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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 to be here with you for this interactive dialogue. At the request of the Human Rights Council, I am presenting a report on “all manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all human rights by their followers”.

Mr. President,

The issue at hand has been discussed for more than a decade and things have undoubtedly evolved over time. As you all know, during his tenure from 2002 to 2008, my predecessor devoted a significant amount of time to this difficult issue and significantly contributed to clarifying it. On the basis of an in-depth analysis, he shed new perspectives on the debate. His last report on the topic was in this regard particularly enlightening and inspiring and I would like to reaffirm that I fully concur with his conclusions and recommendations contained therein. I do therefore feel entrusted to pursue his work in finding a way to renew the approach to defamation of religions by focusing on the existing human rights norms offering protection to individuals.

Excellencies,

Since my appointment in August 2008, I have had the opportunity to examine the issue at hand. I have noticed that what I would call the “terminology controversy” has unfortunately detracted our attention from real problems affecting the people we aim to protect. I would therefore recommend that we focus on the rights of individuals and groups of individuals affected by racial and religious intolerance, discrimination or violence, as well as on the best ways to prevent and combat such acts. My report is therefore an attempt to move forward the debate on this issue, building on previous analyses, as well as on the rich and frank debates that took place.

In this regard, I believe that the expert seminar organized by the OHCHR last October on the links between articles 19 and 20 of the ICCPR was an important development. During the seminar, the experts identified the need to attain a better understanding of the legislative patterns, judicial practices and national policies with regard to the concept of incitement to hatred, as stipulated in article 20 of the ICCPR. The experts generally accepted that the debate on “defamation of religions” should rather focus on the existing legal concept of “incitement to racial or religious hatred”. The experts also agreed that in addition to legislation against hate speech, a wide array of actions is needed to combat this phenomenon in general. The role of education, the need to strengthen the professionalism of the media and its ability to self-regulate, as well as the promotion of inter- and intra-religious dialogue were for instance highlighted as relevant actions.

Another important development referred to in my report is the adoption of the outcome document of the Durban Review Conference. I would like here to reiterate my satisfaction with the way the outcome document addresses the question of

incitement to racial or religious hatred. It is my firm belief that the outcome document reaches a solid balance in reaffirming the importance of freedom of expression and highlighting the need to curb hate speech. It undoubtedly offers robust and adequate tools to address current challenges caused by intolerant and discriminatory acts affecting individuals and groups of individuals.

Ladies and Gentlemen,

My report also refers to information I received up to the end of June 2009 from the Islamophobia Observatory of the Organization of the Islamic Conference and from the European Union Agency for Fundamental Rights. I would like to thank both institutions for having provided me with information on "acts related to the phenomenon of Islamophobia" as well as on immigrant and ethnic minority groups' experiences of discrimination and racist crimes. In this context, I am deeply disturbed by the content of these reports which demonstrate intolerance and discrimination experienced by Muslims on a daily basis.

On the basis of the information received, I suggest that a distinction be made between four types of behaviours:

- (a) Intolerant mentalities, such as those manifested against Muslims in some Western countries, which do not yet constitute human rights violations, but may eventually lead to such violations;
- (b) Advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence and which is prohibited in international human rights law;
- (c) Discrimination against members of religious or belief communities which is also clearly prohibited by international human rights standards and which adversely affects the enjoyment of civil, cultural, economic, political and social rights;
- (d) Acts of violence perpetrated against members of religious or belief communities which constitute a blatant human rights violation, for example with regard to the right to security of the person or ultimately to the right to life.

I strongly deplore acts of violence against individuals based on their religious affiliation and call upon States to take all necessary and appropriate measures to investigate these acts, prosecute and sanction the perpetrators in accordance with international human rights law.

Whereas the information I received both focus on members of one specific religion and on a specific region of the world, I would like to highlight that other regions are also affected by instances of religious discrimination and incitement to religious hatred. While the present report has, at the request of the Council, a specific focus, cases of religious discrimination and of incitement to religious hatred affecting members of other religions or beliefs should also be acknowledged and addressed. We need to avoid establishing any hierarchy in the different manifestations of discrimination, even if they may vary in nature and degree depending on the historical, geographical and cultural context. Furthermore, the specific focus of the present report should not detract attention from the intra-religious dimension which is one of

the most pervasive manifestations of religious discrimination and which often leads to the persecution of intra-religious minorities.

Mr. President,

The last part of my report refers to the joint statement on "freedom of expression and incitement to racial and religious hatred" presented with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression. Among others, we reaffirmed that the right to freedom of expression constitutes an essential aspect of the right to freedom of religion or belief as well as of the fight against racism. It therefore needs to be adequately protected in domestic legislation. We also suggested that it is inaccurate to present the notion of "defamation of religions" as a conflict between the right to freedom of religion or belief and the right to freedom of expression. Due to the difficulty in providing an objective definition of the term "defamation of religion" at the international level, we recommended that the debate be anchored in the relevant existing legal framework provided for by articles 19 and 20 of the ICCPR. In line with the expert seminar of last October, we finally recalled that legal responses to hate speech are far from being sufficient to bring about real changes in mindsets and discourse and that a much broader set of policy measures is necessary to tackle the root causes of intolerance.

Excellencies,

We need to continue the discussions on this important debate to ensure that the rights of all are respected. To that effect, I would like to express my support to the idea retained in the Durban Review Conference outcome document that a series of expert workshops be held to attain a better understanding of the legislative patterns, judicial practices and national policies with regard to the concept of incitement to hatred, in order to assess the level of implementation of the prohibition of incitement. More generally, I also would like to recommend that the outcome document be used as a reference in the way forward when approaching difficult questions such as that of incitement to racial or religious hatred.

Let me conclude by reaffirming that we need to tackle the issue of "defamation of religions" by focusing on the principles and norms embodied in international human rights instruments, in particular article 20 of the ICCPR and article 4 of the ICERD. It is only by doing so that we will manage to avoid the terminology controversy and that we will be able to provide concrete responses to individuals who are victims of discrimination or violence on the grounds of religion or belief. It is only by putting strong emphasis on the implementation of these provisions that we will manage to move forward the debate and address the issues of concerns, which unfortunately continue to prevent numerous individuals and groups of individuals all over the world from living in secure and peaceful societies.

I thank you.