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**HUMAN RIGHTS COUNCIL**

**Ninth Session**

**Statement by Mr. Githu Muigai**

**Special Rapporteur on contemporary forms of racism, racial  
discrimination, xenophobia and related intolerance**

**Genève, Palais des Nations, 19 September 2008**

Mr. President,  
Excellencies,  
Distinguished Delegates,  
Ladies and Gentleman,

Please let me start in my first address to the Human Rights Council by congratulating you, Mr. President, for your election as President of this Council and for the able manner in which you have been conducting its proceedings.

I would also like to express my sincere congratulations to the High Commissioner for her appointment, and wish her success in implementing her complex and fundamental mandate.

I come before you today in my first address to the Human Rights Council as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. I am deeply honoured and proud to have been appointed to this important mandate and thank the Council members for this opportunity. I will spare no efforts in meeting the expectations of this Council and to give voice and visibility to the victims of racism, racial discrimination, xenophobia and related intolerance around the world.

The report I introduce today, on “the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights”, was prepared by my predecessor before I took up the functions of Special Rapporteur. I take this opportunity to commend Mr. Doudou Diène for the active and energetic work he has undertaken in this mandate.

Excellencies,

The report at hand summarizes and updates the analytical framework my predecessor presented to the Council in the past, most recently during the 6<sup>th</sup> session of the Council. In particular, it recalls the assessment of the current political and ideological context and its impact on religious discrimination, highlighting key issues such as:

- the mainstreaming of racist and xenophobic ideas through their adoption by political parties in democratic countries;
- the persistence of attempts to give scientific clout and legitimacy to racist and xenophobic ideas;
- the process of ideological polarization that has affected the interpretation and implementation of fundamental human rights.

The report extensively examines some forms of religious discrimination, including Islamophobia, Anti-Semitism and Christianophobia, focusing on their historical roots as well as current manifestations. Apart from an in-depth analysis of discrimination against these three religious traditions, the report also addresses issues of intra-religious discrimination and the situation of spiritual traditions, sects, religious minorities and new religious movements, which have also been deeply affected by discrimination.

Despite the historical and political particularities of each of these forms of discrimination, the report calls for a universal approach designed to address all of them globally. I would like to strongly reiterate this commitment for universality of application made by my predecessor.

The report also makes a clear call to Member States to shift the present discussion in international fora from the idea of “defamation of religions” to the legal concept of “incitement to national, racial and religious hatred, hostility or violence”, which is grounded in international legal instruments. In this regard, it examines in detail the current normative framework on the question of incitement to hatred, showing that protection against this kind of hate speech has been crafted at length in international law.

In particular, the report underlines articles 19 and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of Racial Discrimination. I should add that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide contains similar provisions calling for speech that leads *directly* to violence to be subject to sanction.

The main issue at hand, therefore, is not whether permissible limitations exist, but rather what *threshold* triggers these limitations. There is no doubt that this intricate legal question, with profound implications, should be subject to a serious, consistent and in-depth *legal* discussion in appropriate fora.

In this regard, I would like to recall the recommendation made by my predecessor, jointly with the Special Rapporteur on freedom of religion or belief, to encourage the Human Rights Committee to formulate a new general comment on Article 20 of the International Covenant on Civil and Political Rights regarding the threshold of application of the article. By adding legal precision to this rather general provision, the Committee can assist national courts and international actors implement the Covenant more effectively.

I would further like to commend the High Commissioner for the decision to organize an expert meeting on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights. I am convinced that the high-level expert discussions that will take place in this meeting will offer valuable guidance for the monitoring and implementation of international instruments and contribute to clarify the question of interdependence of these two central articles in the Covenant.

Mr. President,

When the Council renewed the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance during its 7<sup>th</sup> session, it assigned a key importance to the monitoring and reporting of cases of incitement to racial hatred. It is my intention to undertake these tasks thoroughly during the exercise of my mandate.

To perform this task, I intend to establish a close working relationship with international, regional and national organizations that collect data on hate speech in order to make fully informed, empirically sound and factually robust analysis about

this phenomenon. I further welcome and encourage the submission of related reliable information by Member States, regional organizations, civil society and victims themselves.

Excellencies,

The debate over protected versus unprotected speech has been repeated at length in national courts. A wealth of knowledge is thus available by looking at the jurisprudence of these courts and on how cases of hate speech have been prosecuted. While domestic legislations vary inasmuch as incitement provisions are concerned, national courts have indicated a few salient points that are pertinent to our discussion.

First, in any discussion concerning limitations to a fundamental right, such as the right to freedom of opinion and expression, it is essential that we constantly ask ourselves whether the remedy we seek for a wrong does not create an even greater wrong. This note of caution is important to warn us that these limitations, where appropriate, need to be narrowly defined, not to threaten the exercise of the right itself.

Additionally, a number of independent courts have expressed the view that remedies to hate speech should be applied *a posteriori*, that is to say, they should not justify prior censorship. However, individuals who incite hatred, hostility or violence remain liable to sanction.

Mr. President,

It is important that we do not lose sight of our ultimate goal, which is to eradicate discrimination and promote equal treatment. The question we need to ask is: what are the most effective ways through which we can protect individuals from the advocacy of hatred and violence by others. In this, legal provisions are important, as they ensure that individuals be held liable for their attempts to incite hatred, hostility and violence.

However, a legal response alone is far from sufficient. Hate speech is but a symptom, the external manifestation of something much more profound and rooted, which is intolerance and bigotry. Remedying a symptom does not treat the disease itself, it only makes it invisible. Silent and passive individuals can still be deeply intolerant in their hearts; limiting their speech can hardly be the ultimate solution to their intolerance.

In this sense, I think the best strategic response to hate speech is more speech: more speech that preaches tolerance; more speech that educates about cultural differences; more speech that promotes diversity. This is how we can frustrate the enemies of tolerance and non-discrimination, who thrive on manipulating ideas as a means to generate artificial polarization and antagonism to stigmatize minorities. More speech can be the best strategy to reach out to individuals' hearts and minds, changing what they think and not merely what they do.

Thank you very much, Mr. President.