

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 73RD SESSION 28 JULY 2008, OPENING MEETING

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Opening address¹

Mr Bacre Nidaye, Director of the Human Rights Council and Treaties Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR) made the opening address for the 73rd session of the Committee on the Elimination of Racial Discrimination (the Committee).

He began his statement by welcoming the nomination of the new United Nations (UN) High Commissioner for Human Rights, Ms Navanethem Pillay. He stressed that this is ‘very good news’ and expressed his confidence that she will continue the fight against racial discrimination. He also pointed out that she is the first woman of colour to hold this position. He further noted that the whole of the UN system is engaged in activities to celebrate the 60th anniversary of the *Universal Declaration of Human Rights*, including addressing equality and discrimination.

He continued by acknowledging the heavy agenda before the Committee at this session, which includes the consideration of eight States,² the review procedure for seriously overdue reports, early warning and urgent

¹ The full text of this statement is available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

² Ecuador, Namibia, Togo, Russian Federation, Germany, Austria, Switzerland, Sweden.

action procedures, individual complaints, and the additional thematic discussion on special measures. He added that the adoption of the annual report would also take place at this meeting.

Another area of interest, he observed, is the continued preparation for the Durban Review Conference to be held in Geneva in April 2009. He noted that regional meetings are under way. A preparatory meeting for Latin America and the Caribbean was held last month in Brasilia, and a regional meeting for African States is due to be held in Nigeria in August 2008. Furthermore, he welcomed the Committee's submission of recommendations to this process.

Mr Nidaye also addressed the possibility of establishing a genocide monitoring mechanism, highlighting the work done by Ms Louise Arbour to explore ways of strengthening the punishment and prevention of genocide. He acknowledged the proposal by the Committee to the Human Rights Council (the Council) to create a dedicated enquiry procedure for early warning on situations at risk of degenerating into genocide. This would be established through an optional protocol to the *International Convention on the Elimination of all Forms of Racial Discrimination* (the Convention). The alternative proposal of OHCHR is the creation of a dedicated mechanism to monitor the implementation of the *Convention on the Prevention and Punishment of the Crime of Genocide*. Continuing on the theme of genocide, Mr Nidaye noted the UN Secretary-General's appointment of two advisors on genocide and the responsibility to protect with the view that the two would work closely together and streamline into one office.

Other areas that Mr Nidaye concentrated on were the entry into force of the *Convention on the Rights of Persons with Disabilities* (CRPD) and its Optional Protocol and the adoption of the Option Protocol to the *International Covenant on Economic, Social and Cultural Rights*. He reported that with the entry into force of the CRPD, a new treaty body is in the process of being established; the election of members is taking place in November 2008 in New York.

Mr Nidaye continued his introductory speech by referring to the work done during the Inter-Committee Meeting (ICM) held earlier in July. He said that the discussions had focused on treaty body working methods, including possible areas of harmonisation. He presented recommendations that had been agreed on at the ICM. One proposal was for the holding of biannual meetings, with one meeting dedicated to the harmonisation process. The agenda for the 8th ICM, to take place later this year, he said would comprise discussions on treaty-specific guidelines, consideration of a country in the absence of a report, the universal periodic review (UPR) mechanism, and list of issues. He further stated that the need for developing cooperation between the Council and the treaty bodies was discussed extensively at the 7th ICM. Furthermore, the importance of removing reservations to treaties was highlighted.

Committee comments

Several members of the Committee wished to make comments on matters raised by Mr Nidaye, including genocide, the Committee's relationship with the Council, and the upcoming Durban Review Conference.

Genocide

Referring to comments made by Mr Nidaye, Mr Thornberry stressed the need to conduct an extensive study on the concept of a genocide monitoring mechanism. He reminded his colleagues that existing Committee procedures dealing with genocide have flagged the need for such a mechanism. He recommended that the study include the Committee's early warning procedure, the Committee's *Declaration on the Prevention of Genocide*,³ a list of indicators for recognising situations that may lead to genocide, and the provision of new criteria on this subject. He strongly recommended the Committee be fully involved in this process.

³ Contained in A/60/18, available at www2.ohchr.org/english/bodies/cerd/.

Mr Avtonomov noted that the Committee has adopted a decision on indicators of a potential genocide⁴ and noted that while punishment of this crime is vital, prevention is far more important. He said that it would be useful for the Committee to see others' conclusions on this issue, stating that whilst the Committee brings one aspect to this subject, genocide affects all human rights.

In response to these comments, Mr Nidaye noted that, overall the Committee is the only treaty body to have an early warning mechanism for possible genocide. However, he pointed out that there are distinctions between having information, raising the alarm, and taking action. He recognised that in this regard, the link between the Committee and the Security Council, through the Secretary-General, is not clear. As a means of reconciling this problem, he suggested that members of the Committee be in attendance when these matters are discussed in New York, thus facilitating the link between the information-providers and the decision-makers.

Human Rights Council

Mr Sicilianos asked Mr Nidaye for his opinion on the outcome of the UPR process, on the conclusions drawn by the Council thereon, and whether those conclusions have taken into account the full breadth of treaty body recommendations.⁵ Mr Avtonomov asked about action that can be taken to encourage States who have ratified the Convention to fully comply with their treaty obligations, and asked in what capacity the Council can help with this. Mr Kemal expressed his concern that resources are being diverted from the treaty bodies to the UPR mechanism.

Addressing the relationship between the Council and the treaty bodies, Mr Nidaye stressed that in the OHCHR compilation of UN documents,⁶ attention is paid to States' reservations to treaties. He also pointed out that information on the UPR process and its outcomes are made public. On the division of resources, Mr Nidaye noted that the resources available to the treaty bodies were already limited prior to the creation of the UPR mechanism. Nevertheless, Mr Nidaye acknowledged that member States of the Council had made a particular effort for the UPR by creating additional posts, requiring additional resources.

Replying to concerns about how to respond to States that are not fulfilling their treaty obligations, Mr Nidaye stated that this issue falls directly under the mandate of the Council. However, he highlighted that UN country or regional field presences can facilitate contact with national human rights institutions (NHRIs) and non-governmental organisations (NGOs) in such States.

Durban Review Conference

Mr de Gouttes noted that the idea of complementary norms between the treaty bodies was a 'thorny issue' at the ICM and asked for additional information on discussions on the creation of additional norms for fighting racism.

Mr Lahiri asked, in connection with the Durban Review Conference and regional meetings discussed by Mr Nidaye, if there are any activities aimed at increasing the ratification of the Covenant in Asia. Recalling that there have been numerous discussions on the concept of complementary norms at the Brasilia meeting, Mr Lingdren requested that the Secretariat distribute the final document of this conference to the Committee.

Mr Nidaye said that the Brasilia meeting led to tangible results, but regretted that the outcome document is currently only available in Spanish. He assured the Committee that translations are currently underway. Turning to references made to the concept of complementary standards and norms, he said that he would ask colleagues working on the Durban Review Conference to brief the Committee.

⁴ *Ibid.*

⁵ Echoed by Mr Avtonomov.

⁶ This is one of the core documents on which the review is based.

Adoption of the agenda

Once the dialogue with Mr Nidaye was concluded, Ms Dah introduced the draft programme of work for the session. First on the agenda was the nomination by Denmark of Mr Arnold Skibsted, the Ambassador of Denmark to Latvia, to replace Mr Morten Kjaerum, who had resigned from the Committee. The fact that Mr Skibsted was not present gave rise to a lengthy discussion as to whether the Committee should confirm the appointment in his absence. It was finally agreed that no action would be taken until the next session.

Other matters were raised during the adoption of the agenda. Mr Diaconu informed his colleagues of his wish to raise the situation of the Roma in Italy during the meetings of the early warning and urgent action working group. Mr de Gouttes suggested that the UPR mechanism should be made into a standing agenda item.

Dialogue with UN bodies

OHCHR National Institutions Unit

Ms Liza Sekaggya from the National Institutions Unit of OHCHR made a presentation on NHRIs. She stated that OHCHR is closely monitoring the compliance of NHRIs with the *Paris Principles relating to the Status of National Institutions*. It has initiated a new strategic management plan creating a first global indicator for assessing the number of NHRIs in compliance with the minimum required international standards. As part of this plan, States fulfilling the minimum international standards are granted 'A' status. So far, she added, 60 of the 100 institutions party to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) have been granted 'A' status.

Ms Sekaggya said that the work of the ICC has broadened alongside initiatives of the High Commissioner for Human Rights. These initiatives include encouraging NHRIs to undertake discussions on detention conditions and the introduction of workshops at the national and regional levels. She also acknowledged the participation of NHRIs in the Durban review process.

Ms Sekaggya recognised the Committee's unique working practices in recognising NHRIs,⁷ and encouraged the Committee to continue strengthening this relationship.

International Labour Organization (ILO)

Ms Shauna Olney, Coordinator of the Equality Team of the ILO, presented a report to the Committee. She addressed issues related to the Durban Review Conference and indigenous peoples, and also offered pertinent facts on the situation in the countries due to be considered by the Committee at this session.

She noted that the *Durban Declaration and Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance* addresses many areas of concern to the ILO. She informed the Committee that the ILO will be contributing both to the preparatory meeting in October 2008⁸ and the Review Conference next year.⁹

⁷ At the 71st session of the Committee, NHRIs from Indonesia and New Zealand took the floor to make independent presentations to the Committee.

⁸ To be held from 6 to 17 October 2008 in Geneva

⁹ To be held from 20 to 24 April 2009 in Geneva.

Turning to the work of the ILO Committee of Experts on the application of ILO Conventions, Ms Olney directed the Committee to the report published earlier this year.¹⁰ She noted that all the countries under review by the Committee at this session have ratified ILO *Convention 111 concerning Discrimination in Respect of Employment and Occupation*.¹¹ However, she highlighted that Togo and Ecuador have yet to ratify ILO *Convention 143 on Migrant Workers in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*.¹² She also noted that Sweden has not yet ratified ILO *Convention 169 on Indigenous and Tribal Peoples* and the ILO is currently monitoring the situation of the Sami and Roma in the country. Ms Olney stressed the need for Switzerland to introduce legislation which prohibits racial discrimination. She also raised concerns about the treatment of travellers in Switzerland, highlighting the need to provide rest and transit areas. She also raised concerns about new legislation in the Russian Federation, which prevents petitioning of the labour inspectorate concerning allegations of discrimination.

Office of the UN High Commissioner for Refugees (UNHCR)

Ms Daniela Cicchella presented a report on behalf of UNHCR, providing information to the Committee on the countries under review at this session. She stated that confidential comments on Ecuador, Namibia, Germany, and Sweden have been presented to the Committee in private.

Ms Cicchella expressed her satisfaction with the situation in Ecuador, but noted that the continuing action and improvements in the country appear to be due more to the activities of individuals than of the Government. To supplement this, she pointed out the need to enhance the domestic legal system to further improve protection for those vulnerable to human rights violations.

Turning to the situation in the European countries to be reviewed by the Committee at this session, Ms Cicchella called attention to the *Dublin Convention*.¹³ She also underscored the common problems faced by European countries in the integration of refugees and the education of children.

Ms Cicchella also drew the Committee's attention to the rise of xenophobia in Europe and noted that Austria has introduced training programmes for police forces to help eliminate xenophobic practices.

Committee comments

Following the presentations, the floor was opened for comments from the Committee.

Referring to the presentation on NHRIs, Mr Sicilianos noted the continuing need to encourage interaction between States and their respective NHRIs. Mr de Gouttes emphasised the Committee's 'pioneering spirit' in encouraging NHRIs to be present and take the floor at its consideration of State reports. He urged that other treaty bodies adopt this practice, a matter which was discussed at the ICM. Responding to the Committee's comments, Ms Sekaggya re-emphasised that the National Institutions Unit is encouraging all treaty bodies to give formal status to NHRIs.

Mr Martinez inquired whether the UNHCR and the ILO plan to conduct studies on the draft guidelines to be on the right to return illegal immigrants being considered by the European Union (EU).¹⁴ He remarked that

¹⁰ Report III(1A), available at www.ilo.org/global/What_we_do/Officialmeetings/ilc/ILCSessions/97thSession/reports/lang--en/docName--WCMS_090991/index.htm.

¹¹ Available at www.ilo.org/public/english/employment/skills/hrdr/instr/c_111.htm.

¹² Available at www.ilo.org/ilolex/cgi-lex/convde.pl?C143.

¹³ The Dublin Convention is a European Union Law designed to aid refugees who seek asylum under the *Geneva Convention relating to the status of refugees*.

such a review would be useful to the Committee. Ms Olney assured Mr Martinez that the draft EU guidelines on the right to return will be brought to the attention of the ILO Committee of Experts. However, she emphasised that she could not predict the outcome of such a review. Ms Cicchella stated that the UNHCR is currently engaged in discussions with governments on the right to return. She also informed the Committee that a meeting was held recently with the United Kingdom on diplomatic assurances.

Mr Ewomsan requested further information from the UNHCR on the situation of refugees in Namibia, noting that there are an estimated 6000 refugees there. He also asked whether refugees living in camps are allowed visits by civilians. Ms Cicchella underlined that Government legislation forces refugees in Namibia to remain in settlements. She explained that the Government maintains this policy alleging security issues, and pointed out that this approach is not unique. Unfortunately, she continued, the UNHCR does not have any information on whether civilians are allowed into the refugee camps.

The opening meeting was an interesting start to the 73rd session of the Committee, as it highlighted the many initiatives under way in the international human rights system. It moreover introduced new facets to the work of the Committee, such as the consideration of mechanisms for the prevention of genocide. The Committee also appeared to profit from the presentations by the specialised agencies.

Last revised and updated: 12 September 2008.

¹⁴ *EU Directive on common standards and procedures in Member States for returning illegally staying third-country nationals*, P6_TA(2008)0293, available at www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0293+0+DOC+XML+V0//EN&language=EN#BKMD-4.

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