

COUNCIL MONITOR

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COUNCIL UPDATE – ITEM 9 HUMAN RIGHTS COUNCIL, 11TH SESSION 16 AND 17 JUNE 2009

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Overview

The interactive dialogue and general debate under Item 9 did not trigger much interest, with only few and mainly African States taking the floor. Many interventions addressed the recent Durban Review Conference in a relatively balanced manner. The main topic under discussion, the report of the Special Rapporteur on racism, received few comments. It was notable that few statements were made on controversial issues such as the occupied Palestinian territories (OPT), ‘Islamophobia’ or the right to self-determination.

Tensions arose during the general debate on Item 9 around the planned intervention of an NGO, which raised severe objections by the delegation of Morocco. Before the ‘International Educational Development’ took the floor, Morocco raised a point of order claiming that the person about to deliver the statement was also accredited in the name of another NGO. Morocco demanded that the rules of procedure for NGO participation in the Council be properly drafted and distributed before the next session in September. Although the Azerbaijani Vice-President of the Council promised to look into the issue after the session, Morocco kept raising points of order with the obvious aim of preventing that particular NGO from speaking. Only after a suspension of the session and an informal agreement with Morocco was the NGO able to deliver its statement. Regardless of the content of the NGO statement, it is of concern that States try to prevent NGOs from taking the floor, and are attempting to interfere with the internal process for civil society organisations to designate their speakers. It is not for States to decide what person can take the floor on behalf of an ECOSOC accredited NGO.

Report of the Special Rapporteur

On 16 June 2009, Mr Githu Muigai, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance presented three reports to the Council.¹ His first annual report focused on the **Durban Review Conference** (DRC), which he described as ‘the major event’ that occurred during his mandate. In this regard he deplored the absence of certain States and called upon all States to commit themselves to implementing domestically the outcome document. He also reaffirmed his own commitment to use the outcome document in the framework of his mandate. He also highlighted the **correlation between**

¹ A/HRC/11/36, A/HRC/11/36/Add.2 and A/HRC/11/36/Add.3 available at <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

poverty and race pointing out that racial and ethnic minorities are disproportionately affected by poverty. He also presented the reports of his predecessors' Mr Doudou Diene visits to Mauritania in January 2008 and to the United States in June 2008.

On the visit to **Mauritania**, the former Special Rapporteur welcomed positive aspects such as the adoption of an act criminalising slavery and the creation of a National Commission on Human Rights. Though he noted that there are no manifestations of legally endorsed State-approved racism the country, the society remains deeply marked by continuing discriminatory practices rooted in cultural traditions and present in social, governmental or military structures. Mauritania, speaking as a concerned country, claimed that there is no discrimination on ethnic grounds and reiterated the ongoing process toward democracy and the constant fight against racism.

In relation to the visit to the **United States (US)**, Mr Diene's report pays tribute to the strong awareness at all levels of society and government regarding challenges in the fight against racism. It highlights the comprehensive legal framework put in place with the adoption of the Civil Rights Act in 1964. However, key areas of concern are also mentioned including direct discrimination and concrete racial bias with regard to law enforcement agencies and like racial profiling, laws and policies that seem non-discriminatory, but which are in practice discriminatory, and the socio-economic marginalisation of minorities. The then Special Rapporteur recommended the creation of a bipartisan Commission to evaluate progress and failure in the fight against racism. Speaking as a concerned country, the delegation of the US, among other things, drew the Council attention to the will of the new President to correct police officers' misconduct and to enhance the enjoyment of minorities of their economic, social and cultural rights.

All States were generally supportive of the work of Mr Muigai. Among the few criticism issued was the reference to caste objected by India.² It repeated its usual claim that caste-based discrimination does not fall under the mandate of the Special Rapporteur, as it cannot be considered racial discrimination. In his final statement and with reference to General Recommendation 24 of the Committee for the Elimination of Racial Discriminations, Mr Muigai clearly stated that he considers caste-based discrimination to fall squarely within his mandate.³

Many States expressed their general satisfaction with the **outcome document of the Durban Review Conference** of April 2009. Egypt said that the review was the 'cornerstone of the fight against racism'.⁴ Only Qatar viewed it as unsatisfactory. Taking up the comment of the Special Rapporteur according to which many provisions of the outcome document would not be needed if the Durban Declaration and Plan of Action (DDPA) had been thoroughly implemented, many States asked the Special Rapporteur about the best ways to implement the outcome.⁵ Many delegations supported the appeal of the Special Rapporteur to the States who had not been present at the review to join the outcome document.⁶ In this regard, the US stated that it 'was with regret that it did not join the conference'. Answering to a question put by Indonesia on how to reengage the absent States, the Special Rapporteur called for continued dialogue. Pakistan, the Russian Federation and Switzerland asked for the Durban Declaration and Plan of Action (DDPA) and the outcome document to be disseminated through the UN Department of Public Information and through national awareness raising campaigns. Finally, many States highlighted the need to effectively implement the commitments undertaken in the outcome document.⁷ In his replies, the Special Rapporteur said that he would enhance his collaboration with other Special Procedure to implement the outcome document.

² Paragraph 30.

³ General Recommendation No. 24: Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples.

⁴ Pakistan, Nigeria, Egypt, Russian Federation, Turkey.

⁵ Nigeria and Egypt.

⁶ Pakistan, Egypt, United Arab Emirates.

⁷ The Working Group on people with African Descent; the Intergovernmental Working Group on the effective implementation of the Durban Conference and the Program of Action; and the Ad-Hoc Committee on the elaboration of complementary Standards.

In his report the Special Rapporteur had not touched on the contested concept of ‘**defamation of religions**’, a concept that has fuelled debates in previous Council sessions and during the Durban Review Conference. Instead he chose to refer to ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’, and noted the increase of acts of incitement to hatred in recent years, which he said have targeted and severely affected racial and religious communities and persons belonging to racial and religious minorities. Pakistan (on behalf of the OIC) called for the further development of the international legal regime on this topic. This suggestion was backed by Egypt, who suggested that future reports of the Special Rapporteur cover ‘other grounds of discriminations’ including those contained in ICERD. Finally, Pakistan (on behalf of the OIC) recalled that in this regard the work of the Ad-hoc Committee on Complementary Standards⁸ was very important.⁹ In his final statement, the Rapporteur reiterated the fundamentality of freedom of religions to any democratic society emphasising that discrimination based on religion should be prohibited under national law as it is under international law.

Relatively few States addressed the links between racism and **freedom of expression** even though the Special Rapporteur identified it as a key element in the Durban Review Conference. The Czech Republic (on behalf of the EU) recognised the positive role of freedom of expression in combating racism and shared his conviction that incitement to hatred should be dealt within the international legal framework. Turkey supported the Special Rapporteur’s view that the formulation agreed at the Durban Review Conference on this matter ‘represented a landmark’. Mr Muigai, in his final remarks, stated that freedom of expression ‘ought to be restricted in the clearest possible circumstances’ and only to ‘preserve the public good’. He stressed that ‘freedom of expression should not be abused in any way, in any form, to threaten well established human rights, including the right to freely worship a religion of one’s choice as an individual or with groups’. While he admitting that the intersection of the two rights is complex, he argued for a ‘constant review’ of the relationship, based on the framework agreed in the Durban Review Conference outcome document.

Very little attention was paid during the interactive dialogue to the major focus of the Special Rapporteur’s report, the **link between poverty and racism**. Although it was the core topic of the report, it was only addressed on a general level, and States that took up the issue simply supported the work of the Special Rapporteur.¹⁰ The Czech Republic (on behalf of the EU) welcomed the Rapporteur’s intention to examine this question in more detail and invited him to continue cooperating with other UN mechanisms working in this field including for instance the Special Rapporteur on minority issues. Noting the obligation of States to address the socio-economic vulnerability of minorities, it fully shared the opinion that the right to non-discrimination needed to be fully implemented in that direction and asked what concrete measures could be taken in this regard. Senegal agreed with the double approach of enhancing the principle of non-discrimination and facilitating an access to economic, social and cultural rights.

One mildly contested element was that of **disaggregated data**. While Pakistan, Indonesia and Brazil were in favour and stressed that they are already collecting disaggregated data, some European States and Algeria expressed concerns as it could lead to an increase in racism, racial profiling and discrimination. Explaining his point of view, Mr Muigai agreed that it was a ‘double edged sword’ but argued that the debate should be moved from whether or not to collect data to one where the aim is to create safeguards for data to be collected in line with national constitutions and human rights standards.

General debate on Item 9

Only seven members and three observers States took the floor during the general debate on Item 9 and made general programmatic statements, in which all nominally committed to the fight against racism and re-emphasised the significance of implementing the outcome document of the Durban Review Conference.¹¹ Only few issues

⁸ For further information see <http://www2.ohchr.org/english/issues/racism/AdHocCommittee.htm>

⁹ Supported by China.

¹⁰ Pakistan, the Czech Republic, Germany, the Russian Federation, Senegal, Brazil, Qatar, Switzerland and Morocco.

¹¹ The three observer States were the US, Palestine (speaking in English) and Israel (speaking in Arabic).

where raised that had not already been touched on in the interactive dialogue with the Special Rapporteur, highlighting the potential overlap between these two formats of discussion. Furthermore expected statements were made by Palestine deploring the absence of the international community's interest to the discrimination faced by Palestinians and by Israel objecting to the singling out of their country during the Durban Conference and its review.

The issues discussed included the need for a better synergy in the work of the Durban follow-up mechanisms,¹² the prime importance of the Durban Review Conference outcome document containing States' commitments in the fight against racism,¹³ support to the elaboration of complementary standards,¹⁴ the need to pay attention to racism in sport,¹⁵ the alleged increase of religious hatred,¹⁶ and the importance of not categorising different forms of discrimination.¹⁷ Of note was the statement by the US. It had already spoken as a concerned country on the report by the former Special Rapporteur on racism, and during the interactive dialogue with the current Special Rapporteur. Taking the floor three times, albeit largely repeating its commitment to the fight against racism, seems to indicate that the new US administration attaches a high priority the issue of racism within the Council.

Further information

For further information on the Human Rights Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.
- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

¹² The Republic of Korea and Switzerland.

¹³ The Republic of Korea.

¹⁴ Cuba.

¹⁵ The Czech Republic.

¹⁶ Azerbaijan and Cuba.

¹⁷ The Czech Republic.

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