

# COUNCIL MONITOR

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Human Rights Monitor Series

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### Overview

The Council continued discussion of Item 8, implementation of the Vienna Declaration and Programme of Action (Vienna Declaration). Of note was a request by the Netherlands, repeating a similar request by 54 States during the Council's 3<sup>rd</sup> session, that the President schedule a discussion on human rights violations based on sexual orientation and gender identity on the Council's programme of work.

Under Item 9, on racism, the Council had a heavy workload. The interactive dialogue with the Special Rapporteur on racism showed clearly how different the various view points are in relation to the delineation between freedom of expression and incitement to national, religious and racial hatred, and seemed to foreshadow animated discussions during an upcoming OHCHR seminar on this issue.

Brazil and Nigeria reported on the regional preparatory meetings for the Durban Review Conference held by the Group of Latin American and Caribbean Countries (GRULAC) and the African Group respectively. The Council then held a general debate on racism, racial discrimination, xenophobia and related forms of intolerance (Item 9). States used this occasion to reaffirm their commitment to the Durban review process and to voice their expectations for the upcoming Durban Review Conference.

At the end of the afternoon, the Council suspended the general debate on Item 9 and proceeded to the presentations by the Independent Expert on the situation of human rights in Somalia and the Independent Expert on the situation of human rights in Liberia (under Item 10) as both mandate holders would leave Geneva the following day. The absence of the relevant mandate holders from interactive dialogues with the Council is a recurring problem, and it defeats the purpose of the exercise.

The Council will continue with the presentation by the Independent Expert on the situation of human rights in Burundi and the interactive dialogue on all three reports under Item 10, as well as the remainder of the discussion on Item 9, at 3 p.m. on 23 September 2008. Given this backlog, it seems likely that the 9<sup>th</sup> session of the Council will be extended.

## Implementation of the Vienna Declaration

The general debate on ‘follow-up and implementation of the Vienna Declaration and Programme of Action’ continued along the same lines as it started the previous day. As so often in the Council’s debates, the interventions taken at face value painted a seemingly consensual picture. All States that took the floor hailed the adoption of the Vienna Declaration 15 years ago as a milestone, and affirmed the progress achieved by the international community in various areas.

Particular attention was paid to discrimination based on sexual orientation. The previous day, recalling that the *Universal Declaration of Human Rights* (UDHR) prohibits discrimination on any grounds, France, on behalf of the European Union (EU), had reaffirmed that ‘all persons, whatever their race, religion, social status or sexual orientation have the same rights’. The Netherlands then went further, and formally asked the President to schedule a discussion on discrimination based on sexual orientation on the Council’s programme of work. It recalled that during the 3<sup>rd</sup> session of the Council, Norway had delivered a joint statement on behalf of 54 States drawing attention to human rights violations based on sexual orientation and gender identity, and had already asked for an opportunity for the Council to discuss this.<sup>1</sup> Chile also mentioned that the right to non-discrimination should be implemented whatever ‘a person’s culture, living place or sexual orientation’.

While all States seemed to agree on the well-known discourse that ‘human rights are universal, indivisible and interdependent and interrelated’ it became clear that there is not much agreement on the scope of the often-praised ‘universality of human rights’. The previous day, Egypt (on behalf of the African Group), while confirming that ‘universality’ encompasses all people and all rights contained in the UDHR, said this did not extend to the ‘forcible introduction of norms that are not internationally recognised.’ While not making its reference to these ‘norms’ explicit, it seems to relate to repeated affirmation of sexual orientation as a ground of prohibited discrimination by other States. It is noteworthy that this broad statement in the name of the African Group seems inconsistent with the laws and policies of some of its members on the issue of sexual orientation.<sup>2</sup>

Thailand drew attention to the triple anniversary celebrated in 2008, pointing out that it is the 60<sup>th</sup> anniversary of the UDHR, the 15<sup>th</sup> anniversary of the Vienna Declaration, but also the 10<sup>th</sup> anniversary of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (commonly known as the Declaration on Human Rights Defenders). Several States recalled the international expert conference entitled ‘Global Standards – Local Action’ held in Vienna on the occasion of the 15<sup>th</sup> anniversary of the Vienna Declaration.<sup>3</sup>

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<sup>1</sup> See ISHR’s *Daily Update* of 1 December 2006, available at [www.ishr.ch](http://www.ishr.ch).

<sup>2</sup> South Africa’s Constitution explicitly recognises sexual orientation as a prohibited ground of discrimination.

<sup>3</sup> Switzerland, Austria.

Austria reported that the experts present had identified the gap between human rights standards and their implementation as the biggest challenge confronting today's human rights community.<sup>4</sup>

Brazil highlighted the issue of migration, a recurring theme that has been raised several times during the current session. The previous day, France (on behalf of the EU) had again defended the EU migration policy as based on solidarity and 'shared responsibilities'. Brazil pointed out that only 'through a full appreciation of the reciprocity of migration' could the principle of shared responsibility work. It seems that there is no agreement either on the meaning, let alone the implementation, of 'shared responsibility'. This debate has highlighted a significant conflict of interests between the EU and other regions.

Many of the other issues raised mirrored those addressed during the general debate on Item 8 held the previous day.<sup>5</sup> These included praise for the establishment of OHCHR and its substantive development over the past 15 years,<sup>6</sup> the importance of human rights education,<sup>7</sup> the important developments in the area of criminal justice since the Vienna Conference,<sup>8</sup> the right to self-determination,<sup>9</sup> and the right to development.<sup>10</sup>

The International Coordinating Committee (ICC) of national human rights institutions praised the Vienna Declaration as a 'catalyst' for national institutions, and welcomed that compliance with the Paris Principles<sup>11</sup> has increased since the Vienna Declaration was adopted.

It was notable that several NGOs illustrated their statements with concrete examples. Amnesty International, recalling that the Vienna Declaration emphasised the importance of sufficient and effective remedies for victims of human rights violations, called on Slovenia to address the situation of the so-called 'erased', permanent residents of the former Yugoslav republics living in Slovenia who had been deprived of residency status. The International Commission of Jurists spoke of the prevalent impunity for systematic human rights violations in Mexico. The Arab Commission for Human Rights illustrated the lack of cooperation with UN treaty bodies with reference to Tunisia, recalling that the Vienna Declaration called for improvements in reporting to treaty bodies. Unlike during earlier sessions, when several States and NGOs had illustrated their statements with references to Tibet, no points of order were raised.<sup>12</sup> Only Algeria exercised a right of reply to respond to the mention of Tunisia, but did not object to the mentioning of Slovenia or Mexico.

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<sup>4</sup> The complete summary of the experts conference was circulated as Council document A/HRC/9/G/6.

<sup>5</sup> See ISHR's *Daily Update* of 18 September 2008, available at [www.ishr.ch](http://www.ishr.ch).

<sup>6</sup> Switzerland, Slovenia, Thailand, Costa Rica.

<sup>7</sup> Thailand, Costa Rica, Soka Gakkai International (joint statement with the International Organization for the Right to Education and Freedom of Education (OIDE), International Federation of Social Workers, Interfaith International, World Student Christian Federation (WSCF), International Council of Women (ICW-CIF), International Catholic Child Bureau (ICCB), Asian Forum for Human Rights and Development (FORUM-ASIA), International Movement Against all Forms of Discrimination and Racism (IMADR), Pax Romana (International Catholic Movement For Intellectual and Cultural Affairs and International Movement of Catholic Students), International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Institute for Planetary Synthesis (IPS), World Federation of United Nations Associations, International Federation of University Women, International Alliance of Women).

<sup>8</sup> Slovenia.

<sup>9</sup> Algeria, Syria.

<sup>10</sup> Morocco, Syria.

<sup>11</sup> The 'Paris Principles' were adopted by the United Nations General Assembly as an Annex to Resolution 48/134. They define the role and functions of national human rights institutions in the promotion and protection of human rights. Available at: <http://www.un.org/Depts/dhl/res/resa48.htm>.

<sup>12</sup> See ISHR's *Daily Update* of 25 March 2008, available at [www.ishr.ch](http://www.ishr.ch).

## Racism, racial discrimination and related intolerance

### Special Rapporteur on racism

Mr Githu Muigai, the new Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, presented his report on ‘the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights’ prepared by his predecessor Mr Doudou Diène.<sup>13</sup> The report contains a summary of Mr Diène’s work presented to the Council in the past, most recently during the 6<sup>th</sup> session of the Council. The report calls for the focus to shift from the idea of ‘defamation of religions’ to the legal concept of ‘incitement to national, racial and religious hatred, hostility and violence’, which is grounded in international legal instruments. The report draws attention to the links between articles 19<sup>14</sup> and 20<sup>15</sup> of *the International Covenant on Civil and Political Rights* (ICCPR) and welcomes the upcoming expert meeting to explore these issues organised by the High Commissioner for Human Rights.<sup>16</sup>

Mr Muigai also noted that independent courts have emphasised that limitations on fundamental rights such as freedom of opinion and expression could not justify censorship. He affirmed that a ‘legal response alone is far from sufficient’ to eliminate hate speech and incitement to violence and that ‘the best strategic response to hate speech is more speech’. He called for a strengthening of education and information about cultural differences to help combat intolerance and discrimination and promote diversity.

### Interactive dialogue

The interactive dialogue focused primarily on the concept of ‘defamation of religion’ and the relationship between the right to freedom of expression and the right to freedom of religion and belief. There was a familiar divide between States that emphasised the need to control freedom of expression to prevent racial and religious intolerance, and others that did not accept ‘a right to have a religion free from criticism or ridicule’.<sup>17</sup>

The majority of States were in agreement that intolerance must be combated, but views on the ways to achieve this differed. Pakistan (on behalf of the OIC) and others felt that there is currently a legal vacuum, which creates a favourable environment for intolerance.<sup>18</sup> They called for the legal gap to be filled with further legislation at the international and domestic levels to reduce intolerance, prejudice and xenophobia. In contrast, France (on behalf of the EU) stated that sufficient legislation was already in place and that there was no need for more laws.<sup>19</sup> Despite the opposition to new legislative standards, France (on behalf of the EU) and other States<sup>20</sup> welcomed the recommendation by the Special Rapporteur that the debate should be shifted from the ‘sociological concept of “defamation of religions”’ towards the legal concept of ‘incitement to hatred’.

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<sup>13</sup> A/HRC/9/12 available in French at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/9session/A.HRC.9.12\\_fr.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/9session/A.HRC.9.12_fr.pdf) Document A/HRC/9/12

<sup>14</sup> Which enshrines the right to freedom of expression and opinion and defines its limits.

<sup>15</sup> Which prohibits national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

<sup>16</sup> The expert seminar will take place from 2 to 3 October 2008 in Geneva.

<sup>17</sup> Australia

<sup>18</sup> Azerbaijan, Kenya, Venezuela.

<sup>19</sup> Belgium and Australia shared this view.

<sup>20</sup> Chile, Belgium

Norway and the Sovereign Order of Malta affirmed the Special Rapporteur's statement that dialogue and education are necessary to progress towards reducing intolerance and raising respect for other religions. Australia stated that the right to freedom of expression is a significant human right and no one should be discriminated against on the basis of his or her religion. France (on behalf of the EU) said that human rights should protect individuals and not organisations or religions. It added that both freedom of expression and freedom of religion or belief are cornerstones of a democracy, and one cannot exist without the other.

Saudi Arabia affirmed that religious differences must be respected and that respect for religion is respect for the human person and human dignity.<sup>21</sup> Syria and Venezuela emphasised the dangers of unlimited freedom of expression and affirmed that every freedom has limitations. Morocco said that governments have a responsibility to prevent the use of incitement to hatred in political campaigns. Egypt, in its national capacity, affirmed that defamation of religion had become worse than ever before, and that 'legal pretexts' were being used to not seriously deal with the issue.

It was notable that the African Group did not make a group statement on this issue. South Africa seemed to take a nuanced position, regretting that the 'tenuous line between the exercise of the freedom of opinion and expression (...) continues to divide the world'. Despite the fundamental disagreement about the best way to approach the issues, all States welcomed the holding of a seminar on the links between articles 19 and article 20 of the ICCPR to be organised by OHCHR.

### **Regional preparatory meetings for the Durban Review Conference**

Brazil and Nigeria reported on the meetings held by the Group of Latin American and Caribbean States and the African Group, respectively. In the ensuing general debate, Egypt urged all regions that have yet to do so to organise regional preparatory meetings.

#### ***Latin America***

Brazil presented the results of the GRULAC preparatory meeting that took place in Brasilia in June 2008. There was a range of participants, including the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance, members of the Working Group on people of African descent and the Working Group of the Organisation of American States on racism and racial discrimination, and representatives of States and civil society.

The themes discussed included the study of progress of the implementation of the *Durban Declaration and Plan of Action* (DDPA), evaluation of the effectiveness of the Durban follow-up mechanisms and other relevant UN mechanisms on racism, and sharing of good practices, challenges and future actions. GRULAC members expressed their concern for the rights of indigenous people, people of African descent, migrant workers, and individuals whose rights are violated on the ground of sexual orientation or gender identity. Brazil concluded that the regional preparatory conference was a success. It reiterated that racism, racial discrimination, xenophobia and related forms of intolerance have seriously aggravated poverty, underdevelopment, marginalisation, and insecurity worldwide, in particular in developing countries. It pledged GRULAC's commitment to supporting and contributing to the Review Conference.

#### ***Africa***

Nigeria (on behalf of the African Group) reported on its successful regional preparatory conference, held in August 2008. The event served to take stock of compliance with the DDPA and ensure adequate preparations

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<sup>21</sup> Pakistan (on behalf of the OIC), Azerbaijan.

for the Durban Review Conference. At the regional meeting, States discussed prevention and education strategies, and reiterated the importance of effective cooperation between Governments, NGOs, and civil society at large in the identification of good practices. Moreover, African States agreed that the identification of ‘focal points’ between the Committee on the Elimination of Racial Discrimination and national human rights institutions (NHRIs), and close liaison between the two, would help in the implementation of and follow-up to the DDPA. The need to create and monitor practices, such as the ratification and implementation of the *International Convention on the Elimination of All Forms of Racial Discrimination*, was also highlighted at the regional meeting.

During the subsequent general debate, Algeria stressed its concern that the outcome document of the African regional conference be properly reflected in the Durban Review Conference.<sup>22</sup>

### General debate

States used the general debate to reaffirm their commitment to the Durban review process and to voice their expectations for the upcoming Durban Review Conference. France (on behalf of the EU) underscored that the Review Conference should solely focus on the implementation of the DDPA, and not re-open discussions on it.<sup>23</sup> Armenia asserted the importance of involving NGOs and NHRIs in the preparation of and during the Review Conference.

Many States listed areas of concern that, in their view, ought to be addressed at the Durban Review Conference. These included migration,<sup>24</sup> genocide,<sup>25</sup> and fascism.<sup>26</sup> The most prominent theme was religious intolerance,<sup>27</sup> in particular Islamophobia. A number of delegations insisted on the need to redress the balance between freedom of religion and belief, and freedom of expression.<sup>28</sup> Denmark stressed that freedom of expression ‘is an essential foundation of democracy’. It drew attention to the distinction between criticism of religions and incitement to religious hatred, the latter of which must be prohibited. Denmark furthermore rejected the integration of the concept of defamation of religions into international human rights.

Various States also took this opportunity to present national efforts that have been made in implementing the DDPA. These included legislative measures,<sup>29</sup> institutional changes,<sup>30</sup> and national plans of action.<sup>31</sup> At the international level, China pointed out that the elimination of racism is one of the responsibilities of the Council, and urged it to call for greater political will to raise general awareness and promote dialogue on this issue. Algeria repeated its appeal to the High Commissioner for Human Rights to consider appointing an executive director to prepare the Durban Review Conference in order to give greater visibility to the process. The Russian Federation expressed its concern about the ‘passive position’ being taken by European States with regard to the Review Conference, where discriminatory policies are increasing ‘against a background of silent complicity’.

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<sup>22</sup> Echoed by Libyan Arab Jamahiriya.

<sup>23</sup> Echoed by Turkey, Denmark.

<sup>24</sup> Brazil, Indonesia.

<sup>25</sup> South Africa, Rwanda.

<sup>26</sup> Russian Federation, China.

<sup>27</sup> Democratic Republic of the Congo (DRC), Holy See, Libya, Iran, Syria, China.

<sup>28</sup> DRC, Libya, Iran, Syria.

<sup>29</sup> Switzerland, South Africa, Bolivia, Morocco, Rwanda.

<sup>30</sup> Brazil, Switzerland, Morocco.

<sup>31</sup> Brazil, Argentina.

## Technical assistance and capacity-building

In order to profit from the presence of the Independent Expert on the situation of human rights in Somalia and the Independent Expert on the situation of human rights in Liberia, the Council suspended its discussion on Item 9 and proceeded to the presentations by the two mandate holders.

### **Somalia**

Mr Shamsul Bari, the Independent Expert on the situation of human rights in Somalia, presented his report on the situation of human rights. This was based on information gathered from his missions in June and July 2008 to Somalia, Kenya, Djibouti, and Ethiopia. During his missions, Mr Bari met with the Prime Minister of Somalia, government officials, refugees, and civil society representatives.

Mr Bari explained that the weakness of the State has rendered the concept of law and order ‘meaningless’ and the Government is unable to protect its citizens. Mr Bari reported that violence has escalated since the formalisation of the peace agreement in August, and reiterated the need of the international community to act and ‘consider very seriously’ the deployment of troops. Mr Bari further recommended that civil society be involved in the peace process, given the complex nature of the clan conflict in Somalia. Mr Bari advocated one of his recommendations in particular, namely the ‘participatory action research’, which consists of bringing groups together to discuss and debate matters of mutual concern. In conclusion, Mr Bari reiterated the ‘precariousness’ in which the people of Somalia are living and appealed to the Council to ‘help peace succeed’ in the country and save the people from their ‘nightmare’.

### **Liberia**

The Independent Expert on the situation of human rights in Liberia, Ms Charlotte Abaka, presented her report to the Council.<sup>32</sup> Ms Abaka detailed the marked improvement in the human rights situation in Liberia, particularly with respect to economic, social and cultural rights. However, she stressed that development must go hand in hand with all human rights. Ms Abaka’s report also indicates low levels of public confidence in the police and judiciary, high levels of gender-related crimes, and grave violations of civil rights, in particular the right to a fair trial. Ms Abaka noted with disappointment the introduction of a law reintroducing the death penalty, as well as the ‘guarded word of apology’ offered by Mr Prince Johnson, a former warlord, for the atrocities that took place during the civil war.

## Informal consultations

### **Cambodia**

Japan convened informal consultations on its draft resolution ‘advisory services and technical assistance for Cambodia’ that would extend the mandate of the Special Rapporteur for one year.

Several States requested the reinsertion of a paragraph expressing concern about continuing human rights violations.<sup>33</sup> Others argued that the paragraph should not be reinserted as it caused difficulties for the Government of Cambodia.<sup>34</sup> Notably, several States in the region highlighted the constructive and flexible approach of Cambodia, with the Philippines urging States to move towards a compromise and allow for

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<sup>32</sup> A/HRC/9/15.

<sup>33</sup> Slovakia, Australia, New Zealand, UK, Canada, Ireland.

<sup>34</sup> Pakistan, Singapore, Vietnam.

consensus.<sup>35</sup> On the other hand, Australia commented that the current draft threatened broad support for the resolution. Cambodia urged delegations to accept the current text that it has clearly played an important role in developing. In an impassioned statement it implored States to let Cambodia become a participant in the Council and not be subdued or subject to its monitoring. Japan explained that it was not targeting Cambodia but seeking to assist it.

Finally, Japan called on ASEAN countries in general, and Cambodia specifically, to consider sponsoring the draft resolution. Cambodia noted that it would like to be able to join consensus.

### **Protection of civilians in armed conflict**

Egypt convened consultations on its draft resolution on ‘protection of civilians in armed conflict’. The discussion focused on a small number of paragraphs that were also extensively debated during previous consultations. In particular, discussion arose in relation to rather technical legal issues related to international humanitarian law. There seemed to be broad agreement that the draft resolution should correctly reflect the law. Canada and the USA sought to insert the word ‘applicable’ before the words ‘human rights law’ in several places. The Russian Federation expressed reservations about the proposal arguing that even if States derogate from their international obligations, human rights continue to exist.

As in previous consultations some States did not support the inclusion of a paragraph on cooperation with mechanisms that the Council may set up to address violations of the human rights of civilians in armed conflict.<sup>36</sup> Finally, many States had reservations about the request included in the draft resolution to the Advisory Committee to study this issue.<sup>37</sup> They argued in favour of a ‘phased approach’ allowing the Council to re-consider the issue and its next steps after the holding of the planned expert consultation.

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<sup>35</sup> Philippines, Thailand, Vietnam.

<sup>36</sup> Canada, Turkey, Switzerland.

<sup>37</sup> USA, France, Norway, India, Russian Federation, Switzerland.

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