



Office of the High Commissioner for Human Rights
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

November 17, 2008

Dear High Commissioner Pillay:

We write to urge you to take steps now to address serious concerns in connection with the Durban Review Conference in order to prevent a recurrence of the problems that marred the 2001 World Conference Against Racism (WCAR) and ensure that the review conference is a forum for credible discussions on racism and related intolerance.

We participated in the WCAR and were deeply disturbed by the hateful, antisemitic atmosphere that plagued the conference and especially the NGO forum that preceded it. Nevertheless, governments were able to produce a Program of Action there that included important and timely recommendations for states to combat racism and discrimination.

The Durban Review Conference provides an opportunity to review states' progress in the implementation of their commitments to combat racism made in 2001. This notwithstanding, we share many of the concerns expressed by the United States and other governments about the review conference and have encouraged states to take an active role in the preparatory process in order to address those concerns. We support the recent Resolution of the U.S. House of Representatives (H.Res. 1361, attached), which charts a course for U.S. engagement at the highest levels. We believe this approach is necessary in order to focus the conference on the implementation by states of their commitments to combat racism and to defeat any effort to use the forum, in the words of the Resolution, "to promote anti-Semitism or hatred against members of any group or to call into question the legitimacy of any state." The Resolution also calls upon all states to reject a conference agenda that "incites hatred against any group in the guise of criticism of a particular government or that seeks to forge a global blasphemy code."

Your statement to the Second Preparatory Committee Meeting in October rightly urged states to focus on the "concrete pledges undertaken in Durban" and recognized the danger that "incidents of hatred and

intolerance” could be repeated in the Durban Review process. Unfortunately, in the process of drafting an outcome document for the review conference, some states are ignoring that admonition and the danger of which you warned has increased. If these challenges are not urgently addressed, the credibility of the review conference and the active participation by both states and civil society organizations will be irreversibly undermined.

Country-Specific Situations

The Asian Group of countries has proposed language for the review conference outcome document that accuses Israel of engaging in “a new kind of apartheid, a crime against humanity [and] a form of genocide.” These and other provisions in the Asian Group document concerning the Israeli-Palestinian conflict appear intended to make political action regarding this conflict the overwhelming focus of these states’ participation in the conference, to the detriment of its overall agenda. The politicized language of the Asian Group document is similar to that of the outcome document of the 2001 regional meeting in Tehran, which helped precipitate a withdrawal of the United States and others from Durban on the grounds of that the principles of the conference had been betrayed by some participant states. While no state should be immune from scrutiny of their human rights practices – indeed the review should assess the implementation of anti-racism commitments of all states – deliberate mischaracterizations of apartheid, genocide, and crimes against humanity promote the very hatred that the conference is supposed to combat. Moreover, highlighting the alleged abuses of one state, while failing to mention any others, is simply not a credible process.

Defamation of Religion

We have advocated that the conference agenda be limited to a review of the implementation of commitments undertaken in 2001. Additional issues, such as defamation of religions and other topics outside the scope of these commitments, should not be added to the agenda. The Organization of the Islamic Conference has proposed outcome document language calling for “internationally binding normative standards” to guarantee against defamation of religions. The Durban Review Conference is not an appropriate venue for consideration of the controversial issue of defamation of religions, which can threaten freedom of expression and freedom of religion or belief. The concept of defamation relates to religions as a whole rather than the rights of individuals to be protected from racism, racial discrimination, xenophobia and related intolerance.

Incitement to Hatred, Discrimination, and Violence

The regional outcome documents from Brasilia and Abuja, as well as other submissions, recognize the problem of racist, xenophobic, antisemitic, anti-Muslim, and similar bias motivated violence. This problem

has intensified in many places across the globe since 2001, and governments have largely failed to take effective action to combat it.

Nevertheless, the number and nature of the provisions relating to incitement of racial and religious hatred proposed by the African group from the Abuja document and by the OIC raise concerns about the protection of freedom of expression. In our view, any discussion of incitement in the review conference outcome document must be firmly rooted in the obligation to protect freedom of expression, belief, and religion, and cognizant of the obligation to balance the rights of free expression with the right to be free from discrimination. The review conference must not prejudice the ability of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination to interpret article 20 of the ICCPR and article 4 of the ICERD, respectively, in accordance with their mandates. Furthermore, any discussion of the interpretation of these articles needs to take place in a legal framework, rather than by political negotiation. Our statement on this issue at the October PrepCom meeting is attached.

Participation by Nongovernmental Organizations

Human rights and other civil society organizations play an important role in providing oversight of the implementation of anti-racism commitments. There is ample room for the constructive involvement of NGOs in the Durban Review Conference on the basis of the U.N.'s established rules regulating their participation in official meetings. On a separate track, Human Rights First and the Leadership Conference on Civil Rights are working in coalition with others to encourage NGOs that decide to engage in this process to demonstrate respect for human rights standards and principles. Encouraging such respect should guide your office in its efforts to facilitate the involvement of NGO's in the Durban Review Conference.

As organizations that are deeply concerned about racial discrimination, racist violence and related intolerance, we believe that the Durban review process can be an opportunity to advance this agenda. But we are concerned by the absence of a concerted effort by most states to examine implementation of their anti-racism commitments. We urge you to be resolute in your public statements and other efforts to encourage government delegations to confront squarely and resolve our concerns in order to keep the review conference focused on its intended purpose. It is clear that encouraging productive discussions on these issues remains a challenge. We look forward to working with you to address this challenge in the context of the Durban Review Conference and beyond.

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