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HUMAN RIGHTS COUNCIL
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Statement by Mr. Githu Muigai
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

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

It is a great honour for me to be here with you today and to address the Human Rights Council at its 11th session. I am very proud to have been appointed to this important mandate and let me reiterate I will spare no efforts in fulfilling my obligations as Special Rapporteur. The reports I would like to introduce before you today include my first annual report, the 2008 communications report, as well as two country reports on Mauritania and the United States of America prepared by my distinguished predecessor, Mr. Doudou Diène.

The first year of my appointment as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has obviously been very much marked by the Durban Review Conference. It was therefore only logical that my first annual report devote a significant space to that subject.

As we all know, the Review Conference was of utmost importance to mark the renewal of international engagement against racism. Although the absence of some States was regrettable, it is encouraging and notable that the outcome document was adopted by consensus by all participating States. In this regard, I would like to reiterate my call on those states who did not attend the Conference to express their support to the outcome document and to commit to its domestic implementation.

Such a landmark text could however lose its value if the pledges made therein are not transformed into concrete actions in the years to come. As recognized in the outcome document, most of the responsibility for implementing such commitments lies at the level of the State. In addition, civil society and national human rights institutions have a fundamental role to play, not only by holding Governments accountable, but also by participating and providing input to policy-making and implementation.

In the framework of my mandate, I intend to use the outcome document as a blueprint and theoretical framework for analyzing relevant issues during country visits and other regular activities. To that effect, my annual report identifies the concrete commitments taken by States in the outcome document and assesses some initial indicators to monitor how States perform to meet these commitments. I hope to further develop and refine these indicators in my future activities in order to better assess what measures remain to be taken in the fight against racism. I also call on States to adopt similar strategies in implementing the DDPA, defining priorities and concrete goals that they need to meet.

The second part of my annual report focuses on the thematic issue of poverty. There is no doubt that there is a very close association between race or ethnicity and poverty in most countries. Where they exist, national data unambiguously show that racial or ethnic minorities are disproportionately affected by poverty. Based on the body of empirical work and country visits carried out in the mandate, as well as on academic and policy-oriented research on this topic, I note that the socio-economic vulnerability of racial or ethnic minorities is generally the result of historical legacies, such as slavery, segregation or apartheid.

My report focuses on a three overarching priorities in order to address the disproportionate levels of poverty experienced by the members of racial or ethnic minorities:

First, I call attention to the need for States to collect ethnically-disaggregated data, thus providing policy-makers with reliable information concerning the socio-economic situation of minorities. While I am conscious of the arguments against the collection of ethnically disaggregated data, I would like to stress that the lack of such data has most often prevented policy-makers from devising specific and appropriate public policies aiming at redressing racial or ethnic imbalances. In this regard, I propose some key principles for the collection of ethnically disaggregated data that help overcome the concerns of many States in this regard: the right to privacy, the principle of self-identification, and the involvement of minority communities at every stage of the exercise.

Second, I highlight the central obligation that States have in the full implementation of the obligation to non-discrimination as unambiguously contained in international human rights law. Such obligation is particularly important with regard to the provision of economic, social and cultural rights, which have a profound impact on the socio-economic situation of minority communities.

Third, whereas non-discrimination is essential to create a level-playing field for different communities, it does not provide for the correction of imbalances which are the result of historical legacies, such as slavery and segregation. In this regard, there continues to be a need for the enactment of special measures towards groups that suffered from decades or centuries of discrimination, thus helping transform the goal of integration and equal opportunities into a concrete reality for all.

These are the initial points I wanted to make concerning the key issue of poverty and racism. As I said in my report, I intend to examine this question in more depth in the framework of my mandate in the coming years.

Allow me now to introduce the country reports on Mauritania and the United States of America prepared by my predecessor, Mr. Doudou Diène.

The visit to Mauritania took place from 20 to 24 January 2008. He noted in his report that his analysis is based only on the situation observed during his visit in January and does not take into account the events that followed. In this regard, Mr. Diène pointed to a number of positive aspects, including the political will expressed by the then Governing authorities to combat the heavy legacy of racism and racial discrimination by means of a determined transition to democracy and the rule of law. He also welcomed the adoption of the Act criminalizing slavery and penalizing slavery-like practices, which in his view marked a turning point in Mauritania's approach to the issue. In addition, Mr. Diène welcomed the signing of the Tripartite Agreement on the Voluntary Repatriation of Mauritanian Refugees in Senegal and noted with satisfaction the creation of the National Human Rights Commission.

In his conclusions, my predecessor noted that while there are no manifestations of legally endorsed or State-approved racism in the country, Mauritanian society has been deeply marked by continuing discriminatory practices of an ethnic and racial nature, rooted in cultural traditions and pervasively present in social structures, the principal institutions of the State, in particular the armed forces and justice system, and attitudes. He highlighted the central role of traditional slavery in fostering racial discrimination as well as the cultural and

social entrenchment of the caste system, as well as the use of ethnicity as a political tool. Mr. Diène made a number of recommendations for the Mauritanian authorities, including the insertion of specific provisions on racial and ethnic discrimination in the Criminal Code; the recognition of Pular, Soninke and Wolof as official languages; and the adoption of measures under the Act prohibiting slavery that would allow for victims to bring civil suits, notably for restitution or compensation in addition to ensuring the criminal liability of slave owner. I stand ready to cooperate with Mauritanian authorities to ensure the implementation of these recommendations.

My predecessor also visited the United States of America from 19 May to 6 June 2008. On his behalf, I would like to thank the U.S. Government for its cooperation and openness throughout the visit. The report highlights the strong awareness and recognition at all levels of government and society regarding the challenges in the fight against racism in the United States of America. He also commended the country for the comprehensive legal framework put in place since the adoption of the Civil Rights Act of 1964 and noted the important role played by the U.S. Supreme Court in the fight for civil rights. Finally, he also made reference to the vitality of civil society in the country, playing a key role in holding governments accountable to their obligations.

The report also focused on key areas of concern that need to be addressed in the future. The first set of challenges involves instances of direct discrimination and concrete racial bias, which is more pronounced with regard to law enforcement agencies. Particular reference was made in this respect to racial profiling, including in the fight against terrorism, and other aspects of the criminal and juvenile justice systems. Second, the report addresses cases of laws and policies that are prima facie non-discriminatory, but that have disparate effects for certain racial or ethnic groups, such as the practice of mandatory minimum sentences. Finally, the report describes at length the overlap of poverty and race in the United States of America, which has a profound impact for minorities, particularly in areas such as education, housing and employment, creating a vicious cycle of marginalization and exclusion. This socio-economic marginalization of minorities has contributed to a slow process of de facto re-segregation in many areas of the U.S. society, directly challenging the goals of integration and equal opportunities.

To address these challenges, my predecessor made a number of recommendations to the U.S. authorities. These included the need to establish a bipartisan Commission to evaluate progress and failures in the fight against racism and the ongoing process of re-segregation; the reassessment of existing legislation for the identification of possible racial bias; and the enactment of comprehensive legislation prohibiting racial profiling: I look forward to engaging with the authorities of the United States of American in the implementation of these recommendations. I stand at their disposal to cooperate in the follow-up to this report.

Finally, Mr. President, I would like to inform the Human Rights Council that I will conduct my first country visit as Special Rapporteur to the Federal Republic of Germany which will start on 22 June. I hereby would like to thank the German authorities in advance for their cooperation extended so far and I am positive this will be a useful and constructive visit.

I thank you.