Report and Recommendations for HIC from the 2nd Preparatory Committee Session for the Durban Review Conference (2009)

Angie Balata, HLRN Global Program Officer

Introduction

In 2006, the UN General Assembly resolved to convene a review conference in 2009 to follow up on the implementation of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCaR) and its outcome document, the Durban Declaration and Programme of Action (herein referred to as DDPoA).1 As part of the process to prepare for the Durban Review, the Human Rights Council, functioning as the Preparatory Committee for this conference, has convened two substantive sessions to discuss a variety of issues, including NGO accreditation, the creation of an Intersessional Open-ended Intergovernmental Working Group to review recommendations submitted by various stakeholders, and, most importantly, the structure of the Draft Outcome Document of the Review Conference (DOD).2 The DOD is the most important, visible and lasting product of the Durban Review process.

The session took place between 21 April—2 May 2008 (first substantive session) and 6–17 October 2008 (second substantive session). In addition, there have been three sessions of the Intersessional open-ended intergovernmental working group. The draft versions of the Draft Outcome Document are currently available at:


Because of the work left to be done on the DOD, one proposal under consideration now is convene another (third) PrepCom in advance of the April conference.

HIC-HLRN has been following the process and, as its coordination office staff committed at the HIC meetings in Barcelona (February 2007), seeks here to report back to the HIC membership with suggestions as to how HIC could contribute to, and benefit from the Durban Review process and official conference (Geneva, 20–24 April 2009).

The role of civil society has been especially important in the preparation of this review and conference, where state political interests have dominated the agenda. For example, the issues of reparations for African and Asian descendants of the slave trade and inclusion of sexual orientation have been the most controversial, with most states choosing to shun any discussion on actual monetary settlements, in the case of the former, and/or banning any reference to sexual orientation, as in the case of

1 For details on the 2001 World Conference against Racism held in Durban, South Africa and the Durban Declaration and Program of Action, please see: http://www.un.org/WCAR/. For a report of HIC’s participation in WCaR, see “HIC at WCaR,” by Jalpa Ratna (Mazangira Institute, Nairobi) with input from Joseph Schechla (HIC-MENA) and Nazmi Gur (Human Rights Association and HLRN Solidarity Network, Kurdistan/Turkey).

2 For more information on this please refer to: http://www2.ohchr.org/english/issues/racism/DurbanReview/index.htm
the latter. Civil society participation is essential to ensuring that alternative voices and victims are heard.

The UN encourages civil society groups to attend the events and processes in preparation for the Review conference. Also, the OHCHR has committed to help NGOs by way of financial support. Specifically, the OHCHR has put out a call for all interested NGOs to **apply for partial funding to attend the Durban Review Conference by 12:00 PM, 15 December 2008**. Details can be found at: http://www2.ohchr.org/english/issues/racism/DurbanReview/ngos_applications.htm

Please also note that the Second Preparatory Committee has decided:

1. To convene a third substantive session of the Preparatory Committee in Geneva for up to three working days, on 15 to 17 April 2009; and
2. To establish an intersessional open-ended intergovernmental Working Group with a mandate to continue and finalize the negotiations and drafting of the DOD, and to report thereon to the third substantive session of the Preparatory Committee.

The Preparatory Committee has decided that the intersessional open-ended intergovernmental working group shall meet up to 10 working days in advance of the third substantive session of the Preparatory Committee, including meetings on 27 November 2008, 19–23 January 2009 and 6–9 April 2009, or at any other date that the Working Group agrees to meet.

HIC-HLRN has aimed to ensure that certain violations of housing and land rights are both included and recognized as identifiable manifestations of discriminatory and/or racist practices and policies. While there has been reference to the right of housing in the DOD, it has been inconsistent. Access to adequate shelter constitutes a fundamental source of violations to the right to life prevalent in cities all over the world; while, the lack of access to land, as a public resource, often serves as an obstacle not only to adequate standards of living, but more fundamentally to the way of life for many communities subject to ongoing and/or historic discrimination. Dramatic cases of apartheid, colonization, occupation and even genocide involve deliberate targeting of the unwanted (indigenous) people by eliminating, confiscating or destroying their habitat. Thus, it is vital that these issues be acknowledged, particularly with the growing number of conflicts that have as their source housing and land rights violations.

With that in mind, the brief assessment below identifies the housing and land rights gaps in the DOD and important characteristics of the process dynamics. This report then poses corresponding recommendations in the conclusion. The reader should understand that those recommendations are actually opportunities for HIC engagement in the process, either through HLRN and its officers, or with wider participation of HIC and HLRN Members. In order for HIC and HLRN to be further involved requires Member participation and feedback. This assessment may help you in responding to the issue raised in the UN’s Durban Review questionnaire. HLRN is circulating those questions also for your response, and HLRN proposes to work with the HIC GS to incorporate your feedback into a HIC submission in response to the Durban Review.
General observations

- The DOD is not intended to reiterate or replace the Durban Declaration and Programme of Action, but only to reflect the review of progress—or lack thereof—in implementing the Durban WCaR commitments adopted in the DDPoA.
- Sections of the DOD are repetitive and yet to be organized coherently.
- The DOD includes broad statements of progress and regression, but lacks specificity on the necessary tasks to remedy regression and ensure progress. Moreover, the DOD gives no indication as to how assessments were made as to either progress or regress to substantiate the statements in the document.
- The document reflects high sensitivity to political acceptability of the states rather than victim protection (i.e., compare para. 23, Section 1 with para. 8, Section 3).
- The “rightist” political trend of some European Western States and their increasingly discriminatory acts are mentioned (e.g., France, Britain and Spain on the Islamic headdress issue, Swiss posters against migrants, French ghettoization of North Africans, U.S. racial profiling in its “war on terror”).
- The general lack of political will on the part of States is abundantly clear. The Draft Outcome Document (DOD) has called upon the Durban Review Conference to demonstrate the political will to confront these phenomena (para. 227, Section 1). If, seven years after the WCaR, we are still calling for political will, then what progress has been made?
- It is recommended by the DOD that States need to establish mechanisms (i.e., paras. 148, 150–51 Section 1) by which to collect disaggregated numbers on various social indicators; i.e., health, education, and access to housing, but unclear how to create these monitoring mechanisms, the use of such information and what recourse victims have in the information collection process.
- Statements on the significant global progress, adoption of legislation to eradicate racism, and the positive attempts to formulate national strategy plans to deal with racism abound in the DOD (i.e., para. 123–25, Section 1), but, without any detail or precision, they are rendered superfluous. For example, questions such as which countries have actually made any progress since the WCaR, what types of legislation specifically have been enacted, what amendments and/or changes need to be made to ensure the implementation of the DDPoA have not been answered. Without the necessary detail, it becomes impossible to ascertain the true progress of the DDPOA. Moreover, it seemingly puts state sensitivities above to the obligation to acknowledge and protect victims. Finally, when statements are made referring to “progress” it is uncertain how it was “assessed” that progress has been made. Were there consultations with local NGOs globally? Is the assessment based on reports submitted only by States (i.e., the questionnaire)? Have relevant UN bodies been asked to advise (i.e. CERD)?
Section-by-section comments

Section 1: Review of progress and assessment of implementation of the Durban Declaration and Programme of Action (DDPoA) by all stakeholders at the national, regional and international levels, including the assessment of contemporary manifestation of racism, racial discrimination, xenophobia and related intolerance.

This section is divided in five parts dealing with:

1. the sources and forms,
2. the victims,
3. measures of prevention,
4. provision of effective remedies, and
5. strategies to achieve full and effective equality.

The comments below are generally applicable to all the five parts and, where necessary, observations related to one or more of these themes.

- The draft DOD reflects a tendency toward conceptual confusion in the way it interchanges manifestations of racism, racial discrimination and xenophobia with the actual sources/causes. For example, paras. 1–3 acknowledge the relationship between poverty and social exclusion and various forms of discrimination but fall short of clearly declaring that the manifestations, i.e. poverty, underdevelopment, marginalization, social exclusion and economic disparities, are all a consequence of the source; i.e., various types of discrimination.

- States seem generally to avoid and resist explicit and detailed accounts of racism, racial discrimination and xenophobia, so the vague and general language in the DOD may be disappointing.

- As with the preceding observation, the document also reflects a reluctance—or, at least, inconsistency—of the delegates explicitly to recognize the human rights obligations of States (e.g., see paras. 14 and 56). The DOD instead is generally limited to discussing the manifestations of discrimination and racism, and to some extent the specific sources, but offers no clear link between these violations and the international law requirements of States developed for the very purpose of preventing and resolving the harm arising from racism and discrimination. Thus, the DOD seems to fall short of its practical and problem-solving value.

- The text is inconsistent in the way it includes the topics related to specific victims. People of African and Asian decent have been thoroughly acknowledged; however, other victim groups such as pastoralists, victims of caste systems and aboriginal populations have been left out in general.

- Housing, as a right and corresponding obligation of State is not mentioned. However, recognition of nondiscrimination in housing as necessary measure to producing equality appears sporadically throughout the DOD. The document makes no mention of any right to land even in the context of the rights to land as
a public resource or as a subject of survival for communities that are current
and/or historic subjects of discrimination.

- Colonialism and its effects are recognized in the DOD (i.e., para. 102); however,
the cause or effects of neocolonialism, both directly and indirectly, are not
recognized in the DOD.

- Occupation is dealt with here, but not as thoroughly as is required. Paragraphs
114–17 deal explicitly with the occupation(s) of Palestinians. However, these
paragraphs are much diluted, evading any mention of the causes/sources of the
discrimination and omitting any recognition of their clearly institutionalized forms.
The symptomatic manifestations of occupation, such the settlements and
economic blockades, are recognized, but not the inherent causes, namely, the
laws and institutions that enshrine discrimination at the foundation of the Israeli
state, and continue.3 There is no recognition of the official Israeli policy of
hafrada (apartheid), which is not manifest only in the occupied territories.

- Those paras. on occupation also omit mention of any other similarly victimized
groups. While, in some ways, the occupation(s) experienced by the Palestinians
could be considered unique, but other communities and people globally also live
under occupation and alien domination.

- Issues related to women (see paras. 78–86 for example) and migrants and
“noncitizens” (e.g., see paras. 89–95) as special victim groups have been well
covered in the DOD. However, again, the explicit mention of the right to housing
within the context of discrimination against these groups is not present.

- While the DOD has called upon states to honor victims, to apologize and “pay”
the necessary reparations (i.e., para. 167), this has neither been explicated in
terms of the actual implementation, nor does the document propose any
mechanisms for implementation and/or enforcement.

- Since the Durban conference, an “Antidiscrimination Unit has operated within
UNOHCHR with apparent tasks, but no real empowerment. The DOD has called
for the Unit to be “elevated to the rank of division and strengthened with
additional resources and staff” (para. 225). However, the text calling for this
uniquely practical measure reflects no clear understanding of how this should
happened, or the Division would relate to other relevant organizations,
particularly the treaty-monitoring Committee on the Elimination of Racial
Discrimination (CERD).

- The DOD recognizes civil society as a key actor (paras. 236–43) and contributor.
It also implores States to create an environment conducive to the effective
functioning of human rights NGOs. In spite of this, the platform for direct and
actual participation by civil society has been effectively foreclosed through the
Durban Review process. For example, while civil society is allowed to submit its
answers to the questionnaires given to States, there is no clear indication that
the feedback and recommendations offered by civil society have actually been
used, or at all taken into consideration. Moreover, during the Preparatory

---

3 The draft DDPoA included a proposed operative paragraph 41 that address the issue, but was not approved in
the final version. It read: “Urges Israel to revise its legislation based on racial or religious discrimination such as
the law of return and all the policies of the occupying Power which prevent the Palestinian refugees and
displaced persons from returning to their homes and properties, in violation of their right to return;…”
Committee sessions, little time is allotted to NGO intervention. When time is set aside, it is often in a manner that renders interventions ineffective (i.e., when time is ceded, it is often after many days of deliberations and after large topics have been concluded).

Section 2: Assessment of the effectiveness of the existing Durban follow-up mechanisms and other United Nations mechanisms dealing with the issue of racism, racial discrimination, xenophobia and related intolerance in order to enhance them.

This section delves more thoroughly into mechanisms the apparatus of the DDPOA and is divided into three parts:

1. General statement,
2. Mechanisms, and
3. Other mechanisms.

- This section makes clear that “an effective system to protect against discrimination...should improve and provide consistency [among] the relevant mechanisms, thereby preventing duplication and enhancing effectiveness.” (para. 5) However, the DOD also recognizes that the “multiplication of mechanisms” since the WCaR pose risks to the effectiveness of antidiscrimination strategies. Moreover, it also importantly recognizes that “…there is also a feeling that not enough attention is paid to the implementation of the DDPOA at that national level and that states should be encouraged to report on the national implementation within the Durban follow-up mechanisms” (para. 7). The States’ acknowledgement of the weakness of the system is appreciated; however, this concession is not enough. Further the recognition that States need to be more proactive is already considered fundamental and, thus, without any indication how this can be practically implemented make that statement seem disingenuous.

- The DOD commits a grave fault in resting any effective follow-up mechanism on “political acceptability and commitment of the member states” (para. 8) In doing so, the DOD has rested the entire process on State acceptance and sensitivities rather than victim distress as should be. It also reflects an inability to learn the obvious lessons from the process the States are actually reviewing.

- Despite accounting for how the proliferation of mechanisms linked to racism and discrimination negatively has affected the efforts of the DDPOA (para. 9), and addressing the ways in which effective restructuring is possible (para. 12), the DOD offers no conclusive method of how this is to be achieved.

Section 3–4: Promotion of the universal ratification and implementation of the ICERD and proper consideration of the recommendations of the CERD (section 3)

Identification and sharing of best practices achieved at the national, regional and international levels in the fight against
racism, racial discrimination, xenophobia and related intolerance (section 4).

- Section 3 offers a thorough overview of the work of CERD thus far. It recognizes failure to achieve the universal ratification to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) as had been aimed for at WCaR. It has also called on delinquent States to ratify (para. 12) and States with reservations to withdraw these (para. 13).
- This section recommends the full involvement of civil society, including in the preparation of treaty body reports (para. 20).
- It expresses the necessity of CERD to be empowered to undertake field visits and assume a greater role in assisting national mechanisms to combat racism and discrimination effectively (para. 33).
- In spite of all of these necessary recommendations, it is again left up to State will to ensure that these are followed through.
- Section 4 follows through on the good practices presented to the Durban Review process. It offers a broad overview of the necessary steps that States need to take to ensure a comprehensive and universal approach to fighting discrimination and racism (para. 10).
- It acknowledges, again, the specific impacts of foreign occupation and how this represents a “new kind of apartheid.” That is welcome, as it focuses needed attention on continued occupation. However, again, the causal factors and the victims are not mentioned as they should be, and the specific violations of housing and land are left out (i.e., forced evictions, demolitions, population transfer and denial of refugee rights, etc).
- Paras. 30–35 deal with the treatment of victims, and offers confidence, particularly as it recognizes the need for collective compensation, restitution and reparation. However, there is no indication how all of this is to be practically achieved.

General recommendations

- It is understandably impossible to list all obligations of State, particularly those arising from legislation at the national level. However, it is not beyond the scope of the DOD implicitly to recognize that the binding “obligations” are those enshrined in the various UN human rights treaties and international humanitarian law. In this way, it becomes clear to all State participants that the minimal standard of treaty obligations, including their attendant duties and accountability, needs to be upheld and progressively realized. Further, recognizing and acknowledging those binding duties reaffirms the international community and international law as sources of accountability to which victims can also have access.
- There is a need to emphasize the protection of nomadic indigenous populations, as they are often discriminated against in ways different ways from other groups. Specifically, they are often not only discriminated against racially but, more importantly, it is their way of life that forms a key impetus for discrimination.
- It is especially important that a more specific mention of housing and land rights be made as most conflicts today, including interethnic and interracial, illustrate land and housing as being a consistent source of troubles.

- *Neocolonialism* is a modern extension of historical colonialism. It is demonstrated in a variety of instances including, direct occupation, indirect control through economic systems of weaker nations, and pervasive onslaughts of singular ideologies (i.e., Western-defined ideologies of “enlightment” and/or “progress”). This has worked to disable national political, social and economic systems. Likewise, neocolonialism continues to retard “progress” along multicultural and pluralistic approaches. It is vital that concepts of equality be broadened in the DOD to include the global mosaic in which we live, so as truly to attain both the spirit and ideals of a truly equal world. Hence, it should be understood that equality refers to equal opportunity and benefit, rather than equivalence of thought and system.

- Occupation within the context of *institutionalized discrimination*, is a unique and pervasive violation founded on inherent discrimination within the State system. While the Palestinians are an oft-cited example as victims, mention should also be made of the following groups facing similar violations. These include the Kurds, Tibetans, Western Sahrawis, Ahwazis, and the people of Mt. Nuba (Sudan), and others. All of these groups, among others, have experienced or currently undergo demolitions, displacement and land dispossession. Finally, housing demolitions and forced evictions for their prevalence in occupation should be mentioned as a specific manifestation of the racism/discrimination.

- It is particularly important that rights to housing be discussed as shelter as a fundamental life right. Moreover, there is increasing acknowledgement that women, noncitizens and migrants often bear a special burden, being more excluded or “ghettoized” in the spatial setting of cities.

- Since reparations (including apologies) have been made haphazardly in the past (without applying the reparations framework as reiterated in GA resolution A/60/147) and protective of political sensitivities/considerations as opposed to victim needs. Thus, more thoughtful recognition of the problems and solutions is needed on the subject in para. 167 of Section 1.

- While the expanding the OHCHR’s Antidiscrimination Unit is welcome, other practical and institutionally empowered means are needed for monitoring and remedying racism, racial discrimination, xenophobia and related intolerance both within the UN system and in the field.

*Note:* The WCaR NGO Forum Declaration at Durban (2001) actually reflects a critical civil society focus on all of these circumstances and groups omitted from the current DOD draft. (For example, see “WCaR NGO Forum Declaration,” paras. 26, 50–52, 54, 56, 84–90, 95–103, 114–15, 117–18, 140–51, 160–65, 267–77 and 416, or request a copy of “Housing and Land Rights in the WCaR NGO Forum Declaration, Durban, 2001 [extracts]” from HLRN at abalata@hlrn.org.)

**Specific recommendations for HIC-HLRN**
HIC its specialized structures have an important perspective and message to contribute to the Durban Revue process. The DOD does not yet reflect those dimensions, and it would require much advocacy and time commitment in Geneva to do the necessary lobbying with State delegations between now and the April 2009 conference. However, HIC could pursue more economical ways to advance its perspective in the Durban Review process, including:

- Submitting the civil society questionnaire to the Durban Review secretariat to be web mounted and included among the inputs for the review. That submission would incorporate:
  1. The above recommendations,
  2. Feedback and inputs from HIC Members and
  3. Finds and trends arising from HIC-HLRN Urgent Actions and Violation Database findings from the period following WCaR (2001).

- HIC Members participating in any future open-ended Working Group and Preparatory Committee sessions and the Durban Review conference, with the submission (filled questionnaire) as the basis for related advocacy and networking efforts.

- Cooperating with other like-minded NGOs and networks to join forces in common informational and lobby efforts in the Working Group and Preparatory Committee sessions.

- HIC-HLRN and, in particular, through its Middle East/North Africa Program, would cooperate in a forum in Geneva for the Durban Review delegates and NGOs in advance of the Durban Review conference. That forum would clarify the issues raised in this assessment, in particular focusing on the institutionalized discrimination dispossessing the Palestinian people of its homes, lands and habitat, and the analogous situation of other affected people (as demonstrated in the HLRN Solidarity Network activities, publication and web materials [http://www.hlrn.org/english/solidarity.asp]).