

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## DAILY UPDATE HUMAN RIGHTS COUNCIL, 8<sup>TH</sup> SESSION 17 JUNE 2008

### Overview

The Human Rights Council today held a **general debate on item 8** ‘racism, racial discrimination, xenophobia and related intolerance, follow up to the Durban Declaration and Programme of Action’.

The Council received an oral update on the first substantive session of the **Durban Preparatory Committee** by Ms Claudine Mtshali, Vice-President of the Bureau for the Durban Preparatory Committee and Ambassador of South Africa. States primarily commented on the outcome of the session, while NGOs also highlighted racial discrimination in various parts of the world.

In the afternoon, the Council heard the final presentation of Mr Louis Joinet, **Independent Expert on the situation of human rights in Haiti**, in the absence of an annual report. The dialogue was very brief, as was the **general debate on Item 10**, relating to technical assistance.

During the day, an informal consultation on the draft resolution on Burma/Myanmar also took place.

### General debate on racism and follow up to the Durban Declaration and Programme of Action

Ms Claudine Mtshali presented an oral update<sup>1</sup> to the Council on the work of the Durban Preparatory Committee during its first substantive session from 21 April to 2 May and on 27 May 2008. She noted that ‘considerable progress’ had been made towards a successful Durban review conference with consensual conclusions reached on the organisational aspects of the review conference, including the date and venue,<sup>2</sup> participation of observers, review of contributions received, and the structure of the outcome. She noted that agreement had also been reached on a slogan<sup>3</sup> for the conference and a logo. Ms Mtshali stated that the High Commissioner for Human Rights, who is the Secretary General of the review conference, should carry out a worldwide information campaign to mobilise support for the objectives of the review conference and a dedicated web page on the Office of the High Commissioner for Human Rights (OHCHR) website should be established. Decisions were also adopted on accreditation of NGOs to the review conference, and only one of the 43 NGOs considered by the Preparatory Committee had been excluded. Ms Mtshali called on each region

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<sup>1</sup> The report of the session is still being prepared but an advance copy is available at <http://www2.ohchr.org/english/issues/racism/DurbanReview/docs/A.CONF.211.PC.2.7.pdf>

<sup>2</sup> 20 to 24 April 2009 in Geneva.

<sup>3</sup> United against racism: dignity and justice for all.

to announce the date and venue of regional meetings to prepare for the review conference. She explained that the outcome of the review conference will be based on contributions received and regional meetings. The Inter-sessional Intergovernmental Working Group established to follow up the work of the Preparatory Committee will commence negotiations on the outcome and report to the second substantive session of the Preparatory Committee from 6 to 17 October. Several States commented positively on the important decisions adopted by consensus at the Preparatory Committee.<sup>4</sup> However, Egypt (on behalf of the African Group) regretted that the decision on the venue of the review conference had been ‘controversial’ and made dependent on financial and administrative matters.<sup>5</sup> Pakistan (on behalf of the Organisation of the Islamic Conference) warned that threats of disengagement would not help achieve the objectives of the review conference and States must overcome their differences of opinion to achieve common goals. Slovenia (on behalf of the EU) recognised that the consensus had often been a ‘fragile’ one. Egypt (on behalf of the African Group) called on States to be represented at the ‘highest political level’ at the review conference.

Several States commented on the important role of NGOs and civil society in the review conference.<sup>6</sup> Pakistan (on behalf of the OIC) argued that NGOs should closely adhere to ECOSOC *Resolution 1996/31* on accreditation of NGOs while Slovenia (on behalf of the EU) asserted that the ‘excellent practices’ followed by the Council should be applied to NGO participation in the review conference. A number of NGOs commented on the need to make NGO participation possible in practice, including through funding, grating of visas, giving NGOs adequate time for making contributions,<sup>7</sup> including submissions of NGOs in the preparation of the outcome document, and making information on progress in the preparations available on a regular basis.<sup>8</sup>

Several States emphasised the importance of the regional preparatory conferences. Brazil explained that the regional conference for Latin America, taking place in Brasilia, will focus on an evaluation of how the Durban Declaration and Programme of Action has been implemented, national plans to combat racism, the need to formulate educational strategies and strengthen intergovernmental and regional partnerships, including with civil society. The Russian Federation noted alarming trends in Europe ‘demonstrating a new spiral of racism’ and expressed the hope that the European regional conference would critically assess these trends. The International Movement Against All Forms of Discrimination and Racism called on States in the Asian region, and in particular on Thailand, to reconsider hosting the regional conference.

Some States called on other States and other stakeholders to provide additional funding for the review conference.<sup>9</sup> The Russian Federation called on the Secretary General of the review conference to make greater efforts to ensure the necessary funding.

Egypt (on behalf of the African Group) outlined a number of concerns that it asserted should be ‘addressed urgently’, including the need to clarify who would produce the outcome. In this context it also voiced strong criticism of the OHCHR and the support it had provided to the Preparatory Committee, including ‘glaring institutional weaknesses, allegedly hindering participation of NGOs, and more generally lack of a vision for the UN to fight racism. Pakistan (on behalf of the OIC) stated that the unfortunate early departure of the High Commissioner for Human Rights should not affect the preparations for the conference. Several delegations supported a proposal by the African Group to appoint an executive coordinator for the review conference.<sup>10</sup>

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<sup>4</sup> Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Slovenia (on behalf of the EU), Azerbaijan, Russian Federation, Turkey.

<sup>5</sup> Supported by Algeria.

<sup>6</sup> Egypt (on behalf of the African Group), Slovenia (on behalf of the EU), Pakistan (on behalf of the OIC), Switzerland, Azerbaijan, Brazil, Senegal.

<sup>7</sup> NordSud XXI,

<sup>8</sup> International Movement Against All Forms of Discrimination and Racism.

<sup>9</sup> Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Cuba.

<sup>10</sup> Pakistan (on behalf of the OIC), Algeria.

Slovenia (on behalf of the European Union), on the other hand, encouraged the OHCHR to provide ‘all necessary support’.

Azerbaijan emphasised that a human rights perspective and not political considerations should guide the efforts to eliminate racism. However, it was abundantly clear from the comments made by States that political considerations are guiding their human rights priorities for the review conference. In this context, it was of interest that Switzerland asserted that reaching consensus should continue to be the aim.

Egypt (on behalf of the African Group) and Pakistan (on behalf of the OIC) reiterated their view that all contemporary forms of racism must be addressed during the review conference, including racial profiling in the context of the fight against terrorism and incitement to religious and racial discrimination.<sup>11</sup> It further emphasised the need to establish mechanisms to eliminate impunity for such acts. Notably, Azerbaijan argued that the existing mechanisms to follow up on the Durban Conference were insufficient and that new mechanisms were needed. A few States argued that there was a need for complementary standards to address new forms of racial discrimination.<sup>12</sup> Libya strongly condemned ‘defamation of religions’ and argued that the new standards should address this issue. In this context, the UK asserted that it could not accept any restrictions on freedom of expression that went beyond the permissible limitations laid out in the *International Covenant on Civil and Political Rights*.

Slovenia (on behalf of the EU), taking an opposing view to the overall objective of the review conference, stated that the review conference should focus on building further on the common understanding and strengthen implementation of the agreements already reached. The United Kingdom argued that the review conference must address multiple forms of discrimination, anti-Semitism, and Holocaust remembrance.

While some States argued that the situation of people under foreign occupation should be given particular attention,<sup>13</sup> the United Kingdom warned that singling out one geographical situation would jeopardise a possible consensus. UN Watch urged that the review conference should not single out the Israel-Palestine conflict as ‘one of race’.

Several speakers also commented on their domestic or regional efforts to fight racism, racial discrimination, and other forms of discrimination.<sup>14</sup> NGOs highlighted particular cases or situations of racial discrimination, including against the Mongolite ethnic group in northern India;<sup>15</sup> in India generally;<sup>16</sup> colonialism and denial of the right to self-determination;<sup>17</sup> and the situation in Darfur.<sup>18</sup>

## Item 10 – Interactive dialogue with the Independent Expert on the situation of human rights in Haiti

### **Presentation by the Independent Expert**

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<sup>11</sup> Supported by Pakistan (on behalf of the OIC), Azerbaijan, China, Algeria, Iran.

<sup>12</sup> Pakistan (on behalf of the OIC), Algeria, Libya.

<sup>13</sup> Azerbaijan, Algeria.

<sup>14</sup> Slovenia (on behalf of the EU), Argentina (on behalf of MERCOSUR), United Kingdom, International Federation of Red Cross and Red Crescent Societies.

<sup>15</sup> Liberation.

<sup>16</sup> International Islamic Federation of Student Organisations.

<sup>17</sup> Indian Council of South America, Tupaj Amaru.

<sup>18</sup> International Humanist and Ethical Union.

Mr Louis Joinet spoke to the Council for the last time as Independent Expert on Haiti after serving six years and after 30 years of association with the UN. Due to personal reasons, he was unable to conduct his annual visit to Haiti, and so used the presentation to highlight observations deriving from his six years as Independent Expert. His first noted that the most exciting aspect of a country mandate is ‘real follow through’. He stated that the Independent Expert had to play a unique role in a country with a peace-keeping force and various rights-based UN offices. He also noted that he had developed strong links with elements of society that ‘were not always open to dialogue’ and had much to benefit from a lack of stability in the country, and that this was a source of discomfort to some observers.

Turning to events in Haiti, Mr Joinet claimed that the recent elections had shown that elections are not enough to return to the rule of law, and that the present system is ‘scarcely viable’ as Haiti still lacks a creative opposition to provide a genuine alternative. He conceded that the existing blocks to amendments of the Constitution should be respected, as they were inspired by the need to avoid the repetition of history. However, Mr Joinet also understood the frustration of Haitians abroad who were denied dual nationality on account of such blocks. He proposed therefore that the Constitution could be more broadly interpreted, in accordance with Article 3 of the Inter-American Convention on Human Rights on the right of legal personality and in light of the ruling of the International Court of Justice in the case of *Montijo v the United States*.

### **Interactive dialogue and concluding comments**

Haiti spoke as a concerned country by thanking Mr Joinet for the ‘masterful way’ in which he handled his mandate and for his ‘ceaseless support to the people of Haiti’. It noted progress made and challenges still faced, including the rejection of the lower house of Parliament of the establishment of the new Government on 12 May and 12 June 2008. Shortages still existed in relation to food, water and health. Emigration was still considerable and the State could not assist returned migrants. Gangs still remained a persistent threat, despite the UN presence.

All States who spoke welcomed the work of the Independent Expert, which Uruguay categorised as the ‘titanic task of helping to stabilise Haiti’, which was infinitely better than before.

Slovenia (on behalf of the EU) inquired whether there had been any improvement in the fight against impunity, and whether the national forensics institute had acquired the proper status to fulfil the work it needed to undertake. It also asked whether the proportions of pre-trial detainees held beyond the legal timeframe had decreased. Mr Joinet replied that there was a decrease in extended detention periods, but as the Government was presently stepping up on reducing crime, the spaces of 800 recently released detainees had been refilled. France enquired whether three new laws concerning the justice system (on the establishment of a Higher Council, the securing of judicial careers, and the statute for schooling of magistrates) had been implemented and whether the situation was better now. Mr Joinet responded that a very dynamic person had been appointed as head of the Higher Council, but that a new Prime Minister was needed before the justice system could be properly stabilised.

Canada noted advancements in Haiti in the areas of security but claimed that human rights were still a serious concern, including in relation to the rule of law, the implementation of anti-corruption policies, prison conditions, and violence against women. Concerning the latter, it stressed that sustained peace required the full involvement of women in all areas. Mr Joinet very quickly commented that many initiatives were underway in this regard. Luxembourg also asked what the Independent Expert proposed to halt the slide in the self-sufficiency of the Haitian market from 100% to presently 50%, and the impact that the rising price of rice is having on extreme poverty.

Finally, France and Uruguay sought Mr Joinet’s opinion on what the main priorities should be for his successor. Mr Joinet responded that he had not been able to dedicate enough time to economic, social and

cultural rights, which was now a priority on account of the current food crisis, and in any case the monitoring of civil and political rights was being taken up by various UN sections present in the country, as well as NGOs.

Being short on time, Mr Joinet concluded by pointing to the recent decision of the Inter American Court of Human Rights that the detention of the former Prime Minister of Haiti constituted arbitrary detention, and that there was a lack of fair trial and due legal safeguards. He stated that his reports were quoted throughout the judgment, and that this was a testament to the importance of such mandates.

The President added that Mr Joinet had ‘set a fine example’ for all special procedures in his work.

### General debate under Item 10

Slovenia (on behalf of the EU) urged the Council to ‘support and promote’ the provision of technical assistance and capacity building in order to assist in the prevention of human rights violations and as a prompt response to emergencies.<sup>19</sup> Slovenia stressed the need to help build ‘local capacity’ so that local institutions could take over for UN field missions. It welcomed the prolongation of the OHCHR office in Columbia and drew attention to the declaration made by the EU Presidency on the situation of human rights defenders in Columbia.

The delegation reiterated the EU’s disappointment with the Sri Lankan Government in its refusal to accept the presence of a human rights monitoring commission. Slovenia also expressed disappointment that the mandate of the Independent Expert on the human rights situation in the Democratic Republic of Congo (DRC) was not renewed at the previous Council session. However, it welcomed a substantial follow-up by the Council through relevant thematic procedures on the human rights situation of the DRC in a consolidated report at the 10<sup>th</sup> session of the Council. UN Watch also expressed its disappointment as the discontinuation of the mandate of the Independent Expert on the DRC.

Sri Lanka reiterated the need to provide technical assistance with the consent and cooperation of the State concerned. It drew attention to the Council’s ‘fresh’ approach in providing technical assistance, which unlike the previous Commission on Human Rights does not link technical assistance with the ‘imposing of resolutions on developing countries’. Subsequently, Sri Lanka recognized the UPR process as an effective mechanism in requesting States to comply with their human rights obligations. Sri Lanka responded to the EU that technical assistance needed to be ‘demand driven’ at the request of States and not imposed.

### Informal consultations

#### **Draft resolution on Burma/Myanmar**

Slovenia (on behalf of the EU) convened the second informal consultations on the draft resolution on the situation of human rights in Burma/Myanmar.

Again, States were divided along familiar lines. China made several suggestions to ‘soften’ the tone of the resolution, including that the resolution should reflect the continuing talks between the government of Myanmar and the Special Rapporteur, which it hoped would result in the Special Rapporteur being granted permission to visit the country ‘in or around’ September of this year.<sup>20</sup> It also advocated the deletion of the

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<sup>19</sup> Statement supported by the following EU candidate countries: Albania, Armenia, Croatia, Bosnia and Herzegovina, Republic of Macedonia, Republic of Moldova, Montenegro, Ukraine.

<sup>20</sup> See Draft Resolution A/HRC/8/L.12, PP 2 and PP 4

word ‘non-cooperation’ in reference to the Government<sup>21</sup>. China recommended that operative paragraph three<sup>22</sup> be removed from the resolution as the Government of Myanmar had assured not to forcibly return people to areas affected by Cyclone Nargis. India and Cuba were not satisfied with the timing of the resolution. India continued to assert that the initiative was premature. Both States urged the Council to consider the fact that Burma/Myanmar was in the process of recovering from a natural disaster. All three States suggested that it would be better to wait until the Special Rapporteur had had sufficient time to engage with the Government of Myanmar before issuing what India called a ‘harsh, condemnatory and intrusive resolution’.

Australia and Canada both objected to China’s suggestions for softening the language. They insisted on the importance of questioning the constitutional referendum process and expressed particular concern about forced returns of refugees to areas devastated by the cyclone. With regards to the latter, the United Kingdom claimed to have credible information that refugees were in fact being forcibly returned. It joined Australia and Canada in supporting the firm tone of the resolution, which it felt was justified in light of the negative developments since the last resolution. It claimed that inaction would undermine the credibility of the Council.

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<sup>21</sup> Preambular paragraph 4.

<sup>22</sup> Paragraph 3 calls on the Government of Myanmar not to return persons to areas where they cannot have access to emergency relief.

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