countries where I was going, so that I got information in advance and I insisted that at least half of the time would be spent exclusively with either the civil society groups or the communities, without there being any government presence. So that was another criteria.

The third criteria was that I wanted to look at countries in different political situations. I wanted to look at countries that were democratic, some that were more authoritarian, of course if they agreed to invite me, but also countries that were in a post-conflict situations, countries that were peaceful democratic situations.

So those were some of the criteria. And I think that it's something that-- I mean, I was the first mandate-holder of the right to housing, so I was actually learning by doing. But my advice would be to not just go anywhere where you're invited, but to have some criteria. And yes, to do adequate preparation. That was very, very important.

And there, of course, there were some questions about not always having the best support from OHCHR and so on. But I was sort of able to overcome that because luckily for me I came from a very strong civil society background. So we had already existing networks that I could rely on. But I think the role of civil society and independent institutions, national human rights commissions and others, is absolutely key both to the success of the content of the mission, but even more importantly to the follow-up to the mission of what comes out of the recommendations.

**Olivier De Schutter:** So you had a mandate which included the transformation of the Commission on Human Rights into the Human Rights Council. And when the Human Rights Council was established with the new peer-review mechanism, the Universal Periodic Review to monitor states' compliance with their human rights obligations, there were certain concerns expressed that we, as special procedures with the Human Rights Council, former Human Rights Commission, would have less weight, that our recommendations would be basically circumvented or basically not sufficiently supported by the Universal Periodic Review and the Human Rights Council. My impression is that instead it has strengthened us, because many of the recommendations that states made in this UPR process are based on our findings.

**Miloon Kothari:** Yes. Yes.

**Olivier De Schutter:** And I'm not sure whether you agree that in fact the UPR has been not competing with independent experts' monitoring, but instead complementing it. Is this your perception?

**Miloon Kothari:** I would completely agree. In fact, I would go back before the UPR when I became a rapporteur I also decided that I was going to have regular dialogues with the treaty bodies, because I really felt that that complementarity of what a rapporteur could do and what a treaty body could do was very important. And so even when I went on missions, I always asked - so the Committee on ESC Rights had concluding observations, what have you done for that? And whatever I would come up with, I reported back to the treaty bodies.

So now that process became expanded with the UPR. And I would completely agree with you that the initial anxiety that was there, the fear, has not materialized. In fact, I've done some writing on this recently because I've been following the UPR very closely. And I think for the first time in the international human rights system, we have a possibility now of a continuous monitoring of a country's human rights record.

So you have the UPR every four years. We have the treaty body, different treaty body reviews. You have one or two rapporteurs visiting every year. You have countries submitting midterm reports on the UPR. And each one strengthens the other, so each recommendation goes into monitoring, into further recommendations.

So I think the UPR has been very, very useful. And I'm actually hopeful that in the evolution of the UPR becoming better that the work done by the special rapporteurs will become a routine part of the body of work that is before the governments when they ask questions and what they follow-up, that it won't be just left to a particular government's choice of whether they want to use that.

**Olivier De Schutter:** So one last question. One of the many legacies you left is a set of basic principles and guidelines on development-based evictions and displacements, adopted or presented in 2007. What follow-up was given to these basic principles and guidelines? And what would you say are conditions for these normative advances in the understanding of the concrete implications of the right to housing to be successful and influential?

**Miloon Kothari:** Well, I think there are many sort of conditions. But I've recently been collecting information and reviewing progress on the implementation of the guidelines. And there wasn't any formal follow-up within the UN system, which, as you know, is one of the main weaknesses generally of rapporteur work or treaty body work. But there was considerable follow-up by civil society groups taking up the issue, by lawyers taking up the guidelines, by courts using them in their judgments, by many groups translating them into local languages. So we have them in 19 languages now.

They're being increasingly used. And I think that -- I, mean my overall assessment -- it's a little difficult for me to make that -- is that they have been tremendously useful in terms of setting a global standard. But I think my initial idea that they would be operational has turned out to be the correct one, that there was no point in producing another set of theoretical, conceptual guidelines, but something that would sort of step by step explain what precautions are being taken.

**Olivier De Schutter:** So if governments understand it's a way to basically be more effective in operating within the rules, if they see it's useful as a guide for them to use, then they will rely on it.

**Miloon Kothari:** Yeah. And in fact now I know, for example, that the guidelines on extreme poverty and human rights that are going to be presented and adopted in a few weeks, Magdalena Sepulveda's guidelines have learned from these experiences, not only from the evictions guidelines, but the IDP ones and the others, to say OK, so let's create an instrument that is useful and that is something that--

**Olivier De Schutter:** Totally operational.

**Miloon Kothari:** -- people will use. And one of the ways of doing that, which is what I tried to do also was the content actually came -- some of the content at least, came from the ground, from the insights of the people who are struggling against evictions and the people who are coming up with their own solutions, but all within the context of the human rights instruments, which is, as you know, very, very broad, so it allows us to do work which is not necessarily -- and this was a selling point, in a way -- it's not necessarily new standards, but it's interpreting existing standards and elaborating on them.

**Olivier De Schutter:** That's often how human rights make progress, by restating general principles in concrete settings and giving them new meanings.

**Miloon Kothari:** Yeah. But I think that the role of rapporteurs is, in that sense, different from the role of treaty bodies. The treaty bodies can elaborate in sort of a general global sense, through general comments and general recommendations. But I think a rapporteur needs to go further,

because I see the role of rapporteurs, the sort of uniqueness and critical importance of the role, as a practical role. We are there to understand the problems and to provide solutions.

**Olivier De Schutter:** Practical and linked to developments on the ground that you can visit, which is very unique and which is a privilege--

**Miloon Kothari:** That's right. The fact-finding part.

**Olivier De Schutter:** -- that the experts sitting in treaty bodies may not have.

**Miloon Kothari:** That's right.

**Olivier De Schutter:** So thank you very much. It has been very useful. Thank you.