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PROMOTION AND PROTECTION OF HUMAN RIGHTS

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

*Pursuant to General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the Sub-Commission, were assumed, as of 19 June 2006, by the Human Rights Council. Consequently, the symbol series E/CN.4/Sub.2/_ , under which the Sub-Commission reported to the former Commission on Human Rights, has been replaced by the series A/HRC/Sub.1/_ as of 19 June 2006.

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Summary

The present progress report on the question of discrimination based on work and descent has been prepared pursuant to resolution 2005/22 in which the Sub-Commission approved the Special Rapporteurs' proposal to send the questionnaire annexed to the preliminary report, with improvements to be made taking into account in particular the comments and suggestions expressed during the discussions at the present session of the Sub-Commission, to Governments, national human rights institutions, relevant United Nations bodies and specialized agencies and non-governmental organizations. The Sub-Commission endorsed the Special Rapporteurs' proposals to hold a general consultation in Geneva in mid-March/April 2006 and to organize, if funding is available, two regional workshops, one in Asia and one in Africa, sometime before the fifty-eighth session of the Sub-Commission. The Sub-Commission also requested the Special Rapporteurs to reflect the results of the questionnaire, the general consultation and the regional workshops as well as of their analyses in the progress report to be submitted to the Sub-Commission at its fifty-eighth session. Finally, the Sub-Commission requested the Special Rapporteurs to continue to work on the drafting of a set of principles and guidelines for the effective elimination of discrimination based on work and descent, addressing all relevant actors, including Governments, local authorities, private sector entities, schools, religious institutions and the media, based on existing applicable standards and best practices and taking into account the framework proposed in the expanded working paper on discrimination based on work and descent submitted by Asbjorn Eide and Yozo Yokota. The present progress report contains in its main parts the analyses of the results of the questionnaire and a revised draft set of principles and guidelines. The report recommends that the Sub-Commission request the Human Rights Council to include the topic of discrimination based on work and descent among the studies to be conducted by the Sub-Commission. It further recommends that the Sub-Commission endorses the proposal to hold a general consultation meeting in Geneva in 2007 and two regional workshops, one in Asia and one in Africa in 2007.

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INTRODUCTION

A. MANDATE

1. At its fifty-seventh session, the Sub-Commission on the Promotion and Protection of Human Rights examined the preliminary report on the topic of discrimination based on work and descent (E/CN.4/Sub.2/2005/30, submitted by Yozo Yokota and Chin-Sung Chung as Special Rapporteurs pursuant to Sub-Commission resolution 2004/17. The preliminary report focused on the elaboration of a questionnaire to Governments, national human rights institutions, relevant organs and agencies of the United Nations system and non-governmental organizations for the purpose of identifying best practices and to obtain more comprehensive information on constitutional, legislative, judicial, administrative and educational measures taken to address discrimination based on work and descent.

2. In its resolution 2005/22, the Sub-Commission approved the Special Rapporteurs' proposal to send the questionnaire annexed to the preliminary report, with improvements made taking into account in particular the comments and suggestions expressed during the discussions at the fifty-seventh session of the Sub-Commission, to Governments, national human rights institutions, relevant United Nations bodies and specialized agencies and non-governmental organizations. Such questionnaire was sent out from the office of the High Commissioner for Human Rights in December 2005.

3. The Sub-Commission also endorsed the Special Rapporteurs' proposal to hold a general consultation in Geneva in mid-March/April 2006 and to organize, if funding is available, two regional workshops, one in Asia and the other in Africa, sometime before the fifty-eighth session of the Sub-Commission. The Special Rapporteurs regret that such consultation and regional workshops were not formally held due to the new developments regarding the establishment of the Human Rights Council and related dissolution of the Commission on Human Rights whose decisions were sine qua non for organizing such meetings. However, the International Dalit Solidarity Network, in collaboration with the International Movement against All Forms of Racial Discrimination and Racism (IMADR) and the office of the High Commissioner, organized an Informal Consultation on Discrimination Based on Work and Descent in Geneva on 13 and 14 March 2006. The office of the High Commissioner also attempted to organize in Kathmandu, Nepal, sometime in May to July 2006 a regional meeting on human rights, in which the issue of discrimination based on work and descent would be included as an important topic. This meeting unfortunately did not materialize due to political instability developing in Nepal.

4. The Sub-Commission further requested the Special Rapporteurs to "reflect the results of the questionnaire, the general consultation and the regional workshops as well as of their analyses in the progress report to be submitted to the Sub-Commission at its fifty-eighth session." The present progress report has been prepared in response to this request, but the Special Rapporteurs would wish to note that the progress report is prepared with certain constraints and difficulties described above.

Chapter I: Meaning and common features

5. The Special Rapporteurs are well aware that any attempt to define a term such as “discrimination based on work and descent” would encounter great difficulties. Because of the complexity of the issue of discrimination based on work and descent, which is deeply rooted in history, social and economic structure, pattern of personal value judgment and behavior, and emotional and psychological factors, it is perhaps unwise to attempt to define “discrimination based on work and descent” in a few lines. Nevertheless, it may be useful to have at least a brief and broad description of what “discrimination based on work and descent” means instead of its detailed and precise definition.

6. Accordingly, the Special Rapporteurs propose that, for the purpose of this study, “discrimination based on work and descent” is any distinction, exclusion, restriction or unfavorable treatment based on occupation, present or ancestral, and family or community origin, or any other related factors such as name, birth place, place of residence, and language, including dialect and accent.” This is not a perfect description and the Special Rapporteurs welcome any proposal to improve this description or better alternative.

7. In addition to the foregoing description of discrimination based on work and descent, it would be helpful and useful to understand better the nature of the issue if further common features of this type of discrimination are elaborated as follows:

- (a) Discrimination based on work and descent often accompanies a notion of impurity or pollution. The association of impurity or pollution in the concept of discrimination based on work and descent seems to be linked closely to the nature of one’s or one’s ancestors’ occupation. Generally, occupation connected with dead bodies and funerals, religious rituals, animal hunting and killing or making products using animal bodies such as meat, skin or bone, metal works or cleaning toilets and streets has been considered as impure or polluting and people in this sort of occupation, or persons regarded as descendants of such people, are considered as impure or polluted and thus become the targets of discrimination.
- (b) The forms of discrimination based on work and descent commonly include: prohibition of inter-marriage, physical segregation, social ostracism and excommunication, discriminatory practices in the employment and promotion, prohibitions or restrictions on access to public places such as restaurants, hospitals, buses and trains, water springs and common land, untouchability such as prohibition of physical contact and sharing of food or utensils, restrictions on access to educational facilities, religious buildings and sites, and religious ceremonies and verbal humiliation as well as physical attacks.
- (c) Discrimination based on work and descent is most notably practiced in South Asia but further studies have revealed that such discrimination widely exists in other parts of Asia and Africa. Such practices are also found in North and South Americas and Europe, particularly among the diasporas communities.
- (d) In many cases, discrimination based on work and descent has close connection with extreme poverty. The relationship seems to be a vicious circle. People discriminated

against on the basis of work and descent, are living in extreme poverty because they have little or no opportunity, for good employment nor access to social welfare schemes. And, because they live in extreme poverty, they are discriminated against. In some communities, people discriminated against on the grounds of work and descent and people living in extreme poverty are almost synonymous.

Chapter II: Prevention of Discrimination: International and Regional Human Rights Standards and norms

8. The principles of equality and non-discrimination are the foundational principles of the United Nations and these principles are to be realized by those member-states subscribing to the Charter "without distinction as to race, sex, language and religion". The same principles are to be seen in all the subsequent international human rights instruments beginning with the Universal Declaration of Human Rights which added, besides race, sex language and religion, "colour, political or other opinion, national or social origin, property, birth or other status." One of the earliest legally binding human rights treaties was the Convention on the Elimination of all Forms of Racial Discrimination which defined what constitutes racial discrimination as well as included among the distinctions, the question of discrimination based on descent, explicitly. All other human right treaties that have now entered into force incorporate the principles of equality and non-discrimination with clear specifications with reference to both civil, political, economic, social and cultural rights, as well as women's rights, child rights and migrant worker's rights. To this should be added the Convention against Torture which in its definition of torture included the principle of non-discrimination, prohibiting torture "for any reason based on discrimination of any kind." (Art. 1 paragraph 1). Thus the prevention of discrimination and its total elimination have been one of the most important objectives of the United Nations in the field of human rights as well as of all its bodies and that of the specialized agendas during its six decades of existence. Towards further emphasizing its primordial importance, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was established under the Commission on Human Rights. Even though renamed as the Sub-Commission on the Promotion and Protection of Human Rights, the Sub-commission has pursued rigorously its mandate on prevention of discrimination, updating continuously the understanding of the phenomenon of discrimination in all its manifestations, both past and present and arriving at an updating of existing norms and standards so as to be tuned towards the elimination of all forms of racial discriminations. The Special Rapporteurs have undertaken a review of existing international standards and their applicability. Besides, the existing treaties and norms, the Special Rapporteurs have looked into the contributions made by the treaty bodies with regard to equality and non-discrimination. The Special Rapporteurs took a particular note of the General Recommendation XXIX of the Committee on the Elimination of Racial Discrimination. on Article 1, paragraph 1, of the Convention relating to the word "descent". The general recommendation XXIX provides a comprehensive legal framework for the

elimination of the discrimination based on descent. Together with the ILO's expertise and contribution on elimination of discrimination based on work/occupation, there are adequate standards and norms towards the elimination of discrimination based on work and descent. These will be reflected in the principles and guidelines in Chapter IV proposed by the Special Rapporteurs. In this connection, the Special Rapporteurs have taken into consideration the attempts undertaken by the NGOs and the affected communities as well as those initiatives by concerned States.

9. In addition, the Special Rapporteurs have taken into account the relevant provisions of the following international instruments in preparing the progress report, in particular, in drafting the Revised Set of Principles and Guidelines included in Chapter IV:

(a) *The United Nations Charter: Arts. 1(3); 13(1)(b); 55(c); 76(c)*

(b) *The Universal Declaration of Human Rights (1948): Arts. 1; 2; 7; 8; 15(1); 21; 22*

(c) *Convention on the Prevention and Punishment of the Crime of Genocide (1948)*

(d) *International Covenant on Civil and Political Rights (1966): Arts. 2(1); 3; 26; 20(2); 24(1); 25;*

(e) *International Covenant on Economic, Social and Cultural Rights (1966): Arts. 2(2); 3; 7(a)(i)*

(f) *International Convention on the Elimination of all Forms of Racial Discrimination (1965): Arts. 1(1); 5; 6*

(g) *Convention on Elimination of All Forms of Discrimination against Women (1979): Arts. 1; 14; 15(2)*

(h) *Convention on Rights of the Child (1989): Arts. 2(1); 2(2); 32(1)*

(i) *Migrants Workers Convention (1990): Arts. 1(1); 7*

(j) *Convention against Torture (1984); Art. 1(1)*

(k) *UNESCO Convention against Discrimination in Education (1960): Art.1(1)*

10. From the responses to the questionnaire, a number of comments point towards discriminatory practices faced by affected communities at various levels. They constitute serious forms of human rights violations by both States and private actors. This calls for a review of other UN declarations relating to elimination of religious intolerance (access issue and denials), violence against women, administration of justice, trafficking, internal displacement, human rights

defenders, right to development, right to humanitarian assistance and non-discrimination, etc. The following instruments adopted by the United Nations should be considered in this connection.

(a) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

(b) Declaration on the Right to Development (1986).

(c) Declaration of the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

(d) Declaration on Human Rights Defenders (1998).

(e) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

11. Furthermore, the Special Rapporteurs looked at the legal provisions concerning human rights in the administration of justice in relation to the affected communities. Among others, the Special Rapporteurs found the following documents as relevant:

(a) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

(b) Basic Principles on the Role of Lawyers (1990)

(c) Guidelines on the Role of Prosecutors (1990)

12. The Special Rapporteurs have found that a number of ILO conventions have an important role play in eliminating some of the discriminatory practices imposed on affected communities leading to bonded labour, forced labour and child labour. These include:

(a) ILO Convention No. 105: Abolition of Forced Labour (1957)

(b) ILO Convention No. 29: Forced Labour (1930)

(c) ILO Convention No. 182: Abolition of Child Labour (1999)

(d) ILO Convention No. 111: Discrimination (Employment and Occupation) (1958)

13. There are also regional human rights instruments that are relevant in this study such as:

(a) African Charter on Human and Peoples' Rights (1981):0 Arts.2; 3;18(3); 19

(b) African Charter on the Rights and Welfare of the Child (1990): Arts. 3; 21(1)

(c) American Convention on Human Rights (1969) Arts. 1; 8(2); 24

(d) Additional Protocol to American Convention on Human Rights (1988): Art. 3

(e) *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994)*: Arts. 6; 7; 8; 9

(f) *European Convention on Human Rights (1950)* Art. 14: Protocol No. 12.

(g) *European Social Charter (1961) as revised in 1996*: Art. E under Part V

Chapter III: The Situations of Discrimination Based on Work and Descent and Measures Taken: Analyses of the Replies to the Questionnaire

A. Process and Statistics

14. That the phenomenon of discrimination based on work and descent exists and that it has persisted for centuries in a significant number of member States of the United Nations, has been observed and reported by various human rights mechanisms since the mid-nineties. Towards probing deeper into all its manifestations, particularly as experienced directly by the affected communities, the Special Rapporteurs, in accordance with resolution 2005/22 adopted at the 57th session of the Sub-commission (2005), sent out the questionnaires to all the member-states of the UN, the National Human Rights Institutions, the UN bodies and specialised agencies and the NGOs at the end of November 2005 through the Office of High Commissioner for Human Rights. By mid-March 2006, the responses were received from ten member-states, two National Human Rights Institutions from Fiji and Slovenia, one from the ILO, and fourteen from national and local NGOs, and from some individuals. The Special Rapporteurs are thankful to all those who have responded.

15. The Special Rapporteurs' mandate would have been more complete, if those member States in which the affected communities exist, had responded. Particularly, given the new impetus to UN human rights mechanism through the newly envisaged Human Rights Council, the Special Rapporteurs expected a better reception to their questionnaires from all the actors concerned. For example, the governments and NHRIs in those concerned countries, dealing with questions relating to such forms of discrimination confronting affected communities, could have provided much useful information. The same applies to most of the NGOs and other UN bodies and agencies. However, the Special Rapporteurs appreciate deeply the responses provided by those organisations from the affected communities themselves. This is an encouraging sign in bridging the gaps between stated and actual situations of discrimination based on work and descent.

B. The Types of Discriminatory Practices Identified

Basic nature of discrimination based on work and descent

16. Discrimination based on work and descent is a serious and pervasive problem that affects more than 260 million people in all geographical regions, in particular Asia and Africa. The

responses clearly demonstrate that discrimination penetrates all levels and dimensions of societies in those regions: from individuals' mind sets to laws, from everyday life to intellectual and philosophical discourse, from culture and custom to administration, from access to drinking water to market, and so forth. The affected communities, to better function in their allotted status, are quarantined and rendered invisible. Every society has such communities that are separated and marginalized and targeted for discrimination and violence. Discrimination is thus both internalized and institutionalized with its perpetuation solely based on work and descent.

17. Discrimination based on work and descent is deeply rooted in culture and society, and has been reproduced continuously, further reinforcing the atrocities in the process of social change. As explained by some responses from the affected communities, "for too long, discrimination based on work and descent has persisted due to under reporting, absence of political determination for change, and the chronic forms of disempowerment, disarticulation and social exclusion of those born with historically discredited identities," and therefore all future generations of such communities are potential victims, unless and until radical measures towards its elimination are systematically implemented by all the actors.

18. **Untouchability and its heredity:** One response to the questionnaire stated: "I appeared contaminated and they did not want to risk infection." The response portrays distinctly, the plight of affected communities suffering for centuries untouchability, the overarching framework and the essence of discrimination based on work and descent. The practice of untouchability has perpetuated through the ideas of pollution and impurity with a solid economic foundation and deeply interiorized. Thus the Nepalese indicates untouchability as social discrimination with multiple denials to use public facilities and restrictions on accessibility. The Indian Protection of Civil Rights Act of 1976 listed 18 types of discrimination related to untouchability, but there is no legal definition of untouchability in the legislation texts.*

As some of the responses point out, untouchability is a construct both culturally and ritually. It therefore is fluid enough to take on a whole range of forms. It is also exclusively hereditary, providing asymmetrical relationship between people. It has repeatedly been stated that one becomes untouchable precisely because one is a bearer of inherited pollution. The entire edifice amounts to cruel, degrading and inhuman treatment and goes against the inviolability of the

* In *Pakistan*, the affected communities are treated as impure and no laws have been passed prohibiting the practice of untouchability. In *Sri Lanka*, one such community is the *Rodhiya*, which literally means 'filth'. In *Bangladesh*, the affected communities belonging to the sweepers brought in during the British Raj lead a sub human life without sufficient facilities. In the *Somali region of Ethiopia*, the *Midgo* community is deemed to be impure, unlucky, sinful, polluting and thus meriting the disclaim, avoidance and abuse of others. In *Nigeria*, the *Osu*, are considered untouchable and socially rejected. Even the location of state sponsored community development project in an *Osu* area is to be abandoned because their (*Osu*) proximity to water resources made it unfit for human consumption. In *Kenya*, a subsection of the *Samburu*, known as the *Ilkunono* or blacksmiths, are despised and face severe forms of social discrimination. In *Yemen*, the *Al Akhdam* is a socially condemned group engaged in disposal of human waste and is hardly registered and treated as non citizens. Earlier reports by the experts have recorded such practices of untouchability in West Africa, North East Africa and in other areas including the diaspora communities in Europe and the America. The *Buraku* community (in *Japan*) indicated that discrimination against them still exists and is even increasing, treating them as dirty and requesting them to leave. In *India*, despite appropriate legislation towards abolition of untouchability, one of the groups from *Andhra Pradesh* listed 124 types of untouchability practices.

human person, heavily compromising her/his dignity. Thus some go as far as to list untouchability as “a crime against humanity.” All the entitlements are nullified, culminating in total deprivation of all rights. While segregation is the principal feature of the practices of untouchability, exploitation of labor and service of the “untouchables” by dominant castes has been also conducted, which means livings of those groups are not really separate each other but organically interdependent. Frequent violence against affected communities is main consequence of such ironic co-existence of segregation and exploitation.

19. **Segregation:** Marriage and employment are the two most serious fields of segregation. Intermarriage between different castes is rarely condoned. In case of intermarriage denial of kinship, beating and killing by the higher caste community are frequently enforced. In the diaspora communities, discrimination in marriage affairs is most serious. Those affected people are excluded from many occupations, especially from booming industrial sectors such as IT and jobs coming from foreign investment.

The spacial isolation of the affected communities and denial to access to public services are prevailed in those societies. The physical isolation in habitation is regulated through stringent imposition of boundary conditions. In rural area, the situation is more severe in that the persons belonging to this type of communities have no access to education and health services.[†]

Their access to resources and facilities are systematically segregated. Separate water source is the most symbolic practice of segregation. Even in the places where they are provided water through the centralized pipelines, the use of taps is prohibited and they have to draw water from the floor. They can neither sit on the same chairs nor use the same utensils with the dominant castes in the restaurants and school classrooms. They are prohibited from entering many public places including temples and churches, so they are forced to have their own separate places for worship. Usually, shops are also separated in rural areas. In cases where affected people have to shop in the same place as the dominant castes, they are required to make separate queues. They are often ordered to give up their seats at the public transportations and bus stops. There are responses reporting that affected people are forced to wear clothes of different styles and colors from the dominant castes. When they wear clothes similar to those of the dominant caste, they are often ordered to take them off. They are often denied to receive laundry services, barber services, tailoring services, carpenter services, etc.[‡]

[†] Rural India is the most tragic example, wherein affected communities are herded into "colonies". In *Yemen*, the *Al-Akhdam* live literally in society's most marginal social spaces in neighbourhood where the government officials do not provide any services such as electricity, water, sewage systems etc. In *Pakistan*, many scheduled caste villages are in desert area, segregated from dominant caste.[†] In *Bangladesh*, the segregated colonies face the constant threat of forced evictions by non-state agents. In *Japan*, quite a number of *Buraku* people are located in separate villages. There is a marked tendency to avoid the physical proximity to *Buraku*. The *Osus* were and still mostly confined to living in homes at the edge of the town. In *India*, even in disaster rehabilitation programmes following natural disasters like the tsunami, both the government and the humanitarian agencies are not able to overcome the segregated housing pattern.

[‡] In *Kenya* there is a social practice that when *Ilkunono* (blacksmith, affected community) visitor comes he/she is normally turn the hide around to side without neat side, and social belief that it is bad to have meeting with a blacksmith first in the morning.

Defiance of the prescribed order is consistently met with punitive violence and social ostracism; and the perpetrators often operate with total impunity. It is reported that there exists a social punishment called “social boycott” in India and Nepal. Failing to comply with the segregation decree such as by entering the prohibited area, affected people are punished by being totally segregated from others for a period of time.[§] The segregation level of social boycott is so severe that the same violation is rarely attempted again.

20. **Exploitation:** The physical and psychological segregation are closely related to organic integration at the societal level. The affected people have been doing the jobs that dominant caste people do not. The most degrading types of work that are inherited for generations are cleaning drains, sewers and human faeces by hand, sweeping, disposing of dead bodies, skinning of cows and leatherwork are indispensable in the societies. They are often exploited their labor without being paid by dominant castes.^{**} In many countries bonded labor is also a wide spread practice for exploitation of the affected people despite legislation that prohibits bonded labor.

21. **Violence:** In the two ironical social practices of segregation and exploitation through untouchability on the one hand and touching on the other at the same time, violence occurs in various forms. Physical and verbal violence towards the affected people by the dominant castes is a part of everyday life. Kidnappings and killings of the affected people are also seen frequently.^{††} Touching the domain of the dominant castes is easily the causes of such violence.

Violence with the nature of black lash is also increasing. During the election period, the people of affected communities are often forced not to participate in voting, or to vote for a particular candidate. They are sometimes sacrificed in the conflicts between the political parties. When candidates from the affected communities are elected, they are often disenfranchised from speaking up for the affected communities either by their own parties or by higher caste representatives. Initiating and participating in the protest activities against discrimination based on work and descent often leads to severe revenge.^{‡‡} Violence through internet appears as new form of violence. Sexual violence against women needs separate attention.

The problem is that no proper investigation and punishment of the criminals are carried out, which encourages violence to continue. Personal security of the affected people is a serious problem.

[§] According to one Indian NGO (Action Aid), 48.4% of the villages surveyed reported the presence of this practice.

^{**} In *India* it is through the tradition of “Begar system.” At the time of weddings, funerals, and other ceremonies of the dominant castes, those people of affected communities are compulsorily taken to work. Traditional systems of forced labor such as Bali-Bhare, Haliya, Dola, etc. are still enforced in Nepal.

^{††} Between 5000 to 7000 Nepali girls, mostly from such communities, are trafficked every year across the border to India. Most of them end up as sex workers in India cities like New Delhi, Mumbai etc.

^{‡‡} In some villages in India, dominant castes people put human faeces into the well of the affected communities where people participated in the protest rally.

Cultural nature of poverty and its vicious circle

22. **Economic marginalization:** Most of the affected people holding those traditional/hereditary jobs that have very little to do with market economy, have no savings and with often high levels of indebtedness and suffer from illiteracy and malnutrition. In that sense, such forms of sustained discrimination feed into their poverty level that suppresses capacity building and skills enrichment. Within their own forms of productive work, they do possess their own knowledge and information which the rest of the society devalues consistently, further reinforcing the discriminatory practices. However, such results then become the causes of discrimination, leading towards a vicious circle. This vicious circle shows the cultural dimensions of poverty. Some dominant castes people and even a group of affected people argue that the problem lies only on “class” and not on “caste” or “social origin” any more, and that the economic development would resolve discrimination based on work and descent. However, the fact that the lowest economic class largely overlaps with affected communities shows that this argument is not true.^{§§}

All these situations of economic marginalization and exploitation lead towards the denial of economic, social and cultural rights for the affected communities. Beginning with the fundamental denial of freedom to choose their job, steadily in situations of graded inequality, the affected communities are systematically deprived of the right to adequate standard of living, right to food, water and education. In most cases, the responses point towards the absence of legal and institutional mechanism is that could facilitate both the accessibility to resources and services as well as the full enjoyment of all rights.

23. **Education and children:** Most of the affected people suffer from high rates of illiteracy. Even though some measures have been taken towards children receiving education, beginning with the primary level, there are many factors, hindering this objective.^{***} The girl children face even more serious handicaps besides the tradition of keeping them away from any public life, namely the fear of kidnapping and lack of girls' schools.^{†††}

^{§§} In *Pakistan*, poverty and debt bondage is rampant in those communities and some estimates state that debt bondage is as high as seventy percent in Sindh Province where many affected communities locate. People become property of the "owners", and debt bondage is inherited from one generation to the other and also passed on to family members in the same generation (wife, sister etc). In *Japan*, the number of Buraku households receiving social security was relatively higher and sometimes seven times higher than others. Even though the Law on special measures was implemented for certain years, in general, the living standards of Buraku communities are decreasing. In *India*, the extent of poverty is as high as fifty percent as against thirty percent for the population as a whole.

^{***} In *Yemen*, the *Al Akdham* children in rural areas have no access to education, and because they are not allowed to intermingle with the rest, the children are constantly barred from participating or benefiting from public education. In the Somali region of *Ethiopia*, the children of the *Midgo* do not attend schools because their parents cannot afford to buy text books, clothes etc. Also, there is the drawback that even if they learn they cannot have equal opportunity of employment. In *Pakistan*, among the affected people areas, there is also lack of access to schools, and if the schools exist, problems like teacher absenteeism, shortage of books and teaching remedies are prevalent.

^{†††} In *Bangladesh*, the sweepers' communities complain that their children are deprived from schooling due to poverty. Although a few primary schools were established for the Dalits by the government, almost all of those are non-operational now due to lack of teachers and educational materials. In *Bangladesh*, the sweepers' communities

Particularly, the children are forced into work despite measures to eradicate child labour. In South Asia, worst forms of child labour especially from those affected people are rampant.^{***} They work in areas that are considered as polluted such as leather work, glass bangle industry, manual scavenging, etc. A large number of children of the scheduled castes in Pakistan are child workers of carpet industry. Their working condition is pitiable and in many cases, children are employed as bonded labour.

Discrimination practiced in schools seriously damages personality formation of the children. Schools often maintain separate wells for Dalit and non-Dalit children. Dalit students found drinking from non-Dalit water taps may face disciplinary sanctions, including corporal punishment, by their teachers, particularly in rural areas. Dalit children are often made to sit in the back of the classroom and are treated as 'untouchable' even by their teachers. Dalit teachers are themselves socially segregated from others.

24. **Health:** It is reported that affected people generally have worse health situation and shorter life expectancy than the rest of the population because of discrimination in health services. In addition to poverty, discriminatory health services make health situation of the affected communities worse. According to the responses of Indian NGOs, Dalits are denied to enter health centers, and avoided physical touch in the course of checkup and prescribing medicines. Health workers do not visit the places where the affected people live.

Civil and political rights

25. **Political participation:** A number of responses from several countries did indicate the barriers faced in exercising their civil and political rights given the forms of discriminatory practices exercised with the exception of India, where the Dalits have emerged as significant political constituencies and are capable to exercise their political roles at local, provincial and national levels through the constitutional provisions. In all other situations, the affected communities suffer from political disempowerment. Lack of representation is common in all affected communities.^{***} Some affected communities do not have national or personal identity

complain that their children are deprived from schooling due to poverty. Although a few primary schools were established for the Dalits by the government, almost all of those are non-operational now due to lack of teachers and educational materials.

^{***} It is estimated 100 million children are working in India, majority of whom are Dalit children.

^{***} One recent report on Nepal mentions the unchanging plight of Dalits in Nepal is in part a consequence of their lack of representation in Nepal's political landscape. Though they comprise over one-fifth of the population, Dalits are extremely under represented in the government. Such patterns of political exclusion perpetuates at all levels including the local government with only a handful of Dalits. In *Pakistan*, there is no reservation for these affected people in the national parliament, provincial assemblies and local government. Thus meaningful political participation is reduced to the barest minimum. In Sri Lanka, the Rodhiya community is not consulted on anything. For the *Midgo*, in the Somali regional cabinet, not even one member is included. Less than five members are found in the regional parliament which has about 183 members. The response states that in the formal system there are no explicit rules singling out the outcaste groups, but it is the practice. However, in the traditional system, which governs the Somali people more than the formal one, outcaste groups like the *Midgo* are unequivocally excluded. Like ethnicity in *Nigeria*, the *Osu* practice influences the peoples voting behavior. In some Igbo communities, they might not support an *Osu* running for political offices to represent them even if the *Osu* is a better qualified politician

cards, which demands permanent residence and disallows them from obtaining drivers licence or traveling documents such as passports. The consequences also include lack of access to the minimum services that citizenship right provides. In fact their status is not even accepted as a legitimate case of concern where they are constantly referred to as persons outside the category of "citizens."^{****} Caste related violence in local government elections threats, murders, social boycott, destruction of property and assets are often used in preventing and curtailing the participation of Dalits in the local government.^{††††} They are frequently become unjustified targets of law and order agencies including the police and become victims of the blasphemy law without any justification.

26. **Access to justice:** There exists a yawning gap between the legislative measures towards eliminating discrimination based on work and descent and its implementation at the local, provincial and national levels. A common thread that runs through all the responses are the barriers encountered in both access to justice and in the administration of justice. The most common complaint is the impunity of the perpetrators, both state and non-state actors and the total absence of rapid dispute settlement mechanisms. Many have pointed out also to the institutionalization of discrimination at all levels of the society, particularly discrimination in the criminal justice system when it deals with violence against affected people. Most of them emphasize the absence of remedial justice to victims of discrimination based on work and descent. When social norms are skewed, much in disfavor of affected people, unfairness creeps into the judicial system, creating its own forms of discrimination and disparity in outcomes. Where rules exist, there is discrimination in its implementation. In all these responses, there is clear evidence of discrimination in the administration of justice and that policing is far removed from preventing violence against those affected people. While many of the groups have expressed ignorance of rights on the part of both the affected as well as the authorities, they emphasise equally the major gaps and loopholes in implementation. These are systemic violations of human rights and deserve urgent attention and consideration.^{††††}

than the Diala. This type of behavior is more profound at the local (village) levels and prevents the Osu from contributing as they ordinarily would to the political and economic development of their communities. For the *Al-Akdham*, there are no legal representation of this community within the Yemeni government.

^{****} In *Pakistan* some affected communities especially the Kholis, do not have national identity cards that demands permanent residence, and are forced to migrate and live semi nomadic existence. Although the Yemeni constitution talks about the "rights of all its citizens", there are no specific policy measures or legislative actions that deal with their conditions. In Kenya, the Ilkunono face severe social and policy discrimination from the state institutions and structures. In Bangladesh, as per the constitution the sweeper community is granted all of basic and citizen rights but they are far away from the constitutional rights. Only before the election, the ruling and opposition parties come to them but after the election nobody inquired about them.

^{††††} In October 2005, Prabhati Devi, a Dalit woman was burnt alive for standing for local government elections in Kshetra Panchayat in Mirzapur district. She was set ablaze on the day of the elections for refusing to withdraw her candidature in support of a dominant caste member.

^{††††} The Nepalese government declared that untouchability and caste-based discrimination is illegal only in June, 2006. Before that, there was no legislation against untouchability as per the spirit of the constitution. There is zero participation of Dalits in judicial organisations. The Dalit NGOs have been trying seriously to file cases as public interest litigation in the courts, which is dominated by the upper castes. They encounter also the irresponsible attitude of police in registering the complaints. In general, there are inadequate legal measures in the elimination of untouchability. As for the victims of discrimination-based atrocities, there are few judicial remedies. In *Pakistan*, despite the bonded labour abolition act of 1992 and the National Plan of 1995 towards

27. **Land owning system:** In the countries under review, ownership of land and access to water and related resources seems highly problematic. In some instances, landlessness deprives them of all the rights - civil, political, economic, social and cultural - culminating in a situation of non-persons. Most of the countries with the problem of discrimination based on work and descent have high ratio of agricultural population and thus land-ownership with legal titles is closely linked to livelihood issues. Despite land reform acts by the state, powerful land-owning dominant castes have dislodged the tenants of affected communities or have taken the land using the name of them without giving real ownership, compelling them to work as agricultural workers. In the countries where ownership or property is a precondition for citizenship, the affected people forfeit their citizenship papers, and without those official papers, they cannot acquire new land. They remain internally displaced.^{§§§§}

28. **Name system:** In many countries the names of the persons include their castes' name. In order to eliminate caste discrimination the states of those countries establish the law not to use caste name. Most people, however, continue to use their caste names, and Dalits are also asked to use their own caste names.

Multiple discrimination against women

29. Women of the affected communities face multiple discriminations linking gender inequality with untouchability and segregation. The patriarchal system reinforced through caste-based discrimination deny them just and equal wages, fair share in economic distribution, health care, security or protection of property rights. Gender advancement programmes and other special

abolition, authorities at national and provincial levels continue to ignore the problem and district magistrates and law enforcement agencies in Sindh province refused to take action according to the law. No laws have been passed prohibiting the practice of untouchability. No judge, magistrate or police officer has ever been appointed from the scheduled caste communities. While the Constitution guarantees equal rights and also prohibits discrimination on the basis of caste, there are no specific legal or administrative measures to address caste-based discrimination. In the Indian situation, the problem is not one of lacking legislative and administrative measures by the state. There are the scheduled castes and the scheduled tribes (Prevention of Atrocities) Act. It was enacted in 1989 as a deterrent towards preventing caste-based violence. However, many of the procedural mechanisms are yet to be established and where they existed, they hardly functioned. According to that report of the NHRC (2002), in 84 percent of the cases where the Act was applied, cases were registered under the wrong provisions to conceal the violent nature of the incidents; and that charge sheets were framed in only 53 percent of the cases registered under the Act, and over 22 percent of cases registered were closed after investigation. According to the figures quoted, over 92 percent of the cases ended in acquittal. As one reporter expressed, "what is at stake is not merely a temporary remedy, but credibility of the legal system's ability to deliver justice". In Somalia, there are two judges from the affected communities out of 100 judges in the region. However, the judiciary is not a political institution and there is a de facto exclusion. The response points out the necessity of promulgating caste sensitive legislations. The Osu response also indicates lack of legislation and that the criminal justice system is ineffective and not equipped to handle such forms of discriminatory practices against the Osu. The *Al Akhdam* reply is even blunter: there is no justice platform for them.

^{§§§§} This is a case of *Nepal*. In *Pakistan*, the majority of the scheduled castes living in remote rural areas, are mostly landless and end-up as bonded labourers to feudal landlords. Those who do acquire a little land are subjected to harassment and threat. In India where land reform was enforced, feudal lords borrow the names of affected people to register the land because of the limitation of the land they can own, but do not give real ownership to them. If Dalit argue their ownership, they are severely attacked by feudal lords.

measures rarely work to enhance women's opportunities. There is gender discrimination and violence within their own communities. Within affected communities women lag behind men and dominant caste women in terms of healthcare, education, and remuneration for their labour. Many are forced into prostitution, exposing them to sexual violence, trafficking and health hazards.**** In Nepal, the recent armed conflicts have also targeted at Dalit women with impunity by landlords, the police and the army, as a means to crush political opposition. In Pakistan, kidnappings and forced conversions of young scheduled caste women occur frequently, reportedly with total impunity for the offenders and with the consent of the authorities. Where the perpetrator commits violence with impunity, aided by the failure of the state-actors such as the police to arrest and prosecute perpetrators, and the fact that such perpetrators freely move around further harassing and intimidating the victim and her family, invokes feeling of the futility of the legal system and fatalism about positive steps to address the violence.

New emerging issues

30. **Globalization and privatization:** The overarching phenomenon of globalization together with its operational mechanisms of privatization, liberalization and deregulation has had significant impact on those affected communities facing discrimination based on work and descent. At a very basic level, due to economic shifts and free market-oriented policies, most of the traditional occupations which created the earlier division of labour leading to heinous forms of discrimination, are under serious threat. The threat begins with the contraction of the public sector and the rapid encroachment of the private sector into all walks of life, especially those related to livelihood issues. In most cases, where the state as the principal employer provided jobs with certain forms of social security and which included the employment of affected people in low category, labour intensive jobs like in India, now it is systematically being eroded. Moreover, given the commodification of public services, for example, the privatization of drinking water or the diversion of water to business enterprises, the affected people are further pushed down the poverty line coupled with those discriminatory practices of segregation. The pressures on such States by global economic institutions like the World Trade Organization (WTO), the International Monetary Fund (IMF) and the World Bank together with business enterprises and land-owning class are formidable. The affected people suffer from not only decreasing employment and eviction but also uncivil activities of non-state actors including transnational corporations. Some NGOs express their deep worries that the affected people are now at the cross-road backward to worse situation because of globalization and privatization.††††

**** In *Japan*, the *Buraku* women are said to face very difficult conditions in terms of literacy, education and employment. They also suffer from within the *Buraku* community. In *India*, *Dalit* women constitute an important portion of the labour force in the country both in rural and urban areas. All these are characterized by low wages, irregular working conditions, absence of social security, sexual harassment and dependency on the whims of middlemen and employers. In some areas, they are forced into prostitution in the name of religion through "*Devadasi system*." Though the system has been abolished, it is found prevalent in many parts of the country. A study of the National Commission for Women indicates that 62 percent of women commercial sex workers belong to the scheduled caste, many of them through trafficking.

†††† A report from Bangladesh dealing specifically with the sweeping communities states that the recruitment of sweepers in government jobs has decreased with no identifiable alternatives. If any, the affected people are sent to leather tanneries, ship breaking yards etc., which run along corporate lines and considered dirty, dangerous and difficult. Nowadays, waste disposal has become one of the most lucrative corporate sectors that employ less human labour. Despite efforts by affected people, calling upon the state officials for redressals and alternatives

31. **Natural disasters, armed conflicts and other emergencies:** Natural disasters like forest fires, tsunami, earthquakes, hurricanes, etc., strike everyone indiscriminately. On the other hand, their impact on the lives and livelihood of affected people, are extremely serious. When tsunami struck those twelve countries in Asia and Africa, among the victims were those affected people especially along the east-coastal region of South India. The report filed and showed systematic discrimination faced by the Dalits in relief and rehabilitation programmes. They were prohibited from staying in common camps, refused shelter in community halls or temples, not allowed to use same drinking water and prohibited equal access to food provided by relief agencies or local communities. Even among the volunteers helping the victims, removal of dead bodies was considered as the job for Dalit people. This has not been a one-time occurrence. In other disasters like the major earthquake in the Bhuj area of Gujarat, the Dalits faced identical forms of discriminatory practices during relief and recovery work. Reports from Nepal mention the situation of the affected communities during armed conflicts and insurgency. In most cases, such communities are trapped between government armed forces and insurgent groups, facing multiple forms of abuses from both parties to the conflict. On many occasions, they are forcibly conscripted or drafted as soldiers including children as soldiers by parties to the conflict. Dalit women are sexually exploited by both groups. They face collective punishment by vigilante groups. Rarely are the victims compensated.

The affected communities do face other emergencies, the most frequently reported are forced evictions and displacement. Most of the responses raise these issues. Such forms of displacement that are induced due to human efforts to make way for mines, dams, industries and other such projects in the name of development and economic growth without adequate safeguard measures for resettlement.

32. **Religious issues and Religious Freedom:** Another issue that emerges from the responses received describe in detail the tenuous relationships between discrimination based on work and descent, and religious affairs at the existential level. Untouchability that conveys a sense of impurity and defilement also implies certain socio-religious disabilities. In some instances, the affected communities themselves are looked at as bad omen, further reinforcing the barriers that separate them. The affected people emphasize that through religion-based sanctions, the discriminatory practices are systematically reinforced including the notions of Dalits as bad omen, leading to purification ceremonies.^{****} A report from Pakistan talks about instances of kidnapping

including education and skills training, nothing has happened. Many of the sweepers communities are migrating to India now. Dalits in India who benefited through reservations in the public sector, are asking for reservation in rapidly growing business sector including those transnational corporations. In Ethiopia, the Midgo community in the Somali region is economically backward and is surviving through remittances from abroad. In Yemen, the Al Akdham is mainly confined to disposal of human waste. None of them figure in the development schemes.

^{****} This is the case in *Kenya* and *Nigeria*. Even though all Somalis adhere to Islamic religion and it strongly prohibits such notions of pollution, the outcastes (the Midgo) are also marginalized in religious institutions, and there are hardly any attempts to rectify such misinterpretations and resulting practices. The Nepalese report mentions denial of entry of Dalits by non-Dalits inside the temples, religious programmes and festivals as well as denial of religious services by Brahmin priests to Dalits.

and forced conversion of Dalit young girls in Sindh province. In the case of India, besides the Devadasi system of dedicating Dalit girls to temples, there are the denial of entry into temple, denial of sitting before the temple, confining the Dalits participation at religious festivals only to drum-beating (hence the origin of the word, pariah) etc. One NGO list provides at least ten different forms of discriminatory practices within the religious domain.

Another issue that should deserve social attention is the failure to extend reservation to Dalit Christians, which was done through a Presidential Order in 1950 in India. Such form of discrimination by the state deprives the Dalit Christians of the right to seek civil protection and safeguards provided to all Dalits under existing legislative acts

33. **Discrimination within the affected communities:** There are a number of different castes within the affected communities, and discriminatory practices are enforced within themselves. Even though the degree and nature of discrimination is different from “untouchability,” they have hierarchical concepts, and marriages are made within the same castes in the affected communities. Discrimination within the affected communities shows how deeply discrimination based on work and descent is imbedded in the lives of all castes. Responses show the reflexive thinking of themselves for overcoming the discriminatory practice within themselves.

C. Measures undertaken towards the prevention of discrimination based on work and descent and the protection of the affected communities

By the member-states:

34. Basically, from the responses received in those member-states where discrimination based on work and descent, the national constitutions, in general, prohibit discrimination based on specific distinctions and those from the South Asian sub-region explicitly prohibit caste-based discrimination like in Bangladesh, India, Nepal, Pakistan and Sri Lanka. All the member-states under consideration have ratified or acceded to the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Women and the International Covenant on Civil and Political Rights. Except for Pakistan, all are State parties to the International Covenant on Economic, Social and Cultural Rights. Besides, all those member-states in which the affected communities are located have ratified the ILO Convention on the Elimination of Discrimination in respect of employment and occupation No.111.

35. Nepal is a State Party to a number of international covenants and conventions that are relevant to the Dalit context. The government has signed MOU with the OHCHR and currently, has the largest field office of the OHCHR under the technical cooperation component. Its most recent report to the CERD was in 2004. A number of key government agencies and major programmes are directed towards the Dalits. Through executive decision, a National Dalit Commission (NDC) was established in March 2002. It is not a statutory body like the National Human Rights Commission. One of the problems of the NDC is its lack of capacity to carry out the mandated activities. It has taken measures to create legal arrangements as well as a study of the status of Dalit human rights. The National Planning Commission responsible for developmental aspects through its five year plans, in its tenth plan focussed on poverty alleviation (2004)

including Dalit uplift activities. Besides, various sectoral ministries do have a Dalit-oriented component in diverse fields like education and sports, labour, local development, gender advancement, etc. In June 2006 the Nepalese government declared that untouchability and caste-based discrimination is illegal.

36. In Pakistan, the Constitution prohibits caste based discrimination but there are no legal or administrative measures to address the problems; no reservation for scheduled castes in the parliament, the provincial assemblies nor local governments. An attempt was made in 1957 for quota for jobs, about 6 percent in government sector but it was never implemented. In 1998, it was scrapped. There are legislation for the abolition of Bonded Labour and a National Action Plan, but ILO has listed Pakistan among the countries with the worst form of bonded labour and child labour.

37. In 1965, the Government of Japan recognized the discrimination against the Buraku people as a fundamental human rights issue. Since then, the parliament has framed the Law on Special Measures, which is time bound, being renewed every five years. This law was terminated in 2002. Different prefectures have taken measures, like in 1985 by Osaka prefecture prohibiting private investigation of affected people in preparing "Buraku lists" that led towards various discriminatory practices including employment, marriage alliances, habitation etc. From 1969, the Government began to provide subsidies towards improving the living conditions in Buraku areas.

38. Bangladesh is a State party to major international human rights instruments as well as to fundamental labour rights conventions. In May 2006, Bangladesh was elected to the newly established Human Rights Council.

39. The Ethiopian Constitution is very modern and enshrines all the fundamental principles of human rights. However, its application to affected communities is beyond the margin. There are no legislations directly contributing towards the abolition of such forms of discrimination.

40. In Yemen, the Constitution talks about the rights of all its citizens, but there are no specific policy measures or legislative actions that deal with the plight of the Al-Akhdam community. The various UN treaty bodies have expressed concern about the persistence of de facto discrimination of Al-Akhdam people.

41. In the Indian context, ever since the Constitution was being framed, it was understood that non-discrimination is the fundamental and inviolable principle of democracy. Especially, a number of constitutional, legislative and administrative measures were undertaken by the State since independence with a strong emphasis on positive action centered on reservations. The government set up monitoring mechanisms at different levels - ministerial, parliamentary and judicial. A number of legislations towards the abolition of untouchability and the prevention of atrocities (1955) against the scheduled castes and the scheduled tribes (1989) as well as specifically targeted welfare measures were initiated. The constitutional amendments, the 73rd and 74th of 1993 have brought many Dalits into local level bodies (Panchayats) of governance. Some of the recent legislative measures including the right to information act 2005, national rural employment minimum guarantee act etc. are seen as conducive towards the Dalits. The employment of manual scavenger and construction of dry latrines (prohibition) Act was established in 1993. The issue has

been dealt with by the ILO and its convention No.111 on discrimination (employment and occupation) in 2002.

Replies from the National Human Rights Commissions:

42. Having received only two NHRI responses from Fiji and Slovenia, the Special Rapporteurs had to look into the responses of NGO to know about NHRIs role in eliminating discrimination based on work and decent. The NHRIs do exist in India, Nepal, Sri Lanka, Kenya, Senegal, etc. and are in the process of establishment in others like Bangladesh, Pakistan and Japan.

43. The NHRC of Nepal, in its strategy paper 2004-2008 looks at caste based discrimination as a critical issue, mentioning protection of equal rights of Dalits as a key strategic objective. From 2001 to 2003, the NHRC implemented the integration of Dalits Human Rights Programme. Most recently, the NHRC has hired some Dalit staff with the provision of reservation, however, only for lower level posts.

44. The NHRC of India has been doing its monitoring work under existing provisions and submitting its report to the parliament. It has also been monitoring the implementation of the Bonded Labour Abolition Act under the Supreme Court Orders. In the report submitted to the Supreme Court by NHRC, it notes that the situation has not undergone any significant improvement. Another report also stated that in order to eliminate bonded labour the government will have to confront the powerful local elites and the caste system. In India, much of the work related to Dalits especially elimination of untouchability and its debilitating aspects is mandated to the National Commission for Scheduled castes and Scheduled tribes. Some of the members of NHRC, both past and present, have taken up Dalit issues seriously.

45. In Pakistan, there are no governmental or independent human rights mechanisms in place to monitor caste-based discrimination and cases of violations against scheduled castes. No specific law has been passed to punish untouchability and caste-based discrimination and no public or governmental measures have been put in place to address or monitor the discrimination based on work and descent, be it at national, regional or local level. Among the pledges made to the newly established UN Human Rights Council, both Bangladesh and Pakistan have expressed the willingness to establish a National Human Rights Commission.

46. For the affected communities in the Somali region of Ethiopia, Yemen, Nigeria and Kenya, there is a total absence of any form of specific mechanisms, except the judiciary and other arms of the government. In Kenya, the NHRC has not reported any information concerning affected people. However, for the African region, there exist regional human rights standards as well as related institutional arrangements including the recently constituted African Human Rights Court.

By the UN bodies and Others including Specialised Agencies:

47. The ILO in its response mentions that caste-based discrimination was examined in the 2003 Global Report. "Time for Equality at Work", which forms part of the follow up to the 1998 Declaration on Fundamental Principles and Rights at Work. ILO also mentions that it has initiated work in India and Nepal to assist its constituencies to address caste based discrimination through studies awareness rising and the promotion of social dialogue on the issues involved. ILO has also

been looking at the state practices on the basis of its conventions on forced labour (Nos. 29 and 105). In considering the State practices, the ILO has to include those affected communities facing discrimination based on work and descent. All the concerned countries are state parties to both the conventions Nos. 29 and 105 on forced labour and its abolition. An ILO 2001 report on 'Stopping Forced Labour' highlights the prevalence of bonded labour in India, Nepal and Pakistan. The report does not touch upon the profile of the bonded labourers, mainly from the affected communities. In 2002, the ILO under its Convention on Discrimination (No.111), particularly discrimination on the basis of social origin, looked into matters concerning manual scavengers in India.^{§§§§§}

48. A number of UN bodies and specialized agencies have taken up the case of discrimination based on descent and work under various categories particularly in dealing with the elimination of all forms of racial discrimination, xenophobia and related intolerance within their specific mandates and constituencies. Already in its Human Development Report 2000, the UNDP together with the OHCHR included the question of freedom from discrimination.^{*****} The UNRISD with its specific mandate for research on Social Development has taken on board in all its studies, questions pertaining to caste in as much as they impact social development in a variety of ways. Particularly, in a study on gender equality, the study stated that the primary focus, however, is on women understood as differentiated by class, ethnicity and caste (Feb. 2005). The Special Rapporteurs need more information from all these UN bodies and specialized agencies besides a common dialogue, thematically.

49. The World Bank has introduced more regularly the consequences of discrimination on poverty reduction strategies. Thus in its World Development Report of 2000/2001: Attacking Poverty it mentioned the caste relations in India.^{†††††} The report recommended taking affirmative action and gave a case of using affirmative action against caste-based discrimination in India.^{†††††}

^{§§§§§} Nearly one million scavengers are involved in this occupation and heavily discriminated. The experts committee of ILO noted with concern that despite the governmental measures towards its eradication, the practice of manual scavengers continue to perform such degrading tasks by reason of social origin. The Committee requested the government to undertake certain specific measures. The Committee also noted that regarding abolition of untouchability, the pace of progress has been very slow and that millions of men, women and children belonging to this group continue to be relegated to the most menial tasks without the possibility of moving to other types of jobs or employment.

^{*****} The report stated that in India affirmative action in economic and political spheres benefit scheduled castes and tribes; and in Nepal, untouchables have a life expectancy of 46 years - 15 years less than the Brahmins. There are a number of country - specific studies that include the consequences of caste-based discrimination namely access of scheduled castes members to basic needs is one of the lowest.

^{†††††} The report under 'Removing Social Barriers and Building Social Institutions' stated that discrimination on the basis of gender, ethnicity, can lead to social exclusion and lock people in long-term poverty traps; And that, "values, norms and social institutions may reinforce persistent inequalities between groups in society - as with gender-based prejudice throughout much of the world, the caste relations in India, and race relations in the United States and in South Africa". "In the extreme", the report pointed out, "these social divisions can become the basis of severe deprivation and conflict".

^{†††††} In a General Consultation Meeting held in March 2006 in Geneva by International Dalit Solidarity Network, Mr. Joseph Ingram of the World Bank said that it regards discrimination as a major impediment to economic development and that equal opportunity must be guaranteed for all - in terms of land, healthcare and education. He

Some of the WB's country reports do provide specific data on Social Exclusion Assessment. In Nepal, a WB study of 2005 on social exclusion pointed out that the literacy rate of Dalits is about 34% against National average of 54%, the poverty rate of Dalits is 46% against 31% national average, 23% will Dalits and 43% Terai Dalits are landless. And that in political institutions the presence of Dalits is almost zero.

UN Conventional and Extra-conventional Mechanisms

50. All the core human rights treaty bodies of the United Nations are dealing with all the aspects of discrimination related to that respective treaty, when concerned State parties are submitting their reports. Among others, Committee on the Elimination of Racial Discrimination has taken up questions relating to discrimination based on descent, in particular, caste-based discrimination.^{§§§§§§} Notable among them is the General Recommendation XXIX on Article 1, paragraph 1 of the Convention on Descent.^{*****}

51. The UN Special procedures of the Commission on Human Rights have looked into discrimination based on work and descent notably by the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, violence against women and those concerning civil and political rights.^{†††††††}

Non-governmental organizations and other actors

52. The responses received provide ample information on action undertaken by the NGOs that have organized themselves from within the affected communities beginning with grassroots level and have been reinforced substantially through an international alliance of INGOs.

In Japan, the Buraku people have a durable organisational movement since the 1920s and only in the 1960s, they were able to receive the government's attention and support for improving their living conditions. They have continuously developed a focused campaign towards enhancing

also indicated that, at the World Bank, the senior human rights specialists are primarily focusing on access to justice.

^{§§§§§§} Some of their observations and conclusions were listed under specific countries in the expanded working paper by the Sub-commission experts, Mr. Asbjorn Eide and Mr. Yogo Yokota in document E/CN.4/Sub.2/2004/31 (Chap.I).

^{*****} There is no information on how those general recommendations have been taken into consideration by the concerned States Parties to the Convention.

^{†††††††} In a General Consultation Meeting (March 2006), Mr. Doudou Diene pointed out some important aspects of discrimination based on work and descent, and he said that most importantly, it should be recognised that caste-based discrimination is a social construct. He also reminded that not only the visible parts of the discrimination must be addressed (economic, social and political) but also the cultural and value-based systems underlying the discriminatory practices. At the same consultation, Mr. Miloon Kothari, UN Special Rapporteur on Adequate Housing raised the issue of forced evictions, acquiring crisis proportions in some countries, faced by the affected communities. He also pointed out a link between violence against women and the lack of adequate housing and safety faced by the affected women.

their educational and economic levels. These groups point out the lack of a national law as a serious obstacle to the elimination of discrimination perpetrated against their own people. In all these organizations, there has to be a clear recognition of multiple discriminations faced by the affected women, and that women should be seen as equal partners in the common struggles within concerned organizations.

Dalit movement in India is over a hundred years phenomenon to address the issue of caste and untouchability which is 2500 years old, which became active by Babashaheb Dr. Ambedkar in the 1920s. Dalit movements include Dalit NGOs, networks, mass movements, Dalit academics, researchers, journalists, professionals, lawyers and Dalit political parties. The movements now concentrate in organizing awareness-raising and sensitization programs from local and state to national level, which includes the income generating aspects as well with a 'developmental perspective.' The movements are also quick in responding to the day to day socioeconomic plight of Dalits. They are sometimes proposing legal measures.***** Now serious efforts are being made by the movements to address the intra phenomenon, "sub-caste" system among Dalit themselves.

Nepal is another country where Dalit movements are active. During the peoples' manifestation for restoration of democracy in May 2006, Dalit organizations were actively present and express their support to a more inclusive and participatory system which would grant them a greater say in governance. In Pakistan, those affected communities are yet to mobilize themselves into a more recognizable entity with some activities for economic empowerment and for political rights of the affected communities. Some organizations of affected communities are identified in Ethiopia, Senegal, Sri Lanka, Nigeria etc., but they do not form the effective networks needed in the given situations. They require adequate resources and capacity building towards their own empowerment.

53. To these efforts should be included the role played by the media in those countries. This is very much linked to the freedom of the press in each country as well as the access to information from official sources. The enactment of the Right to Information Act 2005 by the Government of India is a good example. The government should also initiate public awareness campaigns to ensure the existence of such legislation.

54. There is a growing contribution from the affected communities towards cultural activities, besides their traditional and artisan skills, in the field of literature, fine arts etc., that express distinctly the long drawn sufferings of their people as well as to narrate their own stories away from the dominating culture of discrimination.

***** Recently, alarmed at the growing incidents of caste-based violence, NGOs have presented suggestions to the Police Act Drafting Committee currently framing a draft Police Act to replace the existing 1861 Act. These recommendations include the Constitution of an independent body, comprising members from affected communities, to look into complaints against police. Recently, the Supreme Court (media write-up) issued notice to Central and State governments on a petition filed by the National campaign on Dalit Human Rights and others, asking for directions to ensure that they appoint nodal officers and set up protection cells as envisaged under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

D. Areas that deserve special consideration and further elaboration

55. Availability of data and fact finding: With the exception of a few countries - India, Japan and Nepal - most of the responses are unable to provide factual data on the ground reality of affected countries. Some of them, for example, Pakistan and Sri Lanka provide fairly different figures on the size and composition of affected people within the population. Many of the responses also demonstrate the lack of access to official information from governmental or other sources. Even then, the data supplied are only aggregates without specific disaggregated information. Moreover, the affected communities through their own forms of self identification as well as by others are categorized under various topologies as untouchables, depressed communities, scheduled castes, Dalits, backward communities, downtrodden etc., that hinders the approaches towards common appellation. In this connection, the Special Rapporteurs underscore the vital importance of the right to information and the public access to information as critical tools of accountability. A number of NGOs have expressed the desirability of data-collection that calls for specific skills and resource allocation. It would go a long way towards empowering the affected communities.

56. Legislative and administrative measures: Despite the existence of constitutional and legislative provisions banning discrimination and granting equality, there are still discriminatory laws in some countries. The existence of such discriminatory laws contributes towards institutionalizing discrimination in myriad forms particularly for the disadvantaged and affected communities. The responses also indicate the absence of laws that abolishes discrimination, in particular, discrimination based on work and descent including untouchability and segregation. This is paradoxical given the fact that those countries reflected in the report are state parties to the ICERD. Measures need to be taken towards compliance and compatibility with the treaty provisions and state obligations.

The responses have also indicated the need for comprehensive affirmative action packages rather than truncated measures that do not respond to actual situations of affected communities. Given the rapid expansion of market mechanisms and the ever increasing influence of business corporations and other enterprises especially restricting employment opportunities, the affirmative action should be built into the MOUs and other agreements by states with enterprises rather than quotas and mandatory reservations.

A common thread running through all the responses point towards the under-representation, and in many cases the total absence of affected people in the arms of a government including the administrative and civil services, police, judiciary, armed forces, national bodies etc., demonstrating sheer negligence and exclusion. Such glaring inequalities not only widen the already existing ones, rather accentuate further the distance between social groups. The responses have also indicated the absence of systematic impact assessment of affirmative action in a number of countries. This would ensure transparency and avoidance of malpractices and corruption.

The responses have also risen in questions relating to remedial justice including reparation, compensation, resettlement and rehabilitation when faced with forced evictions, internal displacement, communal and caste-based violence. All these demand urgently domestic measures at legislative, judicial and administrative levels of governance.

57. Training of civil servants, police, judges and other state officials: Towards ensuring that legislative measures stand a better chance of implementation without gaps, the competence and commitment of the designated state officials for such tasks is a must. Particularly, it involves establishing durable and humane relationships with the affected communities without prejudices. Necessarily, those officials have to undergo, besides their professional formation, also human-rights based training that enables them to intensify efforts towards the eradication of discrimination based on descent and work. Lawyers, advocates and prosecutors should also be included in these categories.

58. Monitoring mechanism: Among the key problems highlighted, a large segment relates to administration of justice and access to justice encountered by affected communities. This includes discrimination in the criminal justice system as well as victims rights within criminal justice. The Special Rapporteurs would like to add about the plight of the victims when the state agencies fail to carry out their duties. Unlike the accused, in such circumstances the victim has no rights to protect his or her interests in the proceedings.

59. Human Rights Defenders: One of the most encouraging signs from the responses, are the various forms of mobilization happening within the affected communities towards the promotion and protection of human rights. As a consequence of such assertions to put a step to discrimination, such social formations and movements, including the NGOs face series of reprisals and specific abuses. §§§§§§§§

60. Participation and capacity building: Practically all the responses have highlighted emphatically the absence or in some cases the total absence of affected communities being represented as well as actively participating both in the public sphere as well as in the conduct of public affairs. Such forms of political and social exclusion that hinders the right to participation of affected communities is a grave violation of their rights and contributes substantially towards their marginalization and exploitation. Most of the responses strongly complain about the lack of participation of affected communities in the planning, decision-making and realization of their respective national development programmes. The affected communities are in some cases seen merely as recipients and in certain cases, totally ignored, when it comes to development. Poverty reduction or any such schemes without the involvement and participation of the affected communities, many of them being poor, cannot achieve its time bound and clearly targeted goals. The responses illustrate any number of instances how such affected communities have never been consulted in processes leading towards their own human and sustainable development. Ultimately, all these considerations point towards the genuine empowerment of affected people in all spheres of human activities, including opportunities to exercise their rightful role in both public and private spheres without segregation and exclusion.

§§§§§§§§ Their situations have been highlighted by the Special Representative of the Secretary General (SRSG) for Human Rights Defenders. The SRSG mandate, among others, is to assist the processes towards the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to promote and protect universally recognized human rights and fundamental freedoms.

Chapter IV: Further Elaboration on the Draft Set of Principles and Guidelines

61. The Sub-Commission in its resolution 2005/22 requested the Special Rapporteurs “to continue to work on the drafting of a set of principles and guidelines for the effective elimination of discrimination based on work and descent, addressing all relevant actors, including Governments, local authorities, private sector entities, schools, religious institutions and the media, based on existing applicable standards and best practices and taking into account the framework proposed in the expanded working paper on discrimination based on work and descent submitted by Asbjorn Eide and Yozo Yokota.” During the meeting of the Informal Consultation in Geneva on 13 and 14 March 2006, the proposed framework was discussed and many constructive comments and suggestions were made. Some replies to the questionnaire also contain good comments and suggestions. The following is the revised set of principles and guidelines reflecting such comments and suggestions with some input from the Special Rapporteurs.

Principles

Discrimination based on work and descent is any distinction, exclusion, restriction or unfavorable treatment based on occupation, present or ancestral, and family or community origin, or any other related factors such as name, birth place, place of residence, and language, including dialect and accent.

- i. Discrimination based on work and descent is a form of discrimination prohibited by international human rights law as reflected in the Universal Declaration of Human Rights and specifically provided inter alia in the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.
- ii. Discrimination based on work and descent is a human rights problem deeply rooted in societies and cultures. While Governments are the primary actors responsible to respect, protect and realize the rights of persons against whom discrimination based on work and descent is practiced, the international community, regional organizations, non-governmental organizations, local authorities as well as private sector entities such as corporations, schools, religious institutions, labour unions, employers organizations, agricultural associations, and the media all have their respective roles to play in eliminating discrimination based on work and descent and a specific responsibility to respect, protect and realize the rights of the victims of such discrimination.
- iii. It is imperative for the Governments to (a) acknowledge the existence of discrimination based on work and descent in their respective territories; (b) conduct regular studies and collect statistics and other information about such discrimination and publish them; and (c) formulate and systematically implement a comprehensive policy to eliminate this type of discrimination through

appropriate legislative, administrative, budgetary and judicial actions including appropriate forms of affirmative or positive actions.

- iv. Discrimination based on work and descent should be explicitly prohibited by law. All offenders of such legal provisions should be brought to justice for appropriate punishment.
- v. Full and effective protection and remedies should be provided for victims of discrimination based on work and descent.
- vi. A comprehensive human rights education and public awareness activities should be rigorously undertaken to eradicate prejudice against those affected.
- vii. As the people discriminated against on the grounds of work and descent are usually politically, economically and socially marginalized, poor, powerless and voiceless, the cooperation of the international community, including development aid agencies, international financial institutions, international humanitarian agencies and human rights and humanitarian non-governmental organizations, is indispensable.
- viii. In addressing the problem of discrimination based on work and descent, special care should be taken to the situation of children, women, the sick or disabled and the aged.

Guidelines

(1) *Survey and research: understanding the actual situation*

In order to develop effective measures for the elimination of discrimination based on work and descent, a regular survey and appropriate research should be conducted by Governments, local authorities as well as universities and research institutions. Such survey and research should include a review of existing measures and proposals for new measures to eradicate discrimination based on work and descent.

(2) *De jure as well as de facto equality*

All efforts and measures to eliminate discrimination based on work and descent should aim at not only de jure but also de facto equality.

(3) *Participatory process*

The policies and measures to eliminate discrimination based on work and descent should be formulated and implemented with the effective participation of members of affected communities and organizations.

(4) *Discriminatory customs and institutions*

Governments, local authorities and the affected communities and organizations should examine the customs and institutions that cause or otherwise contribute to discrimination based on work and descent and formulate and effectively implement the policies and measures to change such customs and institutions.

(5) *Education, training and public awareness-raising*

In order to address deep-rooted beliefs and practices that sustain discrimination based on work and descent, Governments, local authorities, the media and human rights organizations and specialists should actively engage in education, training and public awareness-raising activities aimed at different categories and levels of persons including family education, pre-school and primary school education, training for judges, law enforcement officers, schoolteachers and other public service professionals, training for private sector employers and employees and general public awareness campaigns.

(6) *Affirmative actions and measures*

Where it is found to be effective and useful for the purpose of addressing discrimination based on work and descent, affirmative actions and measures should be adopted and implemented. Special capacity development programs for persons belonging to affected communities should be considered.

(7) *Effective implementation of legislative and administrative measures*

In order to implement relevant legislative and administrative measures to eliminate discrimination based on work and descent, effective mechanisms and appropriate systems to review and monitor the implementation of such measures should be established. Such mechanisms and systems would include national or local committees, focal points, liaison officers or units and ombudspersons.

(8) *Access to justice*

In order to make the justice system more accessible for the victims of discrimination based on work and descent, special measures such as targeted legal aid and associated services should be considered.

(9) *The role of national human rights institutions and other specialized institutions.*

Appropriate mandates and powers should be given to existing national human rights institutions and specialized institutions created so as to provide proper independent attention to the problems of the affected communities.

(10) *International cooperation*

The international community should provide appropriate support through technical assistance and advisory service. It should also establish and apply guidelines for development cooperation that ensures the elimination of discrimination based on work and descent. The role of the international human rights institutions and procedures should also be considered in this context.

Chapter V: Recommendations

62. The Special Rapporteurs recommend the Sub-Commission to request the Human Rights Council to decide to include the topic of discrimination based on work and descent among the studies to be conducted by the Sub-Commission and request the Special Rapporteurs to prepare the final report on the topic to be submitted to the Council in 2007.

63. The Special Rapporteurs also recommend the Sub-Commission to approve their proposals that:

(a) two regional workshops, one in Asia and one in Africa, be held before the spring of 2007 so as to encourage the representatives of the affected communities to actively participate in the discussions on the topic of discrimination based on work and descent; and

(b) one consultation meeting be held in Geneva sometime in the spring of 2007 to reflect the views of Governments, United Nations bodies and agencies, non-governmental organizations and affected communities in drafting the final text of principles and guidelines on discrimination based on work and descent.
