

THE UN SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

REFERENCES TO CASTE-BASED DISCRIMINATION

IDSN- November 2015

I. Introduction

The Special Rapporteur on contemporary forms of racism has played an especially critical role, as this mandate has repeatedly voiced concern about the persistence of caste discrimination and has reiterated the view of CERD, that racial discrimination encompasses caste and analogous forms of discrimination based on inherited states. This compilation includes all relevant references in annual and thematic reports of the SR on contemporary forms of racism in addition to mission reports, and summaries of cases transmitted to governments in the period 2005-2015.

II. Overview of references to caste in reports and by the Special Rapporteur (2005-2014)

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance	
Mr. Mutuma Ruteere (Mr. Githu Muigai until September 2011), (Mr. Doudou Diène until July 2008)	
Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere: Addendum Mission to Mauritania A/HRC/26/49/Add.1 June 3 2014	II. Context The Haratine are thought to constitute the largest ethnic group in Mauritania and the most politically and economically marginalized in what remains a society deeply stratified by ethnicity, descent, castes and class. The word Haratine is derived from the Arabic word for freedom, as they are perceived by the rest of society as freed slaves. The Moors are divided into many different tribes stratified in castes by profession, such as blacksmith, religious leader, and warrior, inter alia. The Special Rapporteur was informed that relations among the different castes are very hierarchical and give rise to the exclusion and marginalization of certain castes , such as that of blacksmiths, in favour of others. Access to certain functions, activities and responsibilities is therefore closely linked to caste identity and marriages are highly codified according to descent. For example, the Special Rapporteur met with members of the blacksmith caste , who reported that 90 per cent are involved in business and retailing, that only 5 per cent are primary school teachers and that their sons cannot marry girls from other castes . Although some of the Afro-Mauritanian ethnic groups are not divided into castes , they too are very hierarchically organized and relations among the various subgroups are highly influenced by descent.

The Special Rapporteur noted that Mauritanian society is highly stratified along ethnic and **caste** lines, with de facto slaves and descendants of slaves assigned the lowest status, which is passed down through the generations. This stratification, which has historical roots, fuels latent tensions and conflicts which at times turn violent

B. Justice system

In addition, the justice system was reported to work mainly in Arabic, as bilingual judges are rare. This, and the fact that judges appear to be recruited mainly from one **caste** or tribe, represents a barrier to access to justice, leading to de facto exclusion of those who do not speak Arabic. The practice of prioritizing one language and one **caste** or tribe also makes access to the judiciary profession very limited for the other ethnic communities and contributes to fuelling impunity for human rights violations, including cases of ethnic and descent-based discrimination, as victims do not trust the justice sector, which they see as skewed in favour of certain segments of the population

D. Census

The authorities explained that the census was necessary to safeguard the security of the country as well as that of its residents and citizens, through the establishment of a centralized national biometric database to replace the 13 uncoordinated regional population databases, which were dismantled in May 2011. The census process started with the opening of a first census centre in Nouakchott on 5 May 2011; in 2013 there were a total of 216 census centres of which 8 located abroad for the census of Mauritanian expatriates. The Government explained that the census had been designed in three successive phases: (1) registration of the population in possession of all requested documents; (2) registration of those partially fulfilling the documentation requirements; (3) and registration of the population not possessing any identification documents. Although the Government reported that the current census had allowed for the registration of 2.9 million people, representing 700,000 additional citizens who did not appear in the 2008 census and subsequent complementary census operations conducted up to 2009, the current national exercise has brought to the surface not only the deep-seated issues that divided the society along ethnic and **caste** lines, but also unresolved human rights violations perpetrated in the late 1980s. Since September 2011, demonstrations have continued against certain practices linked to the census exercise and groups which have traditionally been discriminated against have expressed concerns with regard to the registration requirements, which have been viewed by some as an attempt to strip members of Mauritanian society of their right to nationality.

F. Youth and education

Young people, particularly in rural areas, appear to be strongly attached to the traditional values of their groups of origin: young people identify first and foremost with the group to which they belong rather than to the nation. Some young people, for example, believe that maintaining the **caste** system is necessary to preserve the group identity and claim that mixed marriages

	<p>are unacceptable. As a result the ethnic, religious or descent based groups compete with and fill the space left by public institutions and services which are no longer able to cater for an increasing young urban population, thus undermining efforts towards social cohesion.¹</p> <p>From the interactions during the visit, the Special Rapporteur sensed that the feeling of belonging to one nation had not yet been cemented and that individuals were more likely to mobilize along ethnic and caste lines. Hence it was reported that people tended to favour members of their families, their castes, ethnic groups or regions,² which perpetuates nepotism in both the political and economic spheres, leading to further discrimination and inequalities.</p> <p>VI. Conclusions and recommendations</p> <p>There is a need to improve the effectiveness of the relevant institutions in addressing the problems of discrimination and to win public confidence in their effectiveness and commitment to implementing the law. The competent ministries should therefore include in their annual budgets adequate resources to tackle issues of ethnic-, caste- and descent-based discrimination as well as slavery-like practices within their areas of responsibility, particularly to strengthen the capacity and expertise of officials, and maintain continued cooperation with relevant United Nations agencies, and in particular with the Office of the High Commissioner for Human Rights in Mauritania.</p>
<p>Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere</p> <p>A/HRC/26/49 6 May 2014</p>	<p>1. International frameworks and initiatives</p> <p>24. A number of United Nations human rights mechanisms have addressed the issue of the use of the Internet and social media to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance. The Committee on the Elimination of Racial Discrimination, in its general recommendation XXIX on descent-based discrimination, recommended that States take strict measures against any incitement to discrimination or violence against descent-based communities, including through the Internet. Furthermore, in its general recommendation XXX on discrimination against non-citizens, the Committee recommended that action be taken to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, in particular by politicians, officials, educators and the media, on the Internet and other electronic communications networks. The Committee has also expressed concern at the dissemination of racist propaganda on the Internet in a number of recent concluding observations issued after consideration of regular reports submitted by States parties, recalling that such dissemination falls within the scope of prohibitions of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.</p>

¹ Becapress, Government of the Islamic Republic of Mauritania and UNICEF, “Etude CAP sur les préjugés sociaux, la discrimination et la citoyenneté” (October 2010).

² Sall Ousmane and Abdallahi Ould Kerim, “L’*introduction des life skills en Mauritanie: Document de base à l’intention des concepteurs des programmes scolaires de l’éducation nationale*” (June 2005).

	<p>IV. Conclusions and recommendations</p> <p>69. In the global digital network, the voices of victims of racial discrimination most often remain absent because of their lack of access to the Internet and social media, therefore often leaving racist ideas unchallenged. In this regard, the Special Rapporteur reiterates that States and the private sector should adopt effective and concrete policies and strategies to ensure that access is widely available and affordable for all, on the basis of the principles of non-discrimination of any kind, including on the grounds of race, colour, descent, and ethnic or national origin. National human rights institutions should also be encouraged to lead the development of these initiatives.</p>
<p>Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere</p> <p>A/68/333</p> <p>(GA 68th session – September 2013)</p>	<p>In this report, the Special Rapporteur focuses on the intersectionality between poverty and racism.</p> <p>C. Persons and groups affected by poverty and racism</p> <p>45. The Special Rapporteur notes that one of the major challenges in assessing the extent to which poor racial and ethnic minorities suffer discrimination is the lack of reliable disaggregated data. The lack of data is linked to legal prohibitions in some countries on collection of ethnically disaggregated data, the failure to establish mechanisms for collection of such data in others. The lack of this kind of data means that development policies such as those linked to the Millennium Development Goals may neglect to address the specific needs of racial and ethnic minorities.</p> <p>46. The Special Rapporteur observes that the problem of disproportionate poverty among some racial and ethnic groups is prevalent in all regions of the world. In this report, however, he highlights the situation of just some of those groups.</p> <p>4. Dalits</p> <p>63. The caste system continues to be the source of discrimination against the Dalits who have a low hierarchical status according to tradition and beliefs. A disproportionate percentage of the Dalits live in abject poverty and face discrimination and exclusion at social, economic and political levels.</p> <p>64. Abuses at school by teachers and fellow students such as corporal punishment, verbal abuse, forced “manual scavenging” or injuries reinforce social alienation and drop-out rates. In some cases, Dalits are not allowed to access the same facilities as non-Dalits, owing to what is referred to as the fear of uncleanliness, untouchability and contagion. Most of the Dalits live in rural areas, and are often excluded from services only available in urban areas. It is estimated that less than 10 per cent of Dalit households can afford safe drinking water, electricity and toilets, and approximately 75 per cent are engaged in agricultural work, although many do not have their own land.</p> <p>65. Furthermore, the Dalits are often engaged in manual scavenging, digging of graves, cleaning of human excretions or forced prostitution,</p>

	<p>thus exposing them to a range of health hazards. A study in South Asia found that Dalits were denied entry into private health centres or clinics in 74 out of 348 villages surveyed, or 21.3 per cent of villages. The study also found that in the case of 30 to 40 per cent of the Dalit villages surveyed public health workers refused to visit. In some villages, Dalits also were prohibited from public streets and even police stations.</p> <p>IV. Conclusions and recommendations</p> <p>80. The Special Rapporteur welcomes the efforts and initiatives undertaken by various States to prohibit discrimination and segregation and to ensure full enjoyment of civil, cultural, economic, political and social rights for all individuals and groups. He notes that certain groups and individuals, including people of African descent, indigenous peoples, minorities, Roma, Dalits and migrants, are still confronted with poverty and discrimination, especially in the enjoyment of their economic and social rights. The persistence of discrimination against those groups and individuals remains a challenge to the construction of a tolerant and inclusive society, and only the guarantee of equality and non-discrimination policies can redress that imbalance and prevent those groups that are discriminated against from falling into or being trapped in poverty.</p>
<p>Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere</p> <p>A/HRC/23/56</p> <p>(HRC 23rd session - June 2013)</p>	<p>B. Disadvantaged and discriminated groups</p> <p>28. While recalling that there is no hierarchy between the victims of racism and racial discrimination, the Special Rapporteur would like to bring to the attention of States the situation faced by some specific groups of individuals, including, migrants, refugees, asylum seekers, people of African descent, victims of caste-based discrimination and members of minorities, including Roma, whose situation has also been addressed by his predecessors.</p> <p>4. Victims of caste-based discrimination, including Dalits</p> <p>46. As highlighted by the previous mandate holder (A/HRC/17/40, para. 27), there is serious concern about an estimated 250 million people around the world at risk of human rights violations on the grounds of caste and other systems based on inherited status. Indeed, reports received confirm that discrimination against Dalits in the educational system is a widespread problem in caste-affected countries. Alienation, social exclusion and physical abuse are present throughout all levels of education, from primary to university education. Illiteracy and dropout rates among Dalits are very high due to a number of social and physical factors. Legislation on the issue is limited, and measures to address the issue are often inadequately implemented. The forms of structural discrimination and abuse that Dalit children face in schools are often so stigmatizing that they are forced to drop out of school. One of the main issues is discriminatory practices conducted by teachers, which may include corporal punishment, denial of access to school water supplies, segregation in classrooms, and forcing Dalit children to perform “manual scavenging” on and around school</p>

premises. In addition, Dalit children face discriminatory attitudes from fellow students and the community as a whole, in particular from higher caste members, who perceive education for Dalits as a threat to village hierarchies and power relations. Intolerance of, prejudice against and harassment of Dalits are equally prevalent in institutions of higher education, where discrimination is practised by senior upper-caste students, teachers, faculties and university administrations. The caste bias manifests itself in the way teachers ignore Dalit students and unjustly fail them in exams and in the unwillingness of the university administration to assist and support Dalits. Reportedly, as a grave consequence of this harassment, a disproportionate number of Dalit students have committed suicide in some countries.

47. In 2006, the Special Rapporteur on the right to education recommended that Governments remove known barriers to the enrolment and retention in school of young and teenage girls belonging to all ethnic groups, castes and communities that are discriminated against (E/CN.4/2006/45, paras. 80–85 and 140). The Special Rapporteur urges the concerned States to take appropriate measures to ensure the right to non-discrimination in education for victims of caste-based discrimination, including Dalits. He recalls general recommendation No. 29 (2002) of the Committee on the Elimination of Racial Discrimination on article 1, paragraph 1, of the Convention (descent), which recommends, inter alia, the prohibition and elimination of practices of segregation directed against members of descent-based communities in education, and the education of the population as a whole in a spirit of non-discrimination and respect for the communities subject to descent-based discrimination. Furthermore, it recommends the adoption of special measures in favour of descent-based groups and communities in order to ensure their access to education. The Special Rapporteur, moreover, considers that national and local authorities 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. Concrete steps should be taken to: eradicate the existing prevalence of caste-based discrimination in schools, including stereotypical and demeaning references, for example, in schoolbooks; ensure the inclusion of children of affected communities in schools; and disseminate general information about the importance of non-discrimination and respect for affected communities in the entire education system. The Special Rapporteur also encourages States to enable and improve educational and professional training for Dalit girls and boys so that they can move to professions of their choice.

C. Education and the economic crisis

54. Reports received show that, in the field of education, financing presents a number of difficult and conflicting issues. Indeed, although several Governments have earmarked more resources for education, the level of commitment overall varies greatly. There is also evidence in some regions of growth in international aid, particularly for basic education, albeit with some failures in application. In the last few years, many countries have been experiencing a severe economic crisis, which in some instances has resulted in drastic budgetary restrictions and affects the education sector. It is essential that States carefully evaluate the potential impact of budgetary restrictions on the enjoyment of the right to education without discrimination. Budgetary stringency must not have a disproportionate impact on the enjoyment of the right to education, especially for disadvantaged groups, including minorities, Roma, people of African descent, migrants, undocumented migrants, refugees, asylum seekers and the victims of caste-based discrimination, since this could threaten the progress already

	<p>achieved by some countries, and lead to increased marginalization and exclusion of part of these vulnerable groups.</p> <p>56. Although the Special Rapporteur welcomes some of the efforts and initiatives undertaken by various States to prohibit discrimination and segregation in their educational system and improve access to education opportunities for all individuals and groups, he notes that certain groups and individuals, including people of African descent, minorities, Roma, migrants, refugees and asylum seekers, and victims of caste-based discrimination still face obstacles and challenges to the full enjoyment of their right to education, as they experience a low level of education – in both quality and duration – and discrimination and segregation in schools. This persistence of discrimination among these vulnerable groups and individuals remains a challenge to the construction of a tolerant society which rests upon an inclusive education system.</p> <p>(c) In particular, States should adopt and implement laws that prohibit discrimination on the basis of race, colour, descent or national or ethnic origin at all levels of education, both formal and non-formal, take all appropriate measures to eliminate obstacles limiting the access of children to education, including through affirmative action programmes of a temporary nature, and ensure that all children, especially those of African descent, minorities, Roma, migrants, refugees and asylum seekers, and the victims of caste-based discrimination have access without discrimination to good-quality education, including higher education. Measures to eliminate obstacles limiting access to quality education include committing appropriate resources to eliminating inequalities in educational outcomes;</p> <p>(h) Teachers at all levels of education should benefit from specialized training, including awareness-raising, in how to prevent racism, xenophobia and other forms of discrimination. Special emphasis should be placed on the situation of minority or vulnerable groups within their country, such as Roma or other minorities, persons of African descent, Roma, migrants, refugees and asylum seekers, and the victims of caste-based discrimination. International norms prohibiting racism and racial discrimination and their implementation under domestic law should be emphasized in the curriculum;</p> <p>(l) States should carefully evaluate the potential impact of budgetary restrictions on education, and ensure that they do not have a discriminatory and disproportionate impact on the enjoyment of the right to education of disadvantaged groups, including minorities, Roma, people of African descent, migrants, undocumented migrants, refugees, asylum seekers and the victims of caste-based discrimination;</p>
<p>Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere</p> <p>Prevention of racism, racial discrimination, xenophobia and related intolerance in line with</p>	<p>B. Promoting equality of opportunity in social and economic areas and eradicating poverty</p> <p>12. The Special Rapporteur is convinced that there is a strong correlation between socio-economic inequality and racial discrimination and that these reinforce each other. Additionally, it is important to note that social and economic exclusion and disparities foster racial discrimination already experienced by the victims. [...]</p> <p>15. Poverty, economic and social exclusion constitute both causes and effects of racism, racial discrimination, xenophobia and related intolerance. As stated in the outcome document of the Durban Review Conference, poverty,</p>

<p>the provisions of the Durban documents</p> <p>A/HRC/20/33</p> <p>(HRC 20th session – June 2012)</p>	<p>underdevelopment, marginalization, social exclusion and economic disparities are closely associated with racism, racial discrimination, xenophobia and related intolerance and contribute to the persistence of racist attitudes and practices which in turn generate more poverty.⁹ It should be noted that the previous Special Rapporteur devoted attention and work to elucidating the link between poverty and racism. He found that the intersection between race and poverty was a key dimension to the struggle against racism. This link was further demonstrated by the then Special Rapporteur while addressing racism and racial discrimination against Roma and discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status. The Independent Expert on minority issues has also noted that ethnic minorities are disproportionately affected by poverty in different parts of the world.</p> <p>16. There is a need to further recognize the interrelation between racism, racial discrimination, xenophobia, intolerance and poverty that contributes to the denial for some individuals and groups of individuals of the enjoyment of their civil, cultural, economic, social and political rights. Indeed the structural nature of poverty reinforces structural discrimination which traps the victims into a vicious cycle of social exclusion and marginalization. The Special Rapporteur shares the view of his predecessor that in developing effective and informed policy measures, there is a strong need for ethnically and racially disaggregated data. This would enable policymakers to make an in-depth analysis of social and economic exclusion of individuals and groups of individuals facing racial discrimination. Furthermore in the design and implementation of economic and social programmes at local and national levels, it is essential that attention be paid to the disadvantaged position of excluded ethnic groups and in particular those living in poverty. The Special Rapporteur is of the view that one of the means of promoting the inclusion of excluded individuals is to ensure that such programmes are consultative, involve a diversity of actors and provide mechanisms for securing their views.</p> <p>D. Education</p> <p>20. The Special Rapporteur notes with appreciation efforts made by different States to prohibit segregation in schools and improve access to education opportunities for all individuals and groups. He is however concerned about reports, including by his predecessors, indicating that racial discrimination and segregation in schools, poorer educational achievements and a low quality level of education still characterize the experiences of certain groups of individuals, including minorities, Roma, victims of caste-based discrimination, people of African descent, migrants, refugees and asylum seekers. The persistence of racial discrimination in the enjoyment of the right to education remains a major obstacle in building an inclusive educational system and thus a tolerant society.</p>
<p>Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action -</p>	<p>3. In this report, the Special Rapporteur gives an overview of the issues of concern as addressed within the framework of his mandate since the submission of his previous report to the Assembly (A/65/295). These issues of concern for the mandate are presented in section II and include structural discrimination; incitement to national, racial or religious hatred; extremist political parties, movements and</p>

Interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

A/66/313
(GA 66th session – August 2011)

groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements; and victims of racism, racial discrimination, xenophobia and related intolerance, including people of African descent, Roma and the victims of discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status. The Special Rapporteur also highlights some best practices in the fight against racism, racial discrimination, xenophobia and related intolerance. [...]

11. The Special Rapporteur further highlighted that structural discrimination can be the result of past historical injustices perpetrated against specific groups of individuals. Long after that formalized racial discrimination was dismantled, the inequalities that were created continued to have a disadvantage or disproportionate effect on the human rights of individuals of specific ethnic and racial groups. Indigenous peoples, Roma, members of communities based on caste or analogous systems of inherited status, ethnic minorities and people of African descent remain particularly affected by this historical legacy, notably in the areas of health, housing, employment, education, administration of justice as well as political representation and empowerment. Thus structural discrimination is one example of the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of civil, cultural, economic, political and social rights. [...]

26. In this context, the Special Rapporteur would like to highlight the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of the civil, cultural, economic, political and social rights of certain groups. Since his previous report to the General Assembly, the Special Rapporteur has discussed the situation of people of African descent (see subsection B.1), Roma (see subsection B.2) and those who face discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status (see subsection B.3).

3. Discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status

38. The Special Rapporteur has repeatedly raised the negative impact of discrimination based on work and descent on the full enjoyment of civil, cultural, economic, political and social rights. He reaffirms that States have to recognize that discrimination on the ground of descent constitutes a form of racial discrimination prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Rapporteur has associated himself with the position taken by the Committee on the Elimination of Racial Discrimination which in its general recommendation No. 29: Article 1, paragraph 1, of the Convention (Descent) (2002), strongly reaffirmed 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 equal enjoyment of human rights”.

39. The Special Rapporteur would like to stress that multiple discrimination compounds the severity of the plight of low castes, who sometimes form part of a religious minority. For instance, many Hindu members belonging to “scheduled castes” (Dalits) experience segregation in access to housing, live below the poverty line, earn less than the minimum wage and have no access to education. They suffer from numerous diseases, not least because of lack of access to safe drinking water and sanitation, and sometimes face discrimination in accessing public-health facilities. Pervasive discrimination keeps them poor, uneducated, in terrible living conditions and in menial jobs. Discriminated against in terms of education, children of lower castes are among the most vulnerable, facing recruitment as child labour,

soldiers or as sex workers, and rampant torture and corporal punishment. Trafficking and the sale of children, especially young girls, and infanticide of female children are other multiple forms of discrimination. Women and girls face multiple discrimination, including through sexual exploitation, forced prostitution, violence in their family and communities, and from actors in other castes.

40. At the same time, the Special Rapporteur has identified good practices and challenges in the fight against discrimination based on work and descent at the international and national levels. He notes with satisfaction that some Governments have taken initiatives to address the problems facing communities affected by discrimination based on work and descent, and he encourages them to continue their efforts, share best practices and take the lead in regional and international initiatives to eliminate this form of discrimination.

41. However, despite Government efforts to eradicate this type of discrimination through constitutional guarantees, legislation and affirmative action programmes, the Special Rapporteur notes that caste-based discrimination remains deplorably widespread and deeply rooted. He would like to reiterate that, notwithstanding the existence of international legal obligations to protect against discrimination based on work and descent, certain Governments have failed to implement such obligations effectively and have, in some instances, sidestepped the question of caste discrimination by claiming that it does not fall under the scope of the international conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, in contrast to the opinion of the Committee on the Elimination of Racial Discrimination. In that regard, he again recommends that the general measures contained in general recommendation No. 29 (2002) of the Committee on the Elimination of Racial Discrimination be implemented.

	<p>42. The Special Rapporteur recommends the continued use of the draft principles and guidelines for the elimination of discrimination based on work and descent, as a guiding framework for the elaboration of effective measures to be taken by States to fulfil international legal obligations, and invites Governments to consider creating a consultative body of regional human rights institutions to study the issue and raise regional awareness. Furthermore, the Special Rapporteur recommends that measures with regard to the legal framework be taken hand-in-hand with awareness-raising measures. [...]</p> <p>62. Racism, racial discrimination, xenophobia and related intolerance unfortunately continue to have a negative impact on the full enjoyment of civil, cultural, economic, political and social rights. This is particularly blatant for people of African descent, Roma, members of communities based on caste or analogous systems of inherited status and ethnic minorities in general, including in the areas of education, employment, health, housing, access to citizenship, administration of justice, racial profiling as well as access to political decision-making and judicial systems. In addition, women and girls belonging to certain communities remain particularly vulnerable to exploitation, trafficking, racial abuse and violence.</p>
<p>Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 65/199 A/HRC/18/44 (HRC 18th session – July 2011)</p>	<p>8. A number of States have indicated that their Constitution and legislation prohibit racial discrimination. The Special Rapporteur welcomes such a step. The Special Rapporteur also notes with interest the information provided by States about non-citizens being guaranteed equality before the law and human rights without discrimination. He also welcomes the legislative measures taken to combat racism in sport. However, the Special Rapporteur notes that domestic law does not always fully cover the definition of racial discrimination as enshrined in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.</p> <p>Consequently, the Special Rapporteur urges States parties to this important instrument to ensure that the definition of racial discrimination under their domestic order complies with the provisions of article 1 and prohibit and eliminate any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin 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.</p>

	<p>The Special Rapporteur also recalls that, under article 20 of the International Covenant on Civil and Political Rights, “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.</p> <p>Furthermore, paragraph 13 of the outcome document of the Durban Review Conference reaffirms that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law, as should be the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts.</p>
<p>Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai A/HRC/17/40 (17th Human Rights Council session, June 2011)</p>	<p>III. Discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status</p> <p>25. Over the past three years, the Special Rapporteur has recalled that racial discrimination affects individuals in all societies and regions of the world. While the manifestations of racism may vary in nature and degree depending on the historical, geographical and cultural context, all individuals, regardless of their race, colour, descent or national or ethnic origin, should be offered robust and effective protection against discrimination. In this regard, the Special Rapporteur highlighted last year at the General Assembly that since the 2001 World Conference against Racism, the issue of discrimination based on descent has been on the international agenda. He has noted that the main human rights bodies working in the area of racism and discrimination have clearly stated that the prohibition of this type of discrimination falls within the scope of existing instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention). The Special Rapporteur has also referred to the draft principles and guidelines for the effective elimination of discrimination based on work and descent and have encouraged States to engage in substantive discussions on this topic and eventually rally around these draft principles.</p> <p>26. The Special Rapporteur has associated himself with the position taken by the Committee on the Elimination of Racial Discrimination, which, in its concluding observations, has stated that “the term ‘descent’ in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of scheduled castes and scheduled tribes falls within the scope of the Convention” (CERD/C/304/Add.13, para. 14). The Committee also stated that “discrimination on the grounds of caste constituted a form of racial discrimination” (A/64/271, para. 57) and that “the term ‘descent’ had its own meaning and was not to be confused with race or ethnic or national origin” (CERD/C/304/Add.114, para. 8). More broadly, in its general recommendation No. 29 (2002) on article 1, paragraph 1 (descent), the Committee further clarified its position by “strongly reaffirming 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 equal enjoyment of human rights” (preamble).</p> <p>27. Within the context of the Durban Review Conference, the Special Rapporteur highlighted his serious concern about an estimated 250</p>

million people around the world being at risk of human rights violations on the grounds of caste and other systems based on inherited status.⁵⁰ He expressed concern at reports of the prohibition of or limitations on the ability to alter inherited status; socially enforced restrictions on marriage outside the community; public and private segregation, including in housing and education, and access to public spaces and places of worship and public sources of food and water; limitations on the freedom to renounce inherited or degrading occupations or hazardous work; and subjection to debt and bondage.

28. The Special Rapporteur reaffirmed that the legal framework on discrimination based on descent is unambiguous but is not properly implemented. The vital first step is for States to recognize that discrimination on the grounds of descent constitutes a form of racial discrimination prohibited by the Convention. Without such recognition it is not possible to effectively address the serious human rights violations and discrimination against individuals and groups on the grounds of caste and other systems of inherited status (A/64/271, para. 58). States should also raise awareness and challenge long-entrenched perceptions to help shape public opinion towards fairer and more equitable societies.

29. Despite Government efforts to eradicate this type of discrimination through constitutional guarantees, legislation and affirmative action programmes, caste-based discrimination remains deplorably widespread and deeply rooted. Victims face structural discrimination, locking them in a persistent and vicious cycle of poverty and marginalization.

30. The problem is neither confined to one geographical area nor exclusively practised within one particular religion or belief system. It is found in all geographical regions, including within diaspora communities.

A. Manifestations

31. Common denominators among victims of this kind of discrimination in the forthcoming examples include, inter alia, untouchability, which in some cases prevents them from using the same public wells or water taps, drinking from the same cups in tea stalls, or visiting the same temples as members of higher castes or of noble clans; occupational segregation, which impairs their access to employment, restricting them to traditionally assigned jobs (generally sweeping and manual scavenging); enforced endogamy, thus limiting intermarriage; severe restrictions on commensality; and social ostracism, including social boycotts and blockades.

1. Caste-based occupations and untouchability

32. Discrimination against members of the affected groups manifests itself in work or occupation. Designated tasks considered ritually polluting and unclean to others in the social system further marginalize them as they are considered “untouchables” based on their employment. Untouchability has been banned in many countries (along with caste-based discrimination), but notions of impurity and pollution linked to jobs continue to persist through descent-based discrimination. Therefore, the notion of pollution ascribed through work is intertwined with caste-based occupations, which include sweeping and manual scavenging (the cleaning of excreta from dry latrines).

33. Bonded labour and forced prostitution disproportionately affect those in lower castes, with a large number of Dalits in South Asia making up the majority of people in domestic bonded labour. A large number of victims of human trafficking, sexual slavery and other forms of labour exploitation are members of low castes. Wage discrimination and discrimination in hiring are prevalent.

2. Multiple discrimination

34. Multiple discrimination compounds the severity of the plight of low castes. Sometimes lower caste societies form part of a religious minority. For instance, in Pakistan victims of discrimination on the basis of caste, descent and occupation are also disadvantaged as they are members of the Hindu minority referred to as “scheduled castes” (Dalits).

35. Dalits also experience segregation in access to housing; most live below the poverty line, earn less than the minimum wage and have no access to education. They suffer from numerous diseases, not least because of lack of access to safe drinking water and sanitation, and sometimes face discrimination in accessing public-health facilities (A/HRC/15/55 and Corr. 1, para. 25). Pervasive discrimination keeps them poor, uneducated, in terrible living conditions and in menial jobs (ibid., para. 26).

36. Discriminated against in terms of education (CERD/C/IND/CO/19, para. 25), children of lower castes are among the most vulnerable, facing recruitment as child labour, soldiers or as sex workers, and rampant torture and corporal punishment. Trafficking (ibid) and the sale of children, especially young girls, and infanticide of female children are other multiple forms of discrimination.

37. Women and girls face multiple discrimination, including through sexual exploitation or forced prostitution (A/HRC/7/19 and Corr. 1, para. 71). Women are socio-economically positioned at the bottom of the caste, gender and class hierarchy, and face violence in their family and communities, and from actors in other castes. Women in Dalit Communities in Asia are subjected to physical abuse, sexual harassment, trafficking and sexual violence (E/CN.4/Sub.2/2001/16, para. 45). Violations of land and property rights also affect these women (A/HRC/10/7/Add.1, para. 52), who suffer disproportionately in terms of health care, education, and subsistence wages. Dalit women in India and Nepal make up the majority of landless labourers and scavengers.

38. The practice of devadasi (in which girls are pledged for life to temples at an early age by parents in return for heavenly favours and to placate the gods) continues in India. However, once women are ceremonially “dedicated”, they are forced to become prostitutes for upper-caste community members.⁵⁵ Recently, most devadasis have ended up working in the sex trade industry. In some cases, sexual violence is linked to debt bondage.⁵⁶ In Nepal, badis are viewed as a prostitution caste. Many Dalit women and girls, including badis, are trafficked into sex work. In Pakistan, it is reported that rape of female bonded labourers is one of the most pressing problems facing the movement to end debt bondage. In Mauritania, women referred to as

“slaves” are often forced to remain with their “masters” as they are threatened with separation from their children if they escape.

Intermarriage

39. Discrimination based on caste and analogous systems of inherited status permeates all aspects of life, including marriage. Seen as a method of “status advancement” for some in the lower castes, intermarriage is a way to dispel the stereotypes and persistent artificial divisions between castes. However, this practice is condemned and socially discouraged (E/CN.4/Sub.2/2001/16, para. 8) in a number of countries including India, Japan, Senegal, Sri Lanka and among members of the South Asian diaspora (E/CN.4/Sub.2/2004/31, para. 37). Intermarriage can lead to violent reprisals from the families.

Religious conversion

40. Religious conversion is viewed as a way of escaping this kind of discrimination. However, in certain countries it permeates religious communities. Despite constitutional provisions and legal measures to protect the rights of members of scheduled castes and scheduled tribes, de facto segregation and discrimination persist.

41. In some countries, members of discriminated castes who convert to other religions lose out on the basic safeguards provided to them in policies of affirmative action, while the previous caste status and related social bias remains at the social level. Such is the case in India. Unlike converts who become Buddhists or Sikhs (CERD/C/IND/CO/19, p. 21), Dalits who convert to Islam or to Christianity reportedly lose their entitlement under affirmative action programmes (A/HRC/10/8/Add.3, para. 28), including the system of reservation (a quota system of posts reserved in employment in Government, public sector units, and all public and private educational institutions).

B. Good practices and contemporary challenges

1. International

Sub-Commission on the Promotion and Protection of Human Rights

42. The Sub-Commission on the Promotion and Protection of Human Rights invested efforts to address discrimination based on work and descent. Four substantive reports and a draft set of principles and guidelines for the elimination of discrimination based on work and descent were considered by this body. These draft principles⁶¹ have been cited and referred to, on various occasions, by treaty bodies, special procedures, civil society and national human rights institutions.

2. National

43. To better illustrate manifestations of this form of discrimination, information has been collected from various sources and geographical regions. The identification of challenges and good practices has been done on the basis of publicly available information.

(a) Asia

44. The Special Rapporteur recognizes the efforts of countries that have adopted legislation to counter discrimination based on work and descent. A number of national constitutions list caste within their articles on non-discrimination.

45. The Constitution of India specifically provides for the abolition of the practice of untouchability. Constitutional bodies, special legislative measures and executive orders, a national commission and State institutions were established to protect scheduled castes and help them seek redress for violations. The Indian Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and the subsequent addition in 1995 were enacted to protect these castes. Despite this, the practice of untouchability remains a part of rural India.

46. The Government of India has committed itself to developing policies aimed at the advancement of the Dalit population. The Special Central Assistance to Scheduled Castes Sub Plan is an example, as is the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993. Despite this Act and Government investment, the National Scheme of Liberation and Rehabilitation of Scavengers and their Dependants has failed to achieve its objectives.

47. In Nepal, discrimination based on caste and on ethnicity persists, particularly in less developed and more remote areas. The Interim Constitution and the Civil Code criminalize discrimination on the basis of caste and penalize acts that perpetuate untouchability with imprisonment or fines, but there are considerable gaps in enforcement and implementation of anti-discrimination laws. Marginalized groups, including Dalits, face socio-economic and cultural obstacles to access justice. The Government has reported increased expenditure on social measures at the local government level and has implemented awareness-raising programmes and legal safeguards (A/HRC/16/23, para. 41).

48. The current legal framework has proved inadequate to effectively curb caste-based discriminatory practices or to hold perpetrators accountable. Due to the vagueness of provisions of the Civil Code, Government officials fail to view specific acts of discrimination as crimes and to take appropriate action. The submission of the draft bill on caste-based discrimination and untouchability crime elimination and punishment to Parliament in July 2009 is a positive development (A/HRC/16/23, paras. 54-55).

49. The Constitution of Bangladesh prohibits discrimination on grounds of race, religion, caste or sex, and states that no one can be detrimentally affected in respect of life, liberty, body, reputation or property (part III, art. 31). The pattern of discrimination against occupational groups related to caste systems has been recognized in the National Strategies for Accelerated Poverty Reduction. In the strategies, the Government envisioned that disadvantaged and stigmatized groups could be included into the mainstream by allowing their participation in socio-economic activities. While this is a strong step, more practical action is needed to redress this discrimination, such as the enforcement of current laws and the creation of a commission mandated to address concerns related to the lower castes.

50. In Sri Lanka there are two caste systems: one for the Sinhalese and one for the Tamils (E/CN.4/Sub.2/2001/16, para. 28). Caste differentiation occurs in both of Sri Lanka's main Tamil communities.⁶⁴ Caste-based discrimination is sometimes applied to non-Hindus—

including Tamil Christian and Muslim converts and members of other minority groups. Caste differences between Indian-origin Tamil plantation workers also remain prominent. Untouchables are made to perform specific tasks during Hindu rituals that are particular to their low-caste status.

51. In 1957, the Government passed the Prevention of Social Disabilities Act, making it an offense to deny access to various public places to persons by reason of their caste. A 1971 amendment imposed stiffer punishments for the commission of these offenses. The 1978 Constitution of Sri Lanka does not provide for community-based affirmative action, but does prohibit discrimination on the grounds of caste, including caste-based restrictions on access to public places, including places of worship of one's own religion. However, serious problems remain.

52. In Japan, discrimination against Buraku, also known as eta ("pollution abundant" or "unclean"), persists despite the official abolition of the Buraku system by the Emancipation Edict of 1871 and other Government measures. Nevertheless, the implementation of special policy measures, based on the Law on Special Measures of 1969 aimed at improving the living environment of Buraku districts and improving access to employment and education for Buraku (E/CN.4/2006/16/Add.2 and Corr. 1, para. 15), gave positive results. Other achievements include the increase in the rate of Buraku children going to senior high school, and a certain increase of public understanding of the problems facing Buraku.

53. The only provision in national legislation prohibiting racial discrimination is article 14 of the Constitution, but its provisions are not considered by courts to be self-executing. Since the provisions of the Convention are also considered to be not self-executing, there is no provision in national legislation that outlaws racial discrimination and provides for a judicial remedy for the victims (E/CN.4/2006/16/Add.2 and Corr. 1, para. 11).

54. The governmental strategy to fight discriminatory mentality against Buraku and other groups is carried out principally through human rights education policies promoted by the Ministry of Education (*ibid.*, para. 16). However, there is still no public authority specifically mandated to deal with burakumin discrimination.

55. The practice of hiring investigation or detective agencies to investigate the personal backgrounds of people to identify whether someone is of Buraku origin is not unusual in Japan. Some companies even continue to use "Buraku lists" (*ibid.*, para. 21).

(b) Africa

56. Descent-based discrimination is mainly of three types in Africa. First are caste systems based on "occupational specialization of endogamous groups, in which membership is based on ascription and between which social distance is regulated by the concept of pollution".⁶⁶ The second is discrimination based on real or perceived descent from slaves, leaving many in "virtual" slavery, unable to leave their owner's employ for fear of reprisals or starvation. The third is against the hunter-gatherer societies and their descendants. This

marginalization may contain aspects of a purity-pollution dyad, as well as degrees of real or perceived occupation specialization.

57. Many African states have adopted measures to tackle caste-based discrimination. Some have adopted constitutional provisions guaranteeing freedom from discrimination. Others have enacted laws banning caste discrimination and slavery. However, these provisions have not been enforced.

58. In Nigeria, discrimination against Osu descendants remains a concern. Osu people were historically “owned” by deities among communities in Igboland, in south-east Nigeria. They were dedicated and “sacrificed” to these gods and were forced to live on the outskirts of villages to be the target of any bad luck that might occur. Being an Osu is a position ascribed at birth, based on descent.

59. Chapter IV, article 42, of the Constitution guarantees the right to freedom from discrimination for every citizen of Nigeria. In addition, the 1958 Osu Abolition Law legally abolished work- and descent-based discrimination. However, concerns remain about persistent allegations that members of Osu and other similar communities are still subjected to social exclusion, segregation and mistreatment, as well as discrimination in employment and marriage (CERD/C/NGA/CO/18, para. 15). Since the enactment of the Osu Abolition Law, no cases have been prosecuted in connection with the law because no claims of its violation have been made (CERD/C/SR.1720, para. 3). In this regard, the Committee on the Elimination of Racial Discrimination has made recommendations to Nigeria (CERD/C/NGA/CO/18, para. 15).

60. Caste systems exist within several ethnic groups in Senegal. All characteristics of caste can be found among the Wolof community, principally divided between the geer and the neeno. The Constitution of Senegal proclaims the right of all citizens to equal protection of the law regardless of race, religion, sex, or origin, a reference to one’s caste background (art. 1), and prohibits all acts of racial, ethnic and religious discrimination (art. 5). However, the extent to which neeno castes approach the courts for legal redress on discrimination claims is negligible.

61. In Somalia, society is divided into patrilineal segmented and ranked clan groups. Among Somalia’s minorities, the “occupational groups” include Midgan (or Madhiban), Tumul and Yibro.⁷¹ These groups are also known as “sab”, a collective term for “lowcaste”. Tumul are traditionally blacksmiths; Yibro, ritual specialists; and Midgan, traditionally hunters and leatherworkers, but who also undertook various arts and craft work, male circumcision and female genital mutilation. The few educated members of occupational groups work in any chosen field, but most work in manual and service jobs.

The occupations of the sab groups are generally regarded as polluting. The sab groups are also feared and avoided as they have a reputation for occult practices. With the disappearance of their traditional lifestyles, and as a result of conflict, many have moved to urban settlements or internally displaced persons camps or fled to refugee camps in neighbouring countries. It is also reported that members of sab groups in

the Somali refugee diaspora continue to suffer discrimination from members of other Somali clans.

62. The situation of minorities varies in terms of geographical areas. In Somaliland, article 8, paragraph 1, of the Constitution of May 2001 states that all citizens “shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property, status, opinion, etc”. Under article 8, paragraph 2, “precedence and discrimination on grounds of ethnicity, clan affiliation, birth and residence is prohibited”; and “programmes aimed at eradicating long lasting bad practices shall be a national obligation”. However, there is no specific antidiscrimination legislation. Puntland has provided little protection or assistance to minorities and the parliament has no seats reserved for small minority communities, including for Madhiban.

(c) Other parts of the world and the diaspora
Middle East

63. In Yemen, work- and descent-based discrimination affects the Akhdam (“servant” or “the marginalized ones”) social group. Traditionally, land was the most important resource and those who did not own agricultural land worked in marginal occupations and services, and became part of the servant class (CERD/C/YEM/16, para. 159). Typical Akhdam occupational roles include garbage collection, street sweeping, and cleaning toilets and drains. They are often referred to generically as “sweepers” and are widely regarded as being dirty, immoral and dependent. The “low social status of this group stems from the members occupation as well as their [reputed] ethnic origins” (E/CN.4/Sub.2/2003/24, paras. 31-34). Dominant social opinion considers their men unscrupulous, lazy, unfit and unable to hold respectful jobs. The women are often stereotyped as promiscuous, unclean and leading lives as beggars and even prostitutes and children are considered to belong to a social category of so-called “servants” (E/CN.4/Sub.2/2004/31, para. 32).

64. The Yemeni Constitution maintains a bill of rights guaranteeing a wide range of rights and freedoms (arts. 41-61) to “all citizens”. It also provides for equal opportunities in all economic, social, political and cultural activities (art. 24) and guarantees equal treatment before the Law. According to article 5 of the Code of Criminal Procedure, “citizens are equal before the law and an individual may not be punished or harmed on grounds of nationality, race, origin, language, belief, occupation, standard of education or social status” (CCPR/C/YEM/2001/3, para. 9). However, de facto discrimination persists. The Constitution is neither implemented nor adequate to address the specific discrimination against this minority.

65. The Government looks at the issue of marginalization of the “servant class” from a socio-economic perspective, since the legislative framework does not discriminate among citizens (CERD/C/YEM/16, para. 160).

Diaspora communities

66. Discrimination on the basis of work and descent continues to affect diaspora communities whose original cultures and traditions include aspects of inherited social exclusion. For example, the caste system has migrated with the South Asian diaspora and is observed, to varying degrees, in different geographical regions. Some reports indicate ongoing discrimination against Midgan-Madibhan in the Somali diaspora, and in certain West African diaspora communities (E/CN.4/Sub.2/2004/31, para. 35).

67. Despite the limited information available on the issue, the Special Rapporteur has identified a good practice regarding the diaspora community in the United Kingdom, where the previous anti-discrimination legal regime has been replaced by the Equality Act 2010. This legislative framework aims to protect the rights of individuals and advance equality of opportunity for all. Initially, the Act covered nine protected characteristics (sex, gender reassignment, race, religion or belief, age, disability, sexual orientation, marriage and civil partnership, and pregnancy and maternity) in areas such as work, education and goods and services. It makes provision for the advancement of equality, through the public sector equality duty and through positive action.

68. During the passage of the Equality Bill through Parliament, the Government considered that available evidence did not indicate that caste discrimination was a significant problem in the United Kingdom in the areas covered by discrimination legislation; however, it acknowledged that the protected characteristics of race, religion and belief might not always allow an avenue of redress for caste discrimination. It accepted an amendment to the Equality Bill, inserting section 9 of the Act, which provides that a Minister may by order amend that section to provide for caste to be an aspect of race (and to provide for exceptions in the Act to apply, or not to apply, to caste).

V. Conclusions and recommendations

Discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status

85. The Special Rapporteur encountered difficulties in researching for the present report, particularly in the area of discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status. These difficulties included the paucity of sources and lack of recent public information, in particular regarding affected communities outside Asia. Further study of this issue is necessary.

86. Notwithstanding the existence of international legal obligations to protect against discrimination based on work and descent, certain Governments have failed to implement such obligations effectively and have, in some instances, sidestepped the question of caste discrimination by claiming that it does not fall under the scope of the international conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, in contrast to the opinion of the Committee on the Elimination of Racial Discrimination.

87. However, the Special Rapporteur notes with satisfaction that some Governments have taken initiatives to address the problems facing

communities affected by discrimination based on work and descent, and encourage them to continue their efforts, share best practices and take the lead in regional and international initiatives to eliminate this form of discrimination.

88. In several cases, the Special Rapporteur notes that shortcomings do not stem only from Governments and institutions but from the population itself, including within communities considered of lower caste or status. He recommends that measures with regard to the legal framework be taken hand-in-hand with awareness raising, with a special emphasis on the judiciary, police and civil service, to ensure effective implementation and enforcement of the law by the police and civil service to ensure access to justice and right to an effective remedy for victims.

89. The Special Rapporteur:

(a) Encourages the participation of Governments and civil society in broad local and national consultations on discrimination based on work and descent;

(b) Calls upon States to foster the empowerment of victims, and especially women;

(c) Recommends the collection of disaggregated data, on a regular basis, to be able to identify the number of people affected and design appropriate strategies to fight this kind of discrimination.

90. Moreover, the Special Rapporteur recommends:

(a) The enactment of laws and consistent implementation of existing laws, including the monitoring of domestic legal provisions as recommended by treaty bodies and other Special Rapporteurs. The general measures contained in general recommendation No. 29 (2002) of the Committee on the Elimination of Racial Discrimination should also be implemented. Specific legislation to outlaw direct and indirect racial discrimination against the affected groups is recommended;

(b) The continued use of the draft principles and guidelines on discrimination based on work and descent as a guiding framework for the elaboration of effective measures to be taken by States to fulfil international legal obligations, including the duty of Governments to engage in genuine efforts to dispel the prejudicial beliefs that constitute, support and reinforce discrimination based on work and descent, including notions of untouchability;

(c) That, where appropriate and taking into consideration the specific situation of each country, the design and implementation of affirmative action measures or programmes, including quota systems in the areas of education and employment, be considered.

91. The Special Rapporteur invites Governments:

(a) To engage in programmes promoting capacity-building and technical assistance through bilateral, regional and international cooperation aiming at the elimination of discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status;

(b) To implement recommendations of United Nations human rights mechanisms, civil society and NHRIs pertaining to patterns of human

	<p>rights violations against the so-called lower castes, and, where necessary, to expand the mandates of NHRIs to ensure appropriate monitoring and follow up to recommendations;</p> <p>(c) To consider creating a consultative body of regional human rights institutions to study the issue and raise regional awareness;</p> <p>(d) To include information on the issue of discrimination based on caste and other analogous systems of inherited status in their reports to United Nations human rights bodies.</p> <p>92. The Special Rapporteur recommends that the full spectrum of special procedures address the issue of discrimination based on caste and other analogous systems of inherited status in the context of their respective mandates.</p>
<p>Statement by the Special Rapporteur on contemporary forms of racism Statement (8th session of the Intergovernmental Working Group on the Implementation of the Durban Declaration, October 2010)</p>	<p>At the 8th session of this Working Group in 2010, the Special Rapporteur made a statement on “Structural discrimination: definitions, approaches and trends.” He expressed his serious concern about the continuing existence of the caste system and described caste discrimination as a form of “societal” structural racial discrimination.</p> <p>“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”.</p> <p>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.” (...)</p> <p>“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.”</p>
<p>Report of the Special Rapporteur on contemporary forms of racism</p>	<p>The report (A/HRC/14/43) aims at providing an analysis of how racism, racial discrimination and conflict interrelate. Nepal is used as an example</p>

<p>A/HRC/14/43 (14th HRC session, June 2010)</p>	<p>where the ethnic or racial dimension of a conflict has been acknowledged.</p> <p>IV. Racism, racial discrimination, xenophobia and related intolerance in post-conflict situations</p> <p>A. Acknowledging the ethnic or racial dimension of a conflict</p> <p>33. A conflict may be efficiently resolved only if its causes are adequately identified and addressed. Accordingly, the resolution of an ethnic conflict needs to acknowledge and address the ethnic or racial dimension of the conflict. Including those aspects will help to frame appropriate solutions and establish a clear mandate for those in charge of monitoring or contributing to the implementation of related peace agreements. In this regard, the peace agreements concluded in Burundi and in Nepal, described briefly below, are instructive. (...)</p> <p>37. The Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) is another example of an agreement in which the ethnic dimension of a conflict was recognized and addressed. The Parties agreed that the State would be restructured in an inclusive, democratic and forward-looking manner “in order to end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities (Janajatis), Terai communities (Madheshis), oppressed, neglected and minority communities and the backward areas” (para. 3.5) and they reaffirmed that “no individual shall be discriminated on the basis of colour, gender, language, religion, age, race, nationality or social origin, property, disability, birth and other status and thought or belief” (para. 7.1.1).</p>
<p>Statement by the Special Rapporteur on contemporary forms of racism Statement (64th session of the UN General Assembly, November 2009)</p>	<p>At the 64th session of the UN General Assembly, the Special Rapporteur presented his Interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/64/271) – see abstract below. In his presentation on 2 November 2009, he expressed concern about caste discrimination, referred to the draft UN principles and guidelines to eliminate caste discrimination, and urged States to take action on them.</p> <p>“Racial discrimination unfortunately affects individuals in all societies and regions of the world. While the manifestations of racism may vary in degree and nature depending on the historical, graphical and cultural context, all individuals, regardless of their race, colour, descent or national or ethnic origin, should be offered robust and effective protection against racial discrimination. In this regard, I was particularly pleased at the recent positive developments within the United Nations on the question of discrimination based on work and descent. Allow me here to refer to the “Draft UN principles and guidelines to eliminate caste discrimination” which were presented in Geneva in last September, with the support of the Office of the High Commissioner for Human Rights and which were endorsed by the Government of Nepal. I have already expressed my serious concerns about this form of discrimination and have in this respect associated myself with the clear position taken by the Committee on the Elimination of Racial Discrimination. As said two weeks</p>

	<p>ago by the UN High Commissioner for Human Rights, “the time has come to eradicate the shameful concept of caste”. It is therefore my hope that in the coming months, States will engage in substantive discussions on this topic and will eventually rally around these draft principles and guidelines to eliminate caste-based discrimination.”</p>
<p>Interim report of the Special Rapporteur on contemporary forms of racism A/64/271 (64th session of the UN General Assembly, 2009)</p>	<p>In an Interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/64/271) to the UN General Assembly, the Special Rapporteur made extensive references to descent-based discrimination as a thematic issue addressed through his participation in a side event at the Durban Review Conference. He also mentions that he has re-issued requests for country visits to India, Nepal and Bangladesh since he took over in 2008.</p> <p>Country visits</p> <p>10. Following his appointment in August 2008, the Special Rapporteur sent formal requests to visit Bangladesh, the Plurinational State of Bolivia, Bosnia and Herzegovina, Germany, India, Israel, Malaysia, Mexico, Nepal, South Africa, the Sudan and the United Arab Emirates. The Special Rapporteur would like to acknowledge the letters of invitations extended to him by the Plurinational State of Bolivia and by Bosnia and Herzegovina. While he has not been able to honour these invitations yet, the Special Rapporteur hopes that he will be able to do so in the near future.</p> <p>C. Thematic issues addressed by the Special Rapporteur through his participation in conferences, seminars and other meetings</p> <p>4. Discrimination based on descent</p> <p>54. During the Durban Review Conference, the Special Rapporteur participated in a side event on “Communities empowered to resist discrimination and exclusion”, organized by the International Movement against All Forms of Discrimination and Racism and Lutheran World Federation, on 22 April 2009.</p> <p>55. Recalling that the issue of discrimination based on descent was addressed by special procedures mandate holders in their joint contribution to the preparatory process of the Durban Review Conference (A/CONF.211/PC/WG.1/5), the Special Rapporteur highlighted that the mandate holders had already expressed their serious concern about this form of discrimination.</p> <p>56. The Special Rapporteur referred to the estimated 250 million people around the world being at risk of violations of civil, political, social, economic and cultural rights, including violence, marginalization and discrimination, on the grounds of systems based on inherited status. Human rights violations could occur in a wide array of areas, including prohibition or limitations on the ability to alter inherited status, socially enforced restrictions on marriage outside the community, public and private segregation, including in housing and education, and access to public spaces and places of worship and public sources of food and water, limitation of freedom to renounce inherited or degrading occupations or hazardous work, as well as subjection to debt and bondage.</p> <p>57. The Special Rapporteur recalled that since the 2001 World Conference against Racism, held in Durban, the issue of discrimination</p>

based on descent had been on the international agenda. Despite the objection of some States, the main human rights bodies working in the area of racism and discrimination had clearly stated that prohibition of this type of discrimination fell within the scope of existing instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination. In that regard, the Special Rapporteur specifically referred to the Committee on the Elimination of Racial Discrimination, which concluded at its forty-ninth session, that “the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention”. In addition, the Committee also stated that discrimination on the grounds of caste constituted a form of racial discrimination and that “the term ‘descent’ had its own meaning and was not to be confused with race or ethnic or national origin”. More broadly, in its general recommendation No. 29 (2002) concerning discrimination on the grounds of descent, the Committee further clarified its position by “strongly reaffirming 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 equal enjoyment of human rights”.

58. As such, the Special Rapporteur reaffirmed that the legal framework on discrimination based on descent is unambiguous. Yet, it remains to be implemented properly. Robust action was required from Governments in order to advance in the fight against discrimination based on descent. The vital first step in addressing this issue was for States to recognize that discrimination on the grounds of descent constituted a form of racial discrimination prohibited by the International Convention on the Elimination of All Forms of Discrimination. In the absence of such recognition it would not be possible to effectively address the serious human rights violations and discrimination suffered by individuals and groups on grounds of caste and other systems of inherited status.

IV. Conclusions and recommendations

59. In relation to the Durban Review Conference held from 20 to 24 April 2009, the Special Rapporteur hopes that the momentum gained during the review process will maintain its strength and that all pledges and commitments made in the outcome document of the Review Conference will be effectively implemented by States, which bear the primary responsibility in this respect. The Special Rapporteur recommends that concrete measures be identified at the domestic level and that a road map with realistic benchmarks be established by States in cooperation with their civil society for the implementation of the outcome document of the Conference.

63. In order to further clarify the existing links between race and poverty, the Special Rapporteur is of the view that it is necessary to collect ethnically disaggregated data. While he is fully aware of the arguments against the collection of such data, the Special Rapporteur recommends to shift from the debate on the need or not to collect ethnically disaggregated data to a thorough discussion on how to best collect them

	<p>in order to comply with international standards and to avoid the misuse or manipulation of these data.</p> <p>67. In order to provide effective protection to individuals around the world being at risk of violations of civil, political, social, economic and cultural rights on the grounds of systems based on inherited status, the Special Rapporteur would like to encourage an international recognition that discrimination on the grounds of descent constitutes a form of racial discrimination prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination.</p>
<p>Annual report submitted by Mr. Githu Muigai A/HRC/11/36 (11th HRC session, June 2009)</p>	<p>In his report presented to the Human Rights Council (A/HRC/11/36), the Special Rapporteur states that a central dimension of the fight against racism lies in the overlap between two key social indicators: class and race or ethnicity. Throughout his mandate, he intends to examine this question in depth in order to provide sound and policy-oriented recommendations to Member States (para. 16). He states that national data for many countries unambiguously show that racial or ethnic minorities are disproportionately affected by poverty; for example, in her report, the independent expert on minority issues (A/HRC/4/9) provides concrete examples of higher levels of poverty among some groups, including Dalits.</p> <p>The Special Rapporteur notes that the socio-economic vulnerability of minorities is generally the result of historic legacy, such as the impact of slavery in the American continent, systems of inherited status in other continents and also of systems of formalized and State-sponsored discrimination against minorities that were long in place in many parts of the world (para. 18).</p> <p>The Special Rapporteur intends to analyse specific measures further in future reports, in particular on three broad issues: the need for data-gathering that provides policymakers with reliable information concerning the socio-economic situation of minorities; the need to fully implement the obligation not to discriminate; and the need for special measures to redress historical imbalances (para. 19).</p> <p>The Special Rapporteur underlines the need for ethnically disaggregated data collection. “Without knowing which minority groups are more affected by poverty and lack of access to economic, social and cultural rights, devising specific public policies to redress these problems becomes virtually impossible. Lack of data means that minorities are officially “invisible” and that policies towards them, when existent, will be based on assumptions rather than on empirically sound information” (para. 21). We particularly welcome the Special Rapporteur’s suggestion to involve affected communities in all stages of the data collection exercise, including design and implementation.</p> <p>He also emphasizes the right to non-discrimination as a cornerstone and cross-cutting right that affects the enjoyment of all other human rights (para. 28). He mentions that discrimination on the provision of the right to education has also contributed to perpetuating imbalances among members of minorities, such as lower castes being prevented by schoolteachers from attending school.</p>

	<p>With regard to the promotion of non-discrimination, the Special Rapporteur welcomes the General Comment on non-discrimination drafted by the Committee on Economic, Social and Cultural Rights.</p>
<p>Mission report from country visit to Mauritania by Mr. Doudou Diène A/HRC/11/36/Add.2 (11th HRC session, June 2009)</p>	<p>The Special Rapporteur concludes that 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. A number of persistent features of Mauritanian society have given substance and depth to such discrimination over a long period of time, including: the central role of traditional slavery; the cultural and social entrenchment of the caste system (para. 64).</p> <p>Legal provisions against slavery</p> <p>22. Slavery has long been a problem in all ethnic communities in Mauritania. Differences of opinion exist even among those who admit that the practice continues to exist and has left its mark on contemporary Mauritanian society: some deny it exists in their community, but point the finger at other ethnic groups; others claim it is limited to the Arab-Berber community; still others say it also exists in the other communities but in the form of a caste-like system. [...]</p> <p>41. Most of the officials who met with the Special Rapporteur stated that slavery was no longer practised and had left merely traces, underpinned to a large extent by underdevelopment, poor living conditions and poverty. In order to eradicate these remnants of slavery - which in many cases were not very different from the problem of castes, which affected all communities - the authorities stressed the importance of the new law criminalizing and penalizing slavery. They noted that a number of supporting measures will be introduced to implement the law, including the creation of mechanisms for the social and economic reintegration of the victims of slavery and a wide-ranging public awareness campaign.</p> <p>45. The great majority of civil society representatives were convinced that racism, racial discrimination and intolerance are deeply rooted in Mauritanian society. They believe that the problem of slavery, the existence of castes and, more recently, political practices that have favoured the Arab dimension in the building of a national identity, have contributed to discrimination and created divisions among the various communities.</p> <p>V. RECOMMENDATIONS</p> <p>84. The commission should tackle the main issues in Mauritanian society which give rise to discrimination, including the issue of slavery and caste and political practices which, in recent years, have made ethnicity a political tool and have widened the gap between the various communities. It should be mandated, on the one hand, to draft a white paper on the status, root causes, manifestations and consequences of the discrimination which has scarred Mauritanian history and, on the other hand, to develop on that basis a national programme of action against all forms of discrimination to help counteract the consequences of the injustices and discrimination experienced by Mauritanian society.</p>

<p>Joint contribution prepared pursuant to decision PC.1/10 of the Preparatory Committee of the Durban Review Conference at its first session A/CONF.211/PC/WG.1/5 (1st session Preparatory Committee, September 2009)</p>	<p>The joint contribution (A/CONF.211/PC/WG.1/5) was prepared jointly by the UN Special Rapporteurs ahead of the Durban Review Conference. It contains the following separate section on caste discrimination. Discrimination on the grounds of caste and other systems of inherited status</p> <p>44. The Special Rapporteur on racism highlights his serious concern about discrimination on grounds of caste and other systems of inherited status. He notes that an estimated 250 million people around the world are at risk of violations of civil, political, social, economic and cultural rights, including violence, marginalization and discrimination, on the grounds of caste and other systems based on inherited status. He expresses his concern at reports of prohibition or limitations on ability to alter inherited status, socially enforced restrictions on marriage outside the community, public and private segregation, including in housing and education, and access to public spaces and places of worship and public sources of food and water, limitation of freedom to renounce inherited or degrading occupations or hazardous work, as well as subjection to debt and bondage.</p> <p>45. The Special Rapporteur on racism believes that the vital first step in addressing this issue is for Member States to recognize that discrimination on the grounds of caste and other systems of inherited status constitutes a form of discrimination prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In the absence of such recognition it will not be possible to effectively address the serious human rights violations and discrimination suffered by individuals and groups on grounds of caste and other systems of inherited status.</p> <p>46. The Special Rapporteur on racism welcomes the clear confirmation by the Committee on the Elimination of Racial Discrimination that the situation of scheduled castes and scheduled tribes falls within the scope of the ICERD and that discrimination on the grounds of caste constitutes a form of racial discrimination. The Committee has also confirmed that discrimination on grounds of caste constitutes racial discrimination and that the term “descent” has its own meaning and is not to be confused with race or ethnic or national origin.</p> <p>47. The Special Rapporteur on racism is aware that the views of large sections of the population in some countries are informed by ideas based on caste and other systems of inherited status. These views are ingrained in the minds of many and have developed over years and generations. The Special Rapporteur is convinced that Governments and political leaders have a key role in combating racism, racial discrimination, xenophobia and related intolerance. As such, they should take the initiative by raising awareness and challenging long-entrenched perceptions and helping to shape public opinion to move towards fairer societies based on the equality of all human beings. These initiatives should be further complemented by meaningful legislative amendments to ensure equality and prohibit caste-based discrimination.</p>
<p>Report submitted by Mr. Doudou Diène, former</p>	<p>This annual report (A/HRC/7/19) was the last made by Mr. Diène. In the report, the Special Rapporteur devotes an entire chapter to</p>

<p>Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance A/HRC/7/19 (7th HRC session, February 2008)</p>	<p>discrimination based on caste, which he considers to be implicit in his mandate.</p> <p>F. Discrimination on the grounds of caste</p> <p>69. According to highly credible estimations and studies, 250 million people around the world, particularly in Asia and Africa, are victims of discrimination on the grounds of caste or analogous systems of inherited status, and are constantly vulnerable to exclusion, marginalization and violence. The discrimination they suffer, which affects their civil and political rights as well as economic, social and cultural rights, takes the form of, inter alia: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, and access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited or degrading occupations or hazardous work; subjection to debt bondage; subjection to dehumanizing utterances referring to pollution or untouchability; or generalized lack of respect for their human dignity and equality.</p> <p>70. Since the World Conference against Racism in Durban, the issue of discrimination on the grounds of caste has been on the international agenda. Despite the objection of some member States, the main human rights bodies working in the area of racism and discrimination have stated clearly that prohibition of this type of discrimination falls within the scope of existing instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination. Thus, the Committee on the Elimination of Racial Discrimination (CERD), at its forty-ninth session, concluded that “the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention”. It also stated that discrimination on the grounds of caste constitutes a form of racial discrimination and that “the term ‘descent’ has its own meaning and is not to be confused with race or ethnic or national origin”. In its General Recommendation XXIX (2002) concerning discrimination on the grounds of descent, CERD further clarified its position by “strongly reaffirming 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 equal enjoyment of human rights”.</p> <p>71. In this context, women and girls are victims of multiple discrimination, including in certain cases sexual exploitation or forced prostitution. These specific examples of dual discrimination were already acknowledged in the Durban Declaration and Programme of Action, which states that “racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights”. Meaningful work in the areas of legislation, the judiciary and education must be accompanied by strong political will to put an end to this form of discrimination.</p>
<p>Addendum to annual report - summary of cases</p>	<p>The addendum to the annual report (A/HRC/7/19/Add.1) contains several references to communications transmitted to the Government of India</p>

**transmitted to Governments
and replies received**

A/HRC/7/19/Add.1
(7th HRC session, March
2008)

(para. 56-84) and Nepal (para. 118-126) and reiterates his request to visit the two countries, in particular to study the issue of caste-based discrimination.

INDIA

56. On 23 August 2007, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on the situation of human rights defenders regarding attacks on the Dalit communities, particularly women, in Somebhadra District, Uttar Pradesh, India.

64. On 19 December 2007, the Special Rapporteur, jointly with the Independent expert on minority issues, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences sent an allegation letter to the Government concerning allegations of violence against Dalit women in India.

65. According to information received, Dalit women and men suffer descent based discrimination in various aspects of their lives; they are also victims of violence and untouchability practices (based on notions of Dalits' supposed impurity) arising out of the caste system. While both men and women are discriminated and suffer from social exclusion, Dalit women are confronted with discrimination, exclusion and violence to a larger extent than men. They are not only discriminated by people of higher castes but also by men of their own communities. Violence against women in India is generally structured by relationships of power set in systematic caste, class and gender discrimination.

66. The case of Dalit women is specific because of their socio-economic positioning at the bottom of the caste, class and gender hierarchies. Dalit women face violence in the community and in their family, from State and private actors alike, belonging to various castes and socio-economic groupings, and of both sexes. The major forms of violence that Dalit women are subjected to are physical and verbal abuse, sexual harassment, abduction, and sexual violence, including rape.

67. It is alleged that on many occasions, cases of violence against Dalit women are not registered by the police, and opportunities for intervention in the legal system are inexistent due to a general lack of law enforcement. Women are unaware of the laws protecting their rights and their ignorance is easily exploited by perpetrators, and some members of the police and the judiciary. Allegedly, even when the cases are reported to the police and the perpetrators arrested, they are usually released on bail and women do not receive justice as a result.

68. The Indian government adopted the "Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act" in 1989, to prevent atrocities against Scheduled Castes and Tribes. According to this act, in cases of violence against Dalits, including physical or sexual violence against Dalit women, the police are obliged to register the complaints. However, according to information received, the police often refuse to

register complaints under this act or register them under a different act, because the act imposes high prison sentences and fines and the police may not agree with the purpose of the act and may try to protect the perpetrators (who may be their fellow caste members).

69. If a case is not registered under the Prevention of Atrocities Act, it is possible for the perpetrator to receive anticipatory bail which, especially in rape cases, in practice means that the case is generally not examined and prosecuted further. This goes against a Supreme Court judgment that ruled that anticipatory bail should not be available in cases within the Prevention of Atrocities Act (Case 1995-1198, State of M.P. & anr. vs. Respondent, Ram Krishna Balothia & anr, judgment of 6 February 1995). The Supreme Court also ruled that anticipatory bail can be denied for the purpose of investigation (Case 2005-326), which would apply to most rape cases, but this is allegedly not implemented in practice (Appeal (crl.) 326 of 2005, Adri Dharan Das v. State of West Bengal, judgment of 21 February 2005).

70. The Special Rapporteur presented to the Government allegations on specific cases of physical and sexual violence affecting 21 Dalit women or girls that occurred between August 2004 and April 2007, and which outlined the impunity that allegedly prevails with respect to ensuring protection and redress.

71. The Special Rapporteur regrets that no reply to his communications had been received from the Government of India at the time this report was finalized.

72. The Special Rapporteur expresses his utmost interest in receiving responses in regard to the allegations submitted and would be particularly interested to know whether these cases have resulted in any prosecutions of alleged perpetrators. In the event that no response is received from the Government, he will no longer treat the cases as mere allegations but as proven facts.

73. The Special Rapporteur wishes to refer to the invitation he requested to the Government of India in 2004 and 2006, which has remained unanswered, and reiterates his interest in visiting the country. The Special Rapporteur considers the issue of caste-based discrimination to be an integral part of his mandate, in line with the CERD's general recommendation XXIX which strongly reaffirms 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 equal enjoyment of human rights". In this regard, he wishes to refer to the chapter on caste-based discrimination in his 2008 general report to the 7th session to the Human Rights Council (A/HRC/7/19).

NEPAL

118. On 25 September 2007, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, as Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an allegation letter to the Government concerning Ms.

	<p>Uma Devi Badi, the coordinator of the “Badi Adhikari Sangharsa Samiti” (Badi community Struggle Committee), and women and male human rights defenders of the Badi community in Nepal.</p> <p>124. The Special Rapporteur wishes to refer to the invitation he requested to the Government of Nepal in 2004 and 2006, which has remained unanswered. The Special Rapporteur wishes to reiterate his interest in visiting the country, in particular to study the issue of caste-based discrimination, which he considers to be an integral part of his mandate, in line with CERD’s general recommendation XXIX. In this regard, he wishes to refer to the chapter on caste-based discrimination in his 2008 general report to the 7th session to the Human Rights Council (A/HRC/7/19).</p>
<p>Updated study by the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène on Political Platforms which promote or incite racial discrimination A/HRC/5/10 (5th HRC session, June 2007)</p>	<p>The report (A/HRC5/19) provides an update to the previous study from 2006 (E/CN.4/2006/54) submitted pursuant to Commission on Human Rights resolution 2005/36 on the incompatibility between democracy and racism. In the report the SR examines the situation of political platforms which promotes racial discrimination in a number of countries, including some visited or examined previously (e.g. Japan). In the section concerning racial discrimination and hate speech in Asia, the SR describes how caste discrimination remains deeply rooted in societies in India, Nepal, Bangladesh, Pakistan and Japan.</p> <p>35. In Asia’s many multi-ethnic, multicultural and multi-religious nation States, millions of people continue to be negatively affected by problems deriving from ethnic-nationalism, discrimination, xenophobia and related intolerance. Some political movements or even governments have overtly resorted to exclusionary ideologies, policies and practices in order to build political consensus. These platforms promote hostility between different groups on grounds of race, ethnicity, religion, indigenesness, statelessness or even migrant and/or refugee status. Vulnerable groups are, among others, indigenous populations, such as the Bihari in Bangladesh; the Burakumin as well as Korean and Chinese immigrants or nationals in Japan; the Karen, Shan and Rohingya peoples in Myanmar; groups in Nagaland, Mizoram and other regions in north-east India; and the Cordillerans in the Philippines. Some ethnic and religious problems occur not only within one State but also between neighbouring States and have been aggravated by some governments’ attempts to manipulate and stir up the ethnic aspirations of some groups.</p> <p>36. In India, the caste system remains a source of great inequality for millions, particularly the Dalits, in spite of constitutional and other legal instruments introduced over the years to fight it. While measures such as the quota system, introduced by law, have enabled many Dalits to access State institutions, discrimination remains culturally deep-rooted and a serious threat to social cohesion in India. Among the political platforms that incite inter-religious violence is the <i>Rashtriya Swayamsevak Sangh</i> or <i>RSS</i> (National Volunteer Corps) and its political wing, the <i>Bharatiya Janata Party (BJP)</i>. The underlying ideology of these organizations, represented by <i>Hindutva</i> (“Hinduness”), exacerbates the social and political situations of the traditionally oppressed, the Dalits and religious minorities. Its assertion of Hindu supremacy ignores deep-rooted caste, class, ethnic,</p>

	<p>linguistic and regional loyalties. In other countries of the region such as Pakistan and Nepal, caste-based discrimination continues to marginalize millions of individuals.</p> <p>37. In Japan, except for the anti-discrimination provision contained in article 14 of the Constitution, there are no other instruments that enforce the general principle of equality or sanction discriminatory acts committed by citizens, businesses or non-governmental organizations (NGOs). [...] The Special Rapporteur's report on Japan (E/CN.4/2006/16/Add.2) points out that racial discrimination and xenophobia affects three categories of people: national minorities (the Buraku people, the Ainu and the people of Okinawa); people and descendants of former Japanese colonies (Koreans and Chinese); foreigners and migrants from other Asian countries and the rest of the world [...]</p>
<p>Communications to/from Governments A/HRC/4/19/Add.1 (5th session of the HR Council, June 2007)</p>	<p>The addendum to the annual report (A/HRC/4/19/Add.1) is a summary of cases transmitted to Governments and replies received by the SR as an implementation of resolution 60/251 by the Human Rights Council. Several communications concerning caste-based discrimination has been sent by the SR to Governments in caste-affected countries, in particular India and Nepal. In this addendum the SR reiterates his request to visit India, Pakistan and Nepal to investigate forms of caste-based discrimination as previously inquired.</p> <p><u>INDIA</u></p> <p>Communications sent</p> <p>Several specific cases of abuse against Dalits are described in paragraphs 80-95.</p> <p>Reply from the Government</p> <p>96. On 29 May 2006, the Government of India replied to the communication sent by the Special Rapporteur on 11 May 2006 indicating the steps taken by the Government following the dispute that took place on 27 August 2005 between several members of the Jat and Dalit communities resulting in the death of one member of the Jat community. [...]</p> <p>97. The Government further explained that the National Human Rights Commission of India had taken <i>suo motu</i> cognizance of the incident. After considering the case, the Commission expressed appreciation for the sensitivity and promptness shown by the State Government of Haryana in awarding compensation, repairing and reconstructing the houses of the victims and taking action against those responsible. [...]</p> <p>Observations</p> <p>98. The Special Rapporteur thanks the Government of India for the response provided to the communication sent on 11 May 2006. In his view, the response confirms not only the political will but also the legal strategy of the Government to combat caste-based discrimination. However, he is particularly alarmed at the cultural depth of this form of discrimination in many parts of the countryside and by the continuing violence faced by the Dalit community.</p> <p>99. The Special Rapporteur regrets that no reply to the other communications had been received at the time this report was finalized.</p>

	<p>The Special Rapporteur intends to follow up on these cases. In the event that no response is received from the Government, he will no longer treat the cases as mere allegations but as proven facts. 100. The Special Rapporteur wishes to refer to the invitation to visit India which he requested from the Government in 2004 and 2006 and which has remained unanswered. The Special Rapporteur reiterates his interest in visiting India with a view to investigating all forms of racial discrimination, including caste-based discrimination, which he considers to be an integral part of his mandate, in the framework of a regional visit that would also cover Pakistan and Nepal.</p> <p>Follow-up to previously transmitted communications</p> <p>101. In the absence of an answer from the Government of India concerning his communication of 16 August 2005 (see E/CN.4/2006/16/Add.1, para. 33), the Special Rapporteur is forced to consider the following case no longer as allegations but as proven fact. [...]</p> <p><u>NEPAL</u></p> <p>Communications sent</p> <p>One communication was sent to the Government of Nepal on 10 October 2006 concerning attacks on members of the Dalit community in Doti District, Nepal. (see paragraph 128)</p> <p>Observations</p> <p>129. The Special Rapporteur regrets that no reply to his communications had been received from the Government of Nepal at the time this report was finalized.</p> <p>130. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as mere allegation but as proven fact.</p> <p>131. The Special Rapporteur refers to the invitation to visit Nepal that he requested from the Government in 2004 and 2006, which has remained unanswered. The Special Rapporteur reiterates his interest in visiting Nepal, in particular to study the issue of caste-based discrimination, which he considers to be an integral part of his mandate, in the framework of a regional visit that would also cover India and Pakistan.</p> <p>Follow-up to previously transmitted communications</p> <p>In a letter dated 4 January 2006, the Government responded to a communication sent on 17 November 2004 regarding the alleged rape of S.S. from Inruwa, Sunsari (see E/CN.4/2005/18/Add.1. para. 32) (see paragraph 132).</p>
<p>Annual Report 2006 E/CN.4/2006/16 (62nd CHR session)</p>	<p>Interestingly, the report (E/CN.4/2006/16) contains no specific reference to CBD but is mainly focusing on the tendencies created in the wake of the riots in France, including issues concerning Anti-Semitism and Islamophobia.</p> <p>Country visits: The SR mentions that he regrets that he has not yet received any response to his requests for country visits from the governments of India, Pakistan and Nepal.</p>

<p>Political platforms which promote or incite racial discrimination - Updated study 2006 E/CN.4/2006/54 (62nd CHR session)</p>	<p>In the report (E/CN.4/2006/54), the SR mentions in section B concerning “The issue of multiculturalism as the determining factor of the impact of the resurgence of racism on democracy” that:</p> <p>17. Within this context, cultural diversity has been understood and practised as establishing a radical difference and a hierarchy between races, cultures and communities. The religious or mythical legitimization of diversity and the social structures which have expressed it have thus led to the establishment of caste systems in Africa and in Asia. This hierarchical interpretation of ethnic, racial, cultural and religious diversity was theorized and legitimized by philosophers, intellectuals and scientists in Europe in the eighteenth and nineteenth centuries and exploited very deliberately by the political authorities as the ideological foundation of European colonial and imperial expansion. This hierarchical vision of humanity rests on two related concepts: the superiority of European culture and civilization and the civilizing goal of colonial domination. [...]</p> <p>The historic depth of the hierarchical diversity of the societies concerned is a reflection in time and space of the longevity of the feudal, colonial or imperial political systems from which they originate. Its penetration in social relations, personal attitudes and the collective subconscious is due to its justification, transmission and maturation by the dominant systems of values, education, literature and the means of information and communication.</p>
<p>Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène: Addendum: mission to Japan E/CN.4/2006/16/Add.2 (62nd CHR session)</p>	<p>The SR on racism visited Japan in 2005. The mission report was released in January 2006. From the report summary:</p> <p>“The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in pursuance of his mandate, visited Japan from 3 to 11 July 2005. He assessed the factors of discrimination that affect various minority groups, including minorities resulting from the caste-like class system, indigenous people, descendants of former Japanese colonies, foreigners and migrants workers. The Special Rapporteur concluded that there is racial discrimination and xenophobia in Japan, and that it affects three circles of discriminated groups: the national minorities – the Buraku people, the Ainu and the people of Okinawa; people and descendants of former Japanese colonies - Koreans and Chinese; foreigners and migrants from other Asian countries and from the rest of the world. The manifestations of such discrimination are first of all of a social and economic nature. All surveys show that minorities live in a situation of marginalization in their access to education, employment, health, housing, etc. Secondly, the discrimination is of a political nature: the national minorities are invisible in State institutions. Finally, there is profound discrimination of a cultural and historical nature, which affects principally the national minorities and the descendants of former Japanese colonies. This is mainly reflected in the poor recognition and transmission of the history of those communities and in the perpetuation of the existing discriminatory image of those groups.”</p>

	<p>On page 6, the SR refers directly to discrimination against the Buraku people:</p> <p>The caste-like class system</p> <p>7. During the feudal era of the Edo (1603-1867), a caste-like class system based on social and professional belonging was established. The humble people (<i>senmin</i>) were assigned such duties as disposing of dead cattle, leather production, being executioners and performers. Placed at the bottom of the system, they were designated as <i>eta</i> (extreme filth) and <i>hinin</i> (non-humans).</p> <p>In the late nineteenth century, the system was abolished, but a new class system was established, which again placed the most humble class (the <i>Buraku</i>, from the name of their district) at the bottom of the system. In the 1960s, following the claims of the Buraku Liberation League (BLL), the Government recognized the deep discrimination suffered by the Buraku people and adopted special measures to improve their living conditions.</p>
<p>Annual report 2005: Questionnaires to/from Governments E/CN.4/2005/18/Add.1 (61st CHR session of the Commission on HR)</p>	<p>Summary of cases transmitted to Governments and replies received (E/CN.4/2005/18/Add.1). The report refers to CBD in the case of the countries India and Nepal:</p> <p><u>INDIA</u></p> <p>17. On 8 June 2004 the Special Rapporteur, jointly with the Special Rapporteur on violence against women, sent a letter of allegation to the Government concerning a group of 200 people who attacked a Dalit settlement in the Kalapatti village of the Coimbatore district, Tamil Nadu, on 16 May 2004. [...]</p> <p><u>NEPAL</u></p> <p>31. On 19 October 2004, the Special Rapporteur sent a letter of allegation to the Government concerning information that on 6 September 2004 a ban on the use of public facilities was reportedly imposed on Chamar Dalits by the upper-caste villagers in the village of Bhagawatpur, because the Chamar Dalits allegedly refused to remove the carcasses, which had been regarded as their traditional work in the society for a long time. [...] At the time this communication was sent, no effective measure had been taken to protect the rights of the Dalits in the village.</p> <p>32. On 17 November 2004, the Special Rapporteur sent a letter of allegation to the Government concerning S.S., a Dalit girl aged 14, from 6 Inaruwa, Sunsari, who was allegedly raped and then murdered with impunity. [...] The suspects are reported to belong to upper-castes families and are sons of landlords in the village. It is reported that no further investigation was conducted. The one suspect who was held in police custody for two months was reportedly released when an alibi was established. Due to fear for their security, S.S.'s family have been forced to leave the village.</p> <p>Observations (Nepal):</p> <p>33. The Special Rapporteur regrets that no replies to his communications had been received from the Government of Nepal at the time this report was finalised.</p>

	<p>34. The Special Rapporteur intends to follow up on these cases. In the eventuality that no responses are received from the Government, he will no longer treat the cases as mere allegations but will include them in his next general report.</p>
<p>Interim report of Mr. Doudou Diène A/60/283 (60th GA Assembly)</p>	<p>This interim report sums up some of the contemporary forms of discrimination.</p> <p>In the report, he mentions his field mission to Japan and the lack of legislation against discrimination:</p> <p>“This report also covers the Special Rapporteur’s mission to Japan, at the conclusion of which he noted the existence of forms of discrimination against national minorities and foreign communities and the lack of a comprehensive legislation against racism and discrimination. The Special Rapporteur stresses the need for a vigorous political response from the Government and the enactment of legislation and an intellectual and ethical strategy to address the underlying cultural and historical causes of discrimination in Japan.”</p> <p>In section C, the discriminatory practises against the Buraku people in Japan are explained:</p> <p>“30. [...] Racism, discrimination and xenophobia are a reality in Japanese society. This discrimination affects, in different ways, three communities or groups: national minorities (Ainus, Burakumin and the people of Okinawa), the Korean and Chinese communities, and immigrants from Asia, the Middle East, Africa and Europe. [...] In this regard, Japan faces two major challenges: it must bring its internal social, human and cultural structures into line with its global dimension at the political and economic levels and, as a result, build a multicultural society. By inviting the Special Rapporteur to visit the country and facilitating his visit, movements and contacts, the Japanese Government has demonstrated its willingness to meet the serious challenges of racism, discrimination and xenophobia.”</p>