



**Intergovernmental Working Group on the Effective Implementation of the Durban
Declaration and Programme of Action,**

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**“Thematic discussion on structural discrimination: definitions, approaches and
trends”**

**Statement by Mr. Githu Muigai
United Nations Special Rapporteur on contemporary forms of racism, racial
discrimination, xenophobia and related intolerance**

(Geneva, 18 October 2010)

As read

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

It is a great honour to be here with you for this important and challenging thematic discussion on structural discrimination. I would like to thank the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action for this invitation. I am aware of the importance of this meeting since it would be the first time that this issue would be addressed by the Working Group. Allow me to welcome such initiative which demonstrates Members States' interest and political will to address this phenomenon.

Structural discrimination is an issue of continuing political concern. Indeed, while its pervasive existence and manifestations have been studied and addressed widely, including by UN experts mechanisms, this phenomenon remains a difficult one to define. In addition even when legislation or public policies seem to be in conformity with international human rights law, and the aim of Governments is to prohibit racial discrimination, in reality individuals and groups remain discriminated.

The experts' contributions submitted to this Working Group for the present session, contain interesting and pertinent elements of potential

definitions of structural discrimination that I would like to complement with respect to racism, racial discrimination, xenophobia and related intolerances.

Needless to say Mr President, that my analysis does not pretend to be exhaustive. My presentation rather provides some elements that may contribute to a better understanding of the different manifestations of structural discrimination and its various causes. I would therefore further develop some of these dimensions.

Structural racial discrimination refers to racist, xenophobic or intolerant patterns of behaviour and attitudes within societal structures that target specific individuals or groups of individuals, in relation to their race, their colour, their descent, or national or ethnic origin. The existence of such “societal” structural racial discrimination is related, *inter alia*, to the persistence of deeply rooted racial prejudice and negative stereotypes within the societies. In some cases the media, public figures, religious leaders, opinion makers may contribute through the use of such stereotypes and stigmatisation, to enhance societal discrimination and racism.

In this respect, Mr President, allow me to draw on one of my country visit, where my attention was drawn to the widespread and systematic discrimination that still persists against Roma and Sinti, particularly through stereotyping by the media and the public at large, and attempts to associate individuals of Roma and Sinti origin with criminal behaviour.

I would like also to take this opportunity to reiterate my grave concerns about anti- Roma sentiment and the violent incidents against this

community across Europe (A/64/271). Policies such as finger-printing of Roma suspect by police, and racist statements by senior public officials have contributed to creating a climate in which social discrimination and racism are sustained. Measures should be taken to ensure that persons belonging to the Roma/Gypsies/Sinti/Travellers communities exercise fully and effectively all their human rights and freedoms, without discrimination. In this regard, I urge States to fully implement the provisions of the Durban Declaration and Programme of Action, and the Outcome of the Durban Review Conference Document.

Furthermore, I would like to refer to the systems of inherited status such as caste, which may be a manifestation of what has been identified above as “societal” structural racial discrimination. In some cases for example, when a member of a Scheduled Caste left Hinduism and converted to Christianity or Islam, the previous caste status and related social bias would often remain at the social level while the person would legally no longer be eligible for government benefits for Scheduled Castes. In this respect, I would like to specifically refer to the Committee on the Elimination of Racial Discrimination (the CERD), which affirmed in its general recommendation No. 29 (2002) concerning discrimination on the grounds of descent, that: discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their enjoyment of human rights”.

I am seriously concerned Mr President about the continued existence of such systems and I fully share the position taken by CERD in this respect (A/64/271). Indeed CERD has stated that discrimination on the grounds of caste constituted a form of racial discrimination and that “the term ‘descent’ has its own meaning and was not to be confused with race or ethnic or national origin”. These systems based on inherited status are good examples of cases where even when clear legislation exists to prohibit discrimination, individuals and groups of individuals continue to be so discriminated.

Mr President, the existence of policies, legislation, or programmes that are *prima facie* non-discriminatory, but which in practice have discriminatory effects, represents one of the main challenges that may occur within this framework. Sometimes, indeed, as illustrated above, the institutions or the way they are organized, as well as the legislation or policies adopted, may have a discriminatory effect even if not intended so to do. Such effects can arise from the discriminatory application of otherwise non racist measures or the design of seemingly non racist measures.

In addition, even when the application of a given policy is not overtly racist, its design may also lead to a disproportionate impact. In this respect I would like to refer to the Concluding Observations of the CERD which stated that even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations. Furthermore, during my country visits, I have faced situation where legal affirmative action measures in the area of housing allowing for different treatment on the grounds of race or ethnic origin had actually detrimental effect on the equality programmes.

Racial structural discrimination can therefore be the result of past historical injustices perpetrated against individuals of specific ethnic or racial group. As I stated in my reports to the Human Rights Council (A/HRC/11/36) and to the General Assembly (A/64/271) last year, historical injustices, such as slavery, slave trade, segregation, *apartheid* and other forms of exclusion, served not only to dehumanize people, but also to create structural imbalances that still persist these days.

Long after these formalized racial discrimination were dismantled, the inequalities that were created continue to have a disadvantage or disproportionate effect on the human rights of individuals of specific ethnic and racial group. Indigenous peoples, Roma and other minorities groups, as well as people of African descent *inter alia*, remain particularly affected by this historical legacy, notably in the areas of health, housing, employment, education, administration of justice, as well as political representation within the political process and empowerment.

In this context, I would also like to emphasize the vulnerability of migrants. Indeed, racism, racial discrimination, xenophobia and related intolerances, they may suffer should also be considered while addressing the issue of structural discrimination. Indeed, I have noticed during several of my country visit, that the national action plan against racism did not address indirect or structural discrimination against persons with a migration background. I would therefore recommend that particular attention should be paid to their situation.

As to the recommendations:

First, I would suggest States members to address the root causes of structural racial discrimination, through a comprehensive approach that will enable this phenomenon to be addressed in all its dimensions.

While doing so, States must bear in mind their central legal obligation to non discrimination. Indeed it is the obligation of States to ensure that all individuals and groups of individuals do not suffer any forms of racial discrimination, racism, xenophobia or related intolerance, including, and particularly structural racial discrimination. States have in this respect a positive obligation to take all necessary measures to prevent and eliminate such phenomenon.

Therefore, I would call upon all States to fully implement and comply with their international human rights obligations and engagements. In particular the International Convention on the Elimination of Racial Discrimination, the Durban Declaration and Programme of Action and, the Outcome Document of the Durban Review Conference.

I also urge States to review and redesign legislation, policies and programmes that have a disproportionate effect on individuals of specific racial or ethnic group, including those legislation, policies and programmes that may discriminate directly or indirectly specific ethnic minorities, including Roma, Sinti, Gypsies, Travelers, and victims of inherited status systems.

I further recommend Mr President, the adoption, when necessary, of new legislation, policies and programmes in conformity with international human rights standards, including national strategies and plans of action against racism focusing on structural discrimination against specific ethnic or racial groups, including the most vulnerable such as migrants, refugees, asylum seekers, and statelessness persons.

While I am aware that legislative or administrative measures are prerequisite for any concrete action by States, I strongly encourage Governments to complement legislative process with others measures:

First, the enactment of special measures, including measures to redress historical wrongs is important. In this regard, I would like to refer in particular to article 1.4 of the ICERD. Such measures contribute to foster integration of racial or ethnic minorities into education, health, housing, the workplace and other areas. In addition, by correcting historical distortions, special measures contribute to build a more solid democratic society, in which different groups cooperate on a regular basis. (A/HRC/11/36).

Secondly, Mr President, I would recommend the use of ethnically disaggregated data and statistics in order to assess the impact of structural racial discrimination, including with respect to access to employment, housing, education, and health. It is indeed crucial to have a comprehensive picture of this phenomenon and to design targeted policies and measures, including affirmative action that will remedy these inequalities. I would like to recall that the principles of privacy, self-identification and involvement of

all communities in such data-gathering activities should be respected at all times within this framework.

Thirdly, Mr President, education is crucial to promote democratic values and to promote human rights; to instill a sense of tolerance, understanding and respect; and to build pluralistic and inclusive societies. I therefore encourage Governments to adopt appropriate measures in this respect and I would advice that States also initiate awareness raising activities.

These recommendations, Mr President should be implemented with due respect for all human rights and fundamental freedoms, and in close cooperation with concerned communities and civil society.

I thank you for inviting me and for listening to my proposal on these issues.