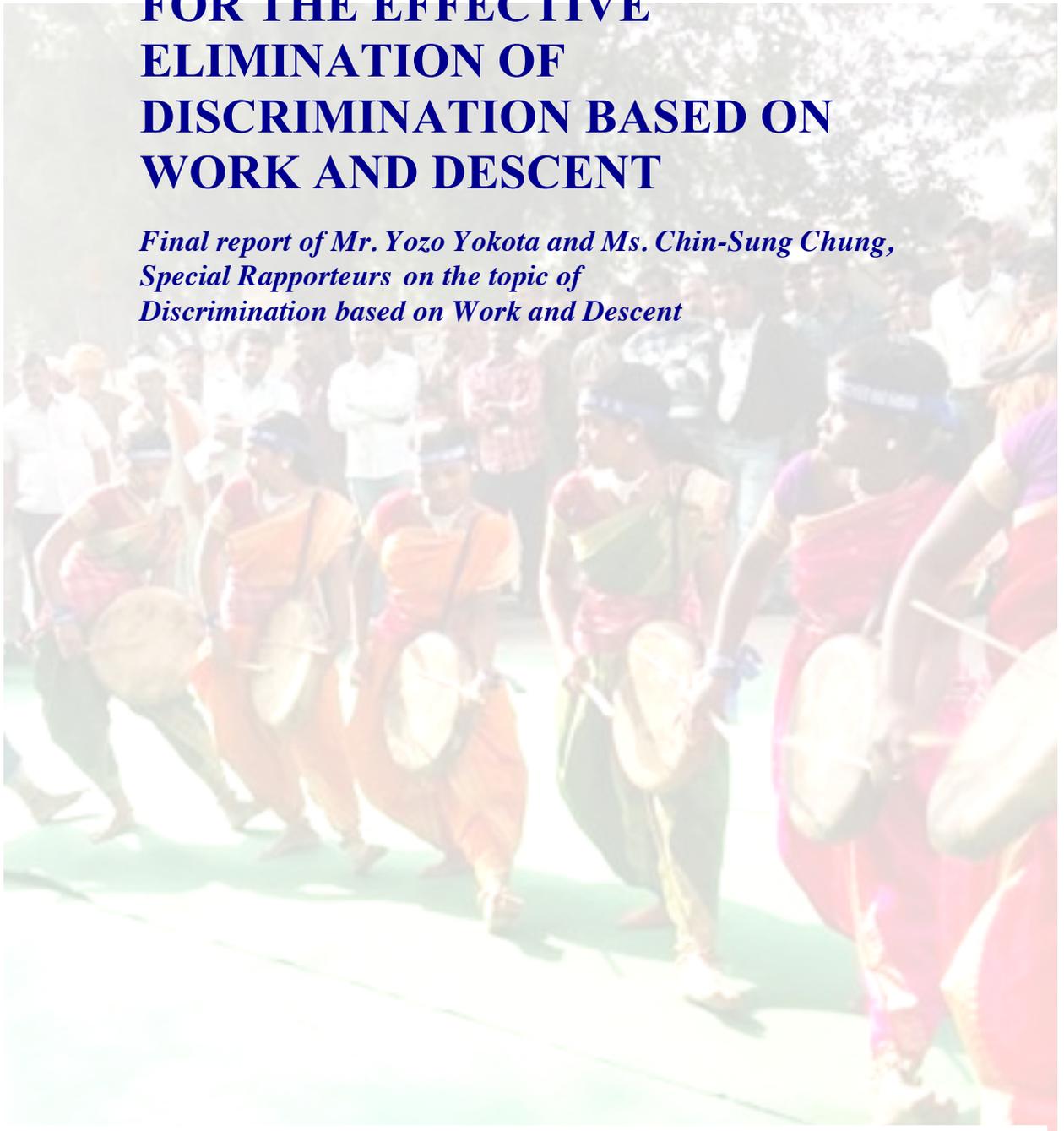


PRINCIPLES AND GUIDELINES FOR THE EFFECTIVE ELIMINATION OF DISCRIMINATION BASED ON WORK AND DESCENT

*Final report of Mr. Yozo Yokota and Ms. Chin-Sung Chung,
Special Rapporteurs on the topic of
Discrimination based on Work and Descent*



Asia Dalit Rights Forum

Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent

The Asia Dalit Rights Forum (ADRF) along with National Campaign on Dalit Human Rights (NCDHR), India, Feminist Dalit Organisation (FEDO), Nepal, Bangladesh Dalit and Excluded Rights Movement (BDERM), Nepal National Dalit Social Welfare Organization (NNDSWO), International Movement Against all forms of Discrimination and Racism (Sri Lanka) with the overall coordination by IDSN (International Dalit Solidarity Network) have made massive strides towards elimination of Caste based discrimination at the global level. For several years now these organizations have committed to challenging the patriarchal structures of power and defining the contours of Dalit Human Rights in the region.

As we all know marginalization on the basis of economic and social parameters plagues the South Asian population which, in turn, demands a clear understanding of the various intersectionalities between caste, gender, poverty, land and livelihood. This has restricted overall development to the Dalits and Tribals (i.e. Scheduled Castes & Scheduled Tribes respectively). Gender discrimination and violence is another index which affects the development of any nation. South Asia is witness to gender-based discrimination and targeted violence, especially of the Dalit and tribal women for hailing from the respective caste communities and for being women. The patriarchal social structure doubly displaces them from any economic and social benefits. The struggle continues for both Social as well as Economic justice. There has been tremendous work and energy put into visibilising and addressing the issues through international mechanisms both at the UN and EU level.

It is pertinent to the annihilation of caste to ensure that certain basic rights are fundamental to the core of the issue and they are: Right to Education, Right to protection, Right to Housing, Right to livelihood, Right to food, Right to water & Sanitation, right to freedom of religion and these rights have to be enshrined in the social, legal fabric of this country. Social justice will remain only aspirational in nature and unachievable until they recognize these rights and act to counter caste induced vulnerabilities of socially excluded Dalits and similarly marginalized communities in South Asian countries.

As a result of the advocacy of all these networks and organizations, UN evolved several mechanisms to address this issue through; CERD General Recommendation 29, CESCR General Recommendation 20, and Concluding Observations of CEDAW, CRC, CAT - to respond to this issue of caste discrimination and to recognize the dignity and rights of Dalits. Several Special Rapporteurs and UN Independent Experts also came out with specific recommendations in their reports on how to address Discrimination based on Work and Descent (DWD). Moreover, the Special Rapporteurs also evolved the ***Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent***. This is a comprehensive legal framework designed to eliminate caste based discrimination globally.

The Special Rapporteurs - **Mr. Yozo Yokota and Ms. Chin-Sung Chung, Special Rapporteurs on the topic of discrimination based on work and descent** have presented the final report in pursuant to the resolution 2006/14. This present report is being issued pursuant to decision 10/117 adopted by the Human Rights Council on publication of reports completed by the Sub-Commission on the Promotion and Protection of Human Rights.

The challenge of addressing and eliminating caste based discrimination is in our hands, we cannot pass the buck, we need to take this challenge and ensure that systems both as the national, sub national as well as international mechanism are sufficiently utilized to annihilate caste! Let us join hands in solidarity to stand up against Caste based discrimination!

Asia Dalit Rights Forum & National Campaign on Dalit Human Rights

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Final report of Mr. Yozo Yokota and Ms. Chin-Sung Chung, Special Rapporteurs on the topic of discrimination based on work and descent

The present report is being issued pursuant to decision 10/117 adopted by the Human Rights Council on publication of reports completed by the Sub-Commission on the Promotion and Protection of Human Rights.

Summary

The present final report on the question of discrimination based on work and descent has been prepared pursuant to the resolution 2006/14 in which the Sub-Commission endorsed the Special Rapporteurs' proposals to organize two regional workshops, one in Asia and one in Africa, before the end of the first quarter of 2007 and a consultation meeting in Geneva during the second quarter of 2007. Pending the Human Rights Council decisions, such workshops and consultation meeting were not formally held. However, the office of the High Commissioner for Human Rights organized in Kathmandu, Nepal, on 23-25 April 2007, a workshop on Social Inclusion: Supporting Political Participation and Economic Empowerment in which the issue of discrimination based on work and descent was included, and the two Special Rapporteurs fully participated in this workshop. Taking advantage of this workshop, the International Dalit Solidarity Network organized, in collaboration with two other international non-governmental organizations and the office of the High Commissioner, an informal Expert Consultation on the Draft Principles and Guidelines for the Elimination of Work and Descent Discrimination in Kathmandu on 26 April 2007. The present report contains in its main parts revised draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent. The report recommends the Human Rights Council to include the topic of discrimination based on work and descent among the studies to be undertaken by the Council. It also recommends the Council to adopt with necessary changes the draft Principles and Guidelines and submit them to the General Assembly for adoption.

GE.09-13276

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Introduction

1. At its fifty-eighth session, the Sub-Commission on the Promotion and Protection of Human Rights examined the progress report on the topic of discrimination based on work and descent (A/HRC/Sub.1/58/CRP.2) submitted by Yozo Yokota and Chin-Sung Chung as Special Rapporteurs pursuant to Sub-Commission resolution 2005/22. The progress report focused on the analyses of the replies to the Questionnaires to Governments, national human rights institutions, relevant organs and agencies of the United Nations system and non-governmental organizations for the purpose of identifying best practices and to obtain more comprehensive information on constitutional, legislative, judicial, administrative and educational measures taken to address the issue of discrimination based on work and descent.

2. In its resolution 2006/14 the Sub-Commission endorsed the Special Rapporteurs' proposals to organize: (i) two regional workshops, one in Asia and one in Africa, before the end of the first quarter of 2007, in order to encourage the interactive participation of representatives of affected communities in discussions with the Special Rapporteurs on this topic; and (ii) a consultation meeting in Geneva during the second quarter of 2007, in order for the Special Rapporteurs to receive the views of Governments, United Nations bodies and agencies, non-governmental organizations and representatives of affected communities on the finalization of the draft principles and guidelines for the effective elimination of discrimination based on work and descent. The Special Rapporteurs regret that such regional workshops and consultation meeting were not formally held pending the decisions by the Human Rights Council. However, the office of the High Commissioner for Human Rights organized in Kathmandu, Nepal, on 23-25 April 2007, a workshop on Social Inclusion: Supporting Political Participation and Economic Empowerment in which the issue of discrimination based on work and descent was included as an important topic. Using this occasion, the International Dalit Solidarity Network (IDSN), in collaboration with the International Movement against All Forms of Discrimination and Racism (IMADR), the Lutheran World Federation and the office of the High Commissioner, organized an informal Expert Consultation on the Draft Principles and Guidelines for the Elimination of Work and Descent Discrimination in Kathmandu on 26 April 2007.

3. The Sub-Commission further requested the Special Rapporteurs to continue and complete their study on discrimination based on work and descent, to finalize draft principles and guidelines for the effective elimination of this form of discrimination and to submit their final report in 2007 to the Sub-Commission or its successor body, or in the absence of either, to the Human Rights Council. The present final report has been prepared in response to this request and is submitted, in the absence of the Sub-Commission or a successor body, to the Human Rights Council.

I. ACTIVITIES OF THE SPECIAL RAPPORTEURS

4. On 28 July 2006, 10 December 2006 and 25 February 2007, Yozo Yokota, one of the two Special Rapporteurs on this topic, attended the meetings of the Project on Discrimination based on Work and Descent of the Buraku Liberation and Human Rights Research Institute held at the Osaka Human Rights Center. The project has been organized by the initiative of Kenzo Tomonaga, Director of the Buraku Liberation and Human Rights Research Institute, and headed by Masanao Murakami, Professor of international law at Osaka University. These meetings focused on the concrete cases of discrimination based on work and descent in various countries,

including Dalit communities in India, and in particular were engaged in detailed critical analyses of the Draft Set of Principles and Guidelines included in Chapter IV of the progress report.

5. During 15 to 22 October 2006, Chin-Sung Chung, another Special Rapporteur on this topic, visited Dhaka, Bangladesh. She observed several Dalit communities in the center and the suburb of Dhaka, and attended a Consultation Meeting on the Situation of Dalits in Bangladesh organized by Bangladesh Dalits' Human Rights in cooperation with the International Dalit Solidarity Network. The Consultation brought together persons from civil society organizations in Bangladesh, including Dalits leaders, Dalit organizations and representatives of international NGOs as well as researchers and journalists. The meeting was the first of its kind, gathering a range stakeholders concerned with Dalit issues covering the four regions of Bangladesh. Research findings and case studies presented as well as plenary and group discussions provided solid documentation on the various forms of discrimination practiced against Dalits in both Hindu and Muslim communities.¹

6. On 20-21 November 2006, Chin-Sung Chung, Special Rapporteur, participated in the Hague Conference on Dalit Women's Rights, held in the City Hall of The Hague. It was the first international conference to discuss the issues of discrimination and violence against more than 100 million Dalit women. Justitia et Pax Netherlands, Cordaid and CMC in collaboration with Dalit Network Netherlands, the National Campaign on Dalit Human Rights India, the National Federation of Dalit Women, the International Dalit Solidarity Network and other Dalit and Women's rights organizations organized this conference. Dalit women presented shocking and heart-breaking testimonies about the violence perpetrated against them and impunity which followed. After deliberating upon the issues of discrimination, violence and impunity for violence against Dalit women, the participants of the Hague Conference on Dalit Women's Rights adopted 'The Hague Declaration on the Human Rights and Dignity of Dalit Women' which included the recommendations to the governments of Nepal, India, Pakistan, Bangladesh and Sri Lanka, and to the International Community, the United Nations and the European Union.

7. On 23-24 April 2007, the Special Rapporteurs attended a workshop organized by the office of the High Commissioner in Kathmandu, Nepal, on Social Inclusion: Supporting Political Participation and Economic Empowerment. The workshop was initially planned for June or May 2006 but was postponed due to political instability developing in Nepal at that time. However, the recent signing of the Comprehensive Peace Agreement among the key political parties and armed groups has provided an opportune occasion for bringing together representatives of politically, economically and socially marginalized communities and peoples in Nepal to discuss various problems faced by them, including extreme poverty, lack of effective participation in public and political life and deprivation of basic human rights such as access to education, decent and favourable conditions of work and health care as well as the right to own land. The workshop paid particular attention to Dalit communities which comprise about 20 % of Nepal's

¹ This visit was followed by her visits to other several countries in South Asia for observing the affected communities and participating in the consultation meetings: Nepal during 29 November to 6 December 2004 which was organized by Dalit NGO Federation in cooperation with the International Dalit Solidarity Network (IDSN); Pakistan during 12 to 19 January 2006 which was organized by Thardeep Rural Development Programme and Scheduled Castes Federation Pakistan in cooperation with IDSN; and India during 24 February to 1 March 2006 which was organized by National Campaign on Dalit Human Rights in cooperation with IDSN.

population and historically marginalized indigenous peoples. It was a rare occasion on which four UN Special Rapporteurs of the Human Rights Council: Doudou Diene, Special Rapporteur on contemporary forms of racism and racial discrimination, Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, in addition to Yozo Yokota and Chin-Sung Chung, were able to come together to engage in active dialogues with the representatives of Dalit communities and indigenous peoples.

8. On 26 April 2007, the International Dalit Solidarity Network (IDSN), in collaboration with the International Movement against All Forms of Discrimination and Racism (IMADR), the Lutheran World Federation and the office of the High Commissioner, organized in Kathmandu an informal Expert Consultation on the Draft Principles and Guidelines for the Elimination of Discrimination based on Work and Descent. Doudou Diene and Rodolfo Stavenhagen in addition to the two Special Rapporteurs on discrimination based on work and descent, representatives of UN programmes and specialised agencies, including the ILO, and resource persons from INGOs and affected communities, actively participated in the Consultation and made invaluable contributions. The draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent included in Chapter II of this report reflect the proposals and suggestions submitted during the Consultation.

II. GOVERNMENTS' REPLIES TO THE PROGRESS REPORT OF THE SPECIAL RAPPORTEURS

9. The Special Rapporteurs, in accordance with resolution 2005/22 adopted at the 57th session of the Sub-Commission (2005), sent out the questionnaires to all the member-states of the United Nations, the National Human Rights Institutions, the United States bodies and specialized agencies and the Non-governmental organizations. A considerable number of responses were received, and the Special Rapporteurs were thankful to all those who responded. The Special Rapporteurs, however, thought that more responses would be desirable, and discussed that matter with the Office of the High Commissioner for Human Rights. As a result of discussion the Office of High Commissioner for Human Rights sent out the Progress Report (A/HRC/Sub.1/58/CRP.2) to all the member-states of the United Nations, the National Human Rights Institutions, the United States bodies and specialized agencies and the Non-governmental organizations, asking their opinions on the Report including the draft set of principles and guidelines for the effective elimination of discrimination based on work and descent. By the beginning of June 2007, the responses were received from five member-states: Japan, Columbia, the Republic of Croatia, the Federal Republic of Germany and Mauritius. The Special Rapporteurs are thankful to the governments of those states.

10. All five states presented their compliments to the High Commissioner for Human Rights, and provided information and opinion. The governments provided information on their ratification of the United Nations Conventions related with discrimination based on work and descent, and on their Constitutional and other legal and administrative measures for elimination of this type of discrimination. They also provided statistics of situation of affected communities, and gave some constructive advice on the Special Rapporteurs' Progress Report. Special Rapporteurs appreciate for those valuable comments, and tried to reflect them in finalizing the Draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent.

Annex

DRAFT PRINCIPLES AND GUIDELINES FOR THE EFFECTIVE ELIMINATION OF DISCRIMINATION BASED ON WORK AND DESCENT

PREAMBLE

Bearing in mind the commitment to the principles and obligations under the Charter of the United Nations, including the Preamble and Articles 1, 2, 13, 55, and 56, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Recalling that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and nations, to respect for the equal freedom and dignity of all human beings, and their entitlement to the rights and freedoms specified therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status,

Recalling also the International Convention on the Elimination of All Forms of Racial Discrimination, which seeks to eliminate discrimination based on race, colour, descent, or national or ethnic origin,

Taking into account General Recommendation 29 of the Committee on the Elimination of Racial Discrimination, which confirms the Committee's consistent view that the term 'descent' in article 1, paragraph 1 of the Convention applies not only to race but also other forms of inherited status and strongly condemns discrimination based on work and descent as a violation of the International Convention on the Elimination of All Forms of Racial Discrimination, and the Committee's concluding observations addressed to States parties to the Convention,

Affirming the condemnation of discrimination in the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

Noting that the World Summit 2005 Outcome emphasized the responsibilities of all States, in conformity with the Charter of the United Nations, to respect human rights and fundamental freedoms of all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,

Taking into account also International Labour Organization Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, and its accompanying General Recommendation No. 111,

Affirming the UNESCO Convention on Cultural Diversity, and on Discrimination in Education,

Affirming also the principles set forth in the United Nations Global Compact, to the end of eliminating discrimination in respect of employment and occupation,

Highlighting that discrimination based on work and descent exacerbates poverty and constrains progress toward achieving the Millennium Development Goals,
Reaffirming the importance of universal education expressed in the Millennium Development Goals,

Noting with grave concern the persistence of discrimination based on work and descent in many regions as reported by the Special Rapporteurs on Discrimination based on Work and Descent of the Sub-Commission on the Promotion and Protection of Human Rights, and by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance of the Human Rights Council,

Aware of the Organisation for Economic Cooperation and Development's Guidelines on Companies

Taking note of the Kathmandu Dalit Declaration, the Ambedkar Principles, and the Sullivan Principles²,

Commending the efforts of governments to eliminate discrimination based on work and descent through national constitutional and other legislation and other measures,

Respecting and attaching the highest importance to ongoing efforts by affected communities, and international and regional organizations to eliminate discrimination based on work and descent,

Strongly condemning discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status, as a violation of human rights and international law,

Confirming the need for the concerted efforts of not only States but also regional and international bodies, donors, local authorities, political parties, private sector actors such as companies, schools, social, cultural and religious institutions, other non-governmental organizations (NGOs) and the media in order effectively to eliminate discrimination based on work and descent in their sphere of influence,

Recommends the following principles and guidelines for the effective elimination of discrimination based on work and descent.

SCOPE AND APPLICATION

1. The principles and guidelines concerning discrimination based on work and descent apply equally to all States and to all local, national, sub-regional, regional, and international governmental and non-governmental bodies.

² Kathmandu Dalit Declaration, adopted at the International Consultation on Caste-Based Discrimination: Establishing Dalit Rights in the Contemporary World; the Role of Governments, the United Nations and the Private Sector, on December 1 2004; the Ambedkar Principles; employment and additional principles on economics and social exclusion formulated to assist all foreign investors in South Asia to address caste discrimination (2005); the Global Sullivan Principles on Social Responsibility (1999).

DEFINITION

2. Discrimination based on work and descent is any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birth place, place of residence, dialect and accent that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life. This type of discrimination is typically associated with the notion of purity and pollution and practices of untouchability, and is deeply rooted in societies and cultures where this discrimination is practiced.

3. Special measures taken for the sole purpose of securing adequate advancement of affected groups and individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed discrimination based on work and descent, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that they shall not be continued after the objectives for which they were taken have been achieved.³

PRINCIPLES

4. Discrimination based on work and descent is a form of discrimination prohibited by international human rights law as proclaimed by the Universal Declaration of Human Rights and, inter alia, by the International Convention on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the International Labour Organization Convention No. 111.⁴

³ The definition of discrimination based on work and descent is modeled on Article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It accordingly supports and encourages consistency with existing international law on the subject of discrimination, and should be read as such. Likewise, paragraph 2 is modeled on Article 1.4 of ICERD and is intended to explicitly allow for the possibility of special measures, such as affirmative action, taken solely for the purpose of and to the extent necessary for the equal enjoyment of human rights and fundamental freedoms of groups and individuals affected by discrimination based on work and descent.

In practice, discrimination based on work and descent is usually embedded in a discernible context of religious, moral, or cultural beliefs about the relative worth of a certain group of persons, as well as notions of purity, pollution, and untouchability. While such a context is not necessary for identifying discrimination based on work and descent, its existence should give reason for greater concern that discrimination based on work and descent is taking place. In addition, actors should recognize that in most situations the effective elimination of discrimination based on work and descent will be impossible with the eradication of the background context of prejudicial beliefs and attitudes, and organize their efforts accordingly.

⁴ This paragraph reaffirms that discrimination based on work and descent is prohibited by international law. At the most general level, this form of discrimination in the protection and promotion of human rights and fundamental freedoms is inconsistent with the goal, proclaimed in the Preamble to the

5. Discrimination based on work and descent and other forms of discrimination are not only human rights violations but also major obstacles to achieving development. Inequalities inevitably diminish development gains and are among root causes of armed conflicts. Ineffective allocation of human resources due to discrimination based on work and descent distorts the labour market and affects the efficiency of an economy.

6. In addressing the problem of discrimination based on work and descent, special care should be taken to address the situation of women, children, the sick or disabled, the aged and people living below the poverty line.⁵

7. All States have a duty to acknowledge the existence of discrimination based on work and descent, to take all necessary constitutional, legislative, administrative, budgetary, judicial and educational measures to eliminate and prevent discrimination based on work and descent in their respective territories and to respect, protect, promote, implement and monitor the human rights of those facing discrimination based on work and descent. All persons of affected communities have the right to enjoy, on an equal footing with others, all civil, political, economic, social and cultural rights, including but not limited to:⁶

Universal Declaration of Human Rights (UDHR) and underlying every major instrument of international human rights law, of universal respect for, and observance of, human rights and fundamental freedoms for all. But discrimination based on work and descent is also clearly prohibited by Article 1.1 of ICERD, as confirmed by the Committee on the Elimination of Racial Discrimination's General Recommendation 29, A/57/18 at 111 (2002). In addition, discrimination based on work and descent is inconsistent with the specific provisions prohibiting discrimination and protecting equality in, inter alia, the UDHR (see, e.g., Articles 1, 7, 10, 21, 26), the International Covenant on Civil and Political Rights (ICCPR) (see, e.g., Articles 4, 20, 24, 26), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see, e.g., 2, 7 10, 13), the International Labour Organization Convention (ILO) No. 111 (Articles 1.1 and 3) and Recommendation No. 111, as well as the ICERD.

⁵ This principle reflects both the (1) reality of heightened risk for women and girls, children, the sick or disabled and the aged in contexts of discrimination based on work and descent; and (2) the recognition by international law of risks of this sort. Especially women and girls, as well as children of both sexes, face heightened risk and multiple discrimination in societies in which discrimination based on work and descent is practiced. International law has recognized the increased need for protection of human rights and fundamental freedoms of women and girls and children through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). For example, the Preamble to CEDAW, emphasizing the interdependence of the elimination of discrimination against women and the elimination of other forms of discrimination. The non-discrimination article CRC (Article 2) clearly indicates that the protection and promotion of the rights of the child shall be pursued without distinction in status.

⁶ The phrase "including but not limited to" recognizes that international law affords affected communities a greater range of rights than listed in this paragraph, viz. the full range of human rights and fundamental freedoms now protected by international law. The purpose of the list is to identify areas of particular risk now faced by affected communities, based on sociological research and documentation, summarized, inter alia, in the Progress report of the Special Rapporteurs on the topic of discrimination based on work and descent, A/HRC/Sub.1/58/CRP.2* (2006), Chapter III. This list should therefore be treated as an open-ended, rather than a rigid, category, to which further rights may be added as requiring special attention.

- x The right to physical security and life and the right to be free from violence;
- x The right to equal political participation;
- x The right to fair access to justice;
- x The right to own land;
- x The right to equal access to public and social services;
- x The right to freedom of religion;
- x The right to marriage on free will
- x The right to education;
- x The right to cultural identity;
- x The right to equal opportunity and free choice of employment;
- x The right to equal, just and favorable conditions of work;
- x The right to be free from forced or bonded labour;
- x The right to be free from cruel, inhumane or degrading treatment;
- x The right to health;
- x The right to adequate food, water, sanitation, clothing and housing;

The rights enumerated in the list are recognized by international law, such as the UDHR (Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 20, 22, 23, 25, 26, 27), ICCPR (Articles 6, 7, 8, 10, 14, 25, 26), ICESCR (Articles 7, 10, 11, 12, 13), ICERD (Article 5(a), (b), (c), (d)(v) and (ix), (e)(i),(iii), and (iv)), CRC (Article 32), as well as standards of conditions of employment and education as provided by the ILO Fundamental Conventions (No.s 29, 105, 87, 98, 100, 111, 138, 182) as well as the 1998 ILO Declaration on Fundamental Principles and Rights at Work. A number of these rights are considered non-derogable (derogation from ICCPR Articles 6, 7, 8.1 and 2, 11 is disallowed by ICCPR Article 4). The right to physical security and to live free from violence and the right to be free from forced labour should be read to include the peremptory norms against torture and slavery. (On the peremptory norm against slavery, see ILO, *Forced Labour in Myanmar (Burma)*, Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Official Bulletin (Geneva), 1998, Series B, special supplement, para. 538). The ILO on Fundamental Principles and Rights at Work binds member states regardless of their ratification of the eight Fundamental Conventions. The particular relation between these rights and legal obligations of states and other actors will depend on further factors such as state ratification of treaties, as well as the development of doctrine and jurisprudence by national and international courts and treaty bodies, including development in the recognition of norms as customary international law.

Principle 6 also reflects the general approach of these Principles and Guidelines: the central problem in contexts of discrimination based on work and descent is that there are certain universal rights and freedoms which are wrongfully being denied to a descent-based community. Thus, the particular mention of terms such as “descent,” “work and descent,” or “discrimination” is not necessary for a right or duty recognized by international standards to merit special attention in efforts to eliminate discrimination based on work and descent.

In line with Principle 1, Principle 6 places an emphasis on the equal protection and promotion of rights for women and girls pursuant to CEDAW, as well as the protections required for children pursuant to CRC. In addition to the CRC, ILO Convention No. 182 imposes an obligation in particular to prohibit and eliminate certain forms of child labour, including those involving slavery or slavery-like practices (Article 3(a)) and carried out in circumstances likely to harm the health, safety and morals of the child (Article 3(d)). ILO Convention No. 138 provides that no child shall enter the labour market before completion of compulsory schooling and, in any case, shall not be less than secondary education at 14 or 15 years of age (Article 2).

8. All States have a duty to make sincere efforts to dispel the prejudicial beliefs that constitute, support and reinforce discrimination based on work and descent, including notions of untouchability, pollution and caste superiority or inferiority, as well as to prevent actions taken on the basis of such beliefs.

9. Regional and international bodies, including United Nations bodies and regional inter-governmental bodies, and national and international civil society, including private sector actors such as corporations, schools, hospitals, labour unions, agricultural associations and media practitioners, should provide assistance to efforts toward the effective elimination of discrimination based on work and descent.

GUIDELINES⁷

GENERAL

10. National and local governments should take all necessary constitutional, legislative, administrative, budgetary and judicial measures, including appropriate forms of affirmative actions and public education programmes, to prevent, prohibit and provide redress for discrimination based on work and descent in both public and private spheres; and ensure that such measures are respected and implemented by all State authorities at all levels.

11. National and local governments should take specific and effective measures to implement laws regarding discrimination based on work and descent including affirmative action.

12. National and local governments should take proper measures to protect affected communities against acts of discrimination and violence, and measures to end impunity for violence against members of affected communities.

13. National and local governments should establish time-bound programmes to enforce the abolition of untouchability and segregation. Legal and judicial mechanisms should be established and enforced including by effectively punishing acts of “untouchability.” Governments should introduce and apply special measures to address the persistence of social norms of purity and pollution.

14. National and local governments should explicitly prohibit by law discrimination based on work and descent, and explicitly provide for criminal and civil remedies in cases of violation. Criminal and civil sanctions should explicitly apply not only to direct violations but also to complicity or aiding and abetting by other actors, including but not limited to corporations and public officials.

⁷ These Guidelines articulate specific measures to be taken by states and other actors in order to implement the Principles. They are based on sociological documentation and research on the specific obstacles faced by affected communities as summarized, inter alia, in the Progress report of the Special Rapporteurs on the topic of discrimination based on work and descent, A/HRC/Sub.1/58/CRP.2* (2006), Chapter III.

15. National and local governments should repeal all existing laws and regulations that directly or indirectly discriminate on the basis of work and descent, including but not limited to laws restricting voting or land ownership rights based on caste or analogous systems.

16. National and local governments should adopt comprehensive plans of action, including specific budgetary measures and create an office to implement and coordinate such plans of action, for the effective elimination of discrimination based on work and descent.

17. National human rights institutions and specialized institutions should be given power to specifically address the problems faced by affected communities. Governments of affected countries should ensure that, where they exist, national human rights institutions and specialized commissions can act independently and effectively in protecting the interest of people affected by discrimination based on work and descent by providing adequate financial, statutory and personnel support. Where such institutions and specialized commissions do not exist, they should be established. Governments should, unless better solutions are found, implement the recommendations of specialized commissions, national human rights institutions and other relevant commissions on measures to eliminate discrimination based on work and descent; and intergovernmental agencies, including UN human rights bodies and agencies, should take note of such recommendations and where necessary provide technical assistance in support of their implementation.

18. In order to achieve not only de jure but also de facto equality and non-discrimination for those facing discrimination based on work and descent, national and local governments should take positive measures to improve the conditions of affected communities, such as special measures for the purpose of securing adequate advancement of affected groups and individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms in education and employment.⁸

19. Governments should ensure that timely reporting is submitted to all relevant United Nations treaty bodies, giving disaggregated data on discrimination based on work and descent.

Survey and research

20. National and local governments should conduct regular surveys and other appropriate research in the social, political, economic, cultural and criminal justice fields, including the attitudes of the general public towards the affected communities, and utilize the resulting data, including disaggregated data for the situation of women, to develop effective measures for the elimination of discrimination based on work and descent. The surveys and research should

⁸ This Guideline emphasizes the need for states, including those which have specific legislation prohibiting discrimination based on work and descent, to ensure that the elimination of such discrimination is not merely formal or in language. While explicit legislation is often necessary and strongly encouraged (see Guidelines 5 and 6), it has not proven sufficient. Assessments of the progress made by countries that explicitly prohibit human rights violations against affected communities have shown that these prohibitions often prove ineffective in the absence of diligent enforcement. The rest of the Guidelines should be read to conform with and support this general Guideline.

present information on the situation of those affected by discrimination based on work and descent, and a review of the effectiveness of existing measures and proposals for the elimination of such discrimination. Research institutions and universities should also be encouraged to independently conduct such surveys and research.

COMBATING SEGREGATION

21. National and local governments should ensure access to public places, including community centers, hospitals, schools, places of worship, and water resources, by those from affected communities; take measures to eliminate and prevent segregation in employment, housing and education and to ensure protection from violence against those who cross the boundaries of segregation.

22. National and local governments should introduce and apply special measures to eradicate the persistence of social and cultural stigma of impurity and pollution that de facto precludes marriages between members of affected and non-affected communities and, in some societies, gives rise to violence, collective punishment and social exclusion against couples from different communities.

PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

23. National and local governments should prohibit harmful practices of child marriages and dowry, and those forbidding the remarriage of widows, the dedication of girls to temple deities and forced, ritualized prostitution and create local law enforcement task forces for the effective implementation of the prohibition.⁹

24. State actors should take special measures, such as devising and implementing comprehensive plans of action and creating a monitoring mechanism, to protect affected communities from physical violence, including torture, sexual violence and extrajudicial killings.

25. Particular attention should be given to the situation of women and girls, including under domestic violence laws, and to sexual violence, sexual exploitation and trafficking committed against women and girls of affected communities.

26. National and local governments should investigate, prosecute and punish perpetrators of all forms of violence and atrocities, and sanction anyone found preventing or discouraging victims from reporting such incidents, including public officials.

27. National and local governments should encourage victims and witnesses to report such acts to the competent authorities and protect them from acts of retaliation and discrimination, and ensure that complaints under relevant acts and other criminal law provisions are properly registered. National and local governments should make public information on the number and

⁹ This guideline draws on concluding observations to governments of caste affected countries by the Committee on the Elimination of Racial Discrimination, in particular the concluding observations on India CERD/C/IND/CO/19 (2007) paragraph 18. The guidelines 16, 17, 24, 27, 37 and 50 also take some parts of the same document, CERD/C/IND/CO/19 (2007), respectively from para.s 15, 26, 17, 23, 25 and 22.

nature of complaints registered, the convictions and sentences imposed on perpetrators, and the remedies and assistance provided to victims of such acts.

ACCESS TO JUSTICE AND EQUAL POLITICAL PARTICIPATION

28. Judicial, legislative, and law enforcement bodies should take specific and concrete measures to ensure equal protection of the law for affected communities.
29. National and local governments should take all necessary steps to ensure equal access to judicial remedies for affected communities, including the provision of legal aid or other kinds of support to public interest organizations representing the interests of those subject to discrimination based on work and descent.
30. State actors, including all bodies of government and public corporations, should adopt specific guidelines, including a scheme of incentives and sanctions, prohibiting discrimination based on work and descent in their internal practices. National and local governments should encourage the recruitment of members of affected communities into law enforcement agencies.
31. Law enforcement officials, including police, judges and prosecutors should be provided with adequate training in the prevention, investigation, and prosecution of cases involving discrimination based on work and descent.
32. National and local governments should take specific measures to ensure equal rights to political participation for affected communities, including rights to participate in public elections, and to equal opportunity to run and be elected to public office.
33. National and local governments should consider the introduction and implementation of a reservation policy to all categories of public service posts, including the judiciary in order to ensure adequate, effective and meaningful, not symbolic, representation at all levels of governments and legislatures and maintain and release statistical data on such representation.

EQUAL EMPLOYMENT OPPORTUNITY AND FREE CHOICE OF OCCUPATION

34. National and local governments should enact equality laws that prohibit public and private employer discrimination on the basis of caste or analogous systems, take steps to remove customary constraints on leaving traditional caste-based occupations, and promote gainful alternative employment opportunities and full access to markets for members of affected communities.
35. National and local governments should enact and enforce legislation guaranteeing decent work, a living wage and labour rights for affected communities.¹⁰ National and local

¹⁰ The ILO Protection of Wages Convention No.95 guarantees payment in legal tender, cash, fair reasonable, direct, adequate and timely.

governments should ensure the complete eradication of manual scavenging¹¹ and other unhealthy working conditions, in accordance with international standards.

36. The government should adopt measures to enhance affected communities' access to the labour market by introducing or extending reservation policies to the public and private sectors, which should effectively counter the impact of market liberalization and globalization.

37. The State and other agencies should secure and support the full exercise of the right of affected communities to free choice of labour and other occupations traditionally withheld from them because of their caste or other kinds of social origin.

FORCED, BONDED AND CHILD LABOUR

38. National and local governments, corporations, labour groups, and international labour, financial, and development organizations should collaborate to ensure concrete mechanisms for the prevention, identification and eradication of exploitative labour arrangements and the implementation of rehabilitation schemes for forced, bonded and child labourers with special attention to affected communities.

HEALTH

39. National and local governments should take all necessary measures to ensure the highest attainable standard of physical and mental health, equal access to healthcare and a safe health environment for members of affected communities. Governments should pay special attention to child malnutrition and high maternal mortality rates in affected communities.

40. National, local and international health officials and practitioners should ensure equal treatment for members of affected communities including access to sanitation facilities and medical insurance and treatment at hospitals.

41. Development and financial assistance to ensure adequate hygiene and sanitation should be provided by national and local governments and international development and humanitarian organizations.

ADEQUATE FOOD, WATER, AND HOUSING

42. National and local governments should take all necessary measures to eliminate discriminatory practices that cause affected communities to suffer from inadequate food, water, sanitation, clothing and housing.¹²

¹¹ "With regard to the practice of manual scavenging and the fact the Dalits are usually engaged in this practice due to their social origin... the Committee noted in its previous observation that the Tenth Five-Year Plan (2002-07) refers to a nation-wide programme for the total eradication of manual scavenging by 2007... In this context, the Committee strongly urges the Government to take decisive action. India Observation C.111 of ILO Committee of Experts on manual scavenging.

43. National governments and local authorities should ensure affected communities due entitlement to land and protect against forced eviction.
44. Governments should ensure that the ministries, district administration and local bodies develop comprehensive mechanisms and programmes for enhancing mandatory and increased access to development programmes and budgets for affected communities.
45. Donor agencies have an obligation to help governments ensure effective outreach in providing food, water and housing to affected communities on an equal footing with other parts of the population.

EDUCATION

46. National and local governments should take all necessary measures to ensure equal access to free quality primary and secondary education for children from affected communities, as well as equal opportunity to receive tertiary education. Effective special measures should be enacted for affected communities in admissions to public and private higher education institutions.
47. National and local governments should take effective measures to reduce dropout rates and increase enrolment rates among children of affected communities at all levels of public and private schooling, by providing scholarships or other financial subsidies, combating classroom segregation, harassment and discrimination against pupils of affected communities and ensuring non-discriminatory access to such schemes, including through provision of adequate equipment, staffing and quality of teaching in public schools, as well as adequate means of physical access to schools for children living in dominant caste neighbourhoods and armed conflict areas. Governments should take all necessary measures to remove obstacles, including child labour, which keep children from regular full time education. Governments should also pay particular attention to the need of providing adequate education to children and adults who are unable to read and write because of lack of formal education.
48. National and local governments should review and eliminate language in school textbooks that conveys or encourages stereotypical and prejudicial beliefs, attitudes, and actions against members of affected communities and ensure that the content of education and curricula reflect the contributions of affected communities and emphasize the need to eliminate discrimination based on work and descent through, among other things, inclusion of human rights education.

¹² Affected communities are likely to suffer high and disproportionate levels of poverty due to discriminatory practices; such barriers and practices should be addressed including by expanding access to adequate sources of income and employment for the affected communities.

In residential areas in which access to food, clothing and housing is typically provided through communal resource arrangements such as village wells and ponds, community grazing grounds, village forests and public roads, national and local governments should monitor and facilitate affected communities' access to these common resources and ensure that their access is not blocked through prejudicial or punitive measures by other residents.

PUBLIC AWARENESS RAISING AND ELIMINATION OF DISCRIMINATORY CUSTOMS

49. National and local governments should take specific measures to raise awareness both among the public and among government officials, teachers, and media practitioners on discrimination based on work and descent, such as through internal training and public campaigns. Areas of attention should include not only the print and broadcasting media but also alternative avenues of information dissemination, such as local oral information through theatre, songs, etc. as well as information via internet.
50. National and local governments should, wherever necessary, review or enact libel, slander, and hate speech laws to explicitly prohibit and punish libellous and slanderous speech or speech inciting discrimination, hatred, or violence based on work and descent.
51. Governments should take special measures to promote due representation in the mass media of affected communities, and carry out sensitization campaigns and awareness raising programme with media representatives. It is recommended that government and other relevant institutions encourage media outlets to profile and publicize abuses faced by descent-affected communities, as well as promoting tolerance and positive examples of combating descent based discrimination.
52. The media, religious, educational and cultural institutions and other parts of civil society, and international organizations should contribute to correcting the spread of negative images of affected communities, and endeavour to build the capacity of those communities, as well as recognize the contributions of affected communities to the development of society.

MULTIPLE DISCRIMINATION AGAINST WOMEN

53. National and local governments should collect, analyze and publicly provide disaggregated data on the situation of women affected by discrimination based on work and descent.
54. National and local governments should take into account the situation of women and girls of affected communities in all measures taken to address discrimination based on work and descent, and explicitly create provisions tailored to ensure the rights of women and girls affected by discrimination based on work and descent wherever possible.

PARTICIPATION OF AFFECTED COMMUNITIES

55. Any measures taken for the effective elimination of discrimination based on work and descent should be made on the basis of genuine and informed consultations with affected communities. Procedural mechanisms of those measures should be set up to ensure that the affected communities' interests are adequately represented.

HUMANITARIAN AND DEVELOPMENT ASSISTANCE

56. All States should recognize and take measures to address the special problem of increased discrimination based on work and descent in situations of humanitarian crises, such as internal conflicts, wars, or natural disasters.

57. Governments and international organizations should develop measures to tackle exclusion and discrimination in all development and disaster recovery programmes, such as social equity audits and caste analysis frameworks. Appropriate 'affected community inclusion tools' should be developed and applied effectively in the planning and monitoring of programmes. Agencies should provide training on discrimination based on work and descent to their staff and should take responsibility to monitor and counter untouchability practices. Members of affected communities should be fully involved in decision-making on and the planning and evaluation of programmes, and agents involved should actively seek to employ members of affected communities in the recovery or development operations.

58. States should investigate all alleged cases in which members of affected communities have been denied assistance or benefits equal to that received by other people, or cases in which they have been discriminated against during the relief, rehabilitation and development processes, and compensate or retroactively grant such benefits to the victims of affected communities.

Market enterprises and financial allocations

59. International financial institutions and private companies should affirm the unacceptability of discrimination based on work and descent within own organizations as well as within the sphere of influence including supplies and business partners with special focus on equal to markets and services and actively to implementing anti-caste laws; and such entities should incorporate caste and gender analyses as well as anti-discrimination policy measures into their corporate social development strategies.

INTERNATIONAL COOPERATION

60. International, regional and sub-regional bodies should provide support for the effective elimination of discrimination based on work and descent, through financial, technical and legal assistance. Inter-governmental bodies, including financial institutions, bilateral donors and diplomatic organizations including embassies, should ensure that the development assistance projects which they support are consistent with efforts to eliminate discrimination based on work and descent. Regional and international human rights institutions and procedures, as well as international civil society, should monitor and support efforts to eliminate discrimination based on work and descent. Humanitarian organizations should recognize affected communities as being at special risk of rights violations and deprivations, and prioritize the distribution of aid accordingly.

61. All international organisations, including United Nations agencies, should pay particular attention to discrimination based on work and descent and seek to prevent and address the multiple forms of human rights violations resulting from this form of discrimination. It is recommended that all agencies include analyses of the situation of affected communities in their

country and regional strategies, and develop policies, strategies and instruments to address work and descent based discrimination as well as operational guidance to staff.

Responsibilities of States with diaspora communities

62. Governments of the countries with diaspora communities where discrimination based on work and descent is practiced should take effective measures to prevent such discrimination.

INTERPRETATION

63. These principles and guidelines for the effective elimination of discrimination based on work and descent shall not be interpreted as limiting, altering, or otherwise prejudicing the rights of individuals recognized under international human rights law, humanitarian law, or immigration and refugee laws.

IV. CONCLUSIONS AND RECOMMENDATIONS

64. The problem of discrimination based on work and descent continues to exist today in many parts of the world. This problem was not a part of the major human rights agenda of the international community until the beginning of this century. The problem of caste-based should this be 'descent-based discrimination, including discrimination against the Buraku, has been taken up by the respective States concerned only as a specific human rights issue peculiar to each State. These forms of discrimination had not been regarded as having common features and similar historical, political, economic and social contexts. However, since the Sub-Commission decided in August 2000 to take up this topic as an important human rights issue of the day and appointed Special Rapporteurs successively up to today, the various studies they have conducted have revealed that the issue is broader than caste-based discrimination in South Asia but has existed and continues to exist in parts of Africa, Latin America and the Middle East, and in some countries of Western Europe (particularly among the diaspora communities). As a result of deliberations and dissemination of information on this topic by the Sub-Commission in parallel with other similar efforts by the Human Rights Committee of the International Covenant on Civil and Political Rights, the Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Commission's (now, the Human Rights Council's) Special Rapporteur on contemporary forms of racism and racial discrimination and the International Labour Organization (ILO), the issue of discrimination based on work and descent is regarded as a specific and important human rights issue to be properly addressed by the international community.

65. It should be emphasised that each State in South as well as East Asia where such discrimination has been felt as an acute and urgent human rights issue has taken certain legislative, administrative, budgetary and positive measures to address the issue. Nevertheless, this type of discrimination still persists even in those States where certain corrective measure have been taken, because: (a) legislative, administrative, budgetary and positive measures are not seriously, vigorously and effectively carried out; (b) such measures are often incomplete or insufficient to effectively eliminate such discrimination; and (c) discrimination of this kind is deeply rooted in social customs, beliefs, rituals and behaviour which distinguishes affected individuals and communities from the majority or dominant individuals or groups on the basis of

impurity and pollution and, unless the attitudes, modes of behaviour or value systems of ordinary citizens drastically change, eradication of such discrimination is difficult.

66. In order to eliminate such discrimination, it is essential that Governments, central as well as local, take all possible effective measures vigorously to achieve this goal. But also, all actors in society, which include business companies, schools, universities, institutes, religious groups and organizations, hospitals, newspapers and broadcasting networks, non-governmental organizations and other welfare and humanitarian organizations, trade unions and employers' organizations, internet operators, and UN bodies and agencies as well as other universal and regional international organizations, should take steps immediately and effectively to eliminate all discriminatory acts, social, psychological or physical.

67. On the basis of the foregoing observations and conclusions, the Special Rapporteurs recommend as follow:

(a) The Human Rights Council should include the topic of discrimination based on work and descent among the studies to be conducted by an expert or experts appointed by the Council.

(b) The Human Rights Council should adopt the draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent included in Chapter II of this report, with necessary amendments and improvements, and send the revised Principles and Guidelines to the General Assembly for adoption.

(c) The Human Rights Council should request, pending the adoption by the General Assembly, all organs and agencies of the United Nations as well as its Member States to give due consideration to the draft Principles and Guidelines in the formulation and implementation of their policies and operations.

(d) The Human Rights Council should request, pending the adoption by the General Assembly, all other international and regional organizations, international and national non-governmental organizations, national human rights institutions, companies, religious institutions, schools, universities, welfare and humanitarian organizations, trade unions and employers' organizations, newspapers and broadcasting networks and internet operators, to give full consideration to the Principles and Guidelines in the course of their activities.

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“Caste is the very negation of the human rights principles of equality and non-discrimination ... The plight of hundreds of millions cannot be justified as age-old traditions, nor can it be regarded merely as a “family business.”... The time has come to eradicate the shameful concept of caste. Other seemingly insurmountable walls, such as slavery and apartheid, have been dismantled in the past. We can and must tear down the barriers of caste too”

Navi Pillay
High Commissioner, UN OHCHR



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