



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/2005/30
21 June 2005

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-seventh session
Item 5 of the provisional agenda

PREVENTION OF DISCRIMINATION

**Preliminary report by Yozo Yokota and Chin-Sung Chung on discrimination
based on work and descent***

Summary

The present preliminary report on the question of discrimination based on work and descent has been prepared pursuant to resolution 2004/17 in which the Sub-Commission decided to appoint Mr. Yokota and Ms. Chung as Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent on the basis of the three working papers submitted on this issue (E/CN.4/Sub.2/2001/16, E/CN.4/Sub.2/2003/24 and E/CN.4/Sub.2/2004/31), as well as the comments made and the discussions that took place during the sessions of the Sub-Commission to which those working papers were submitted, and requested the Special Rapporteurs to submit a preliminary report to the Sub-Commission at its fifty-seventh session. The preliminary report focuses 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. The paper further recommends that the Sub-Commission approve the proposal to send the questionnaire annexed to this preliminary report. The paper also recommends that the Sub-Commission endorse the proposal to hold a general consultation meeting in Geneva in 2006 and two regional workshops, one in Asia and one in Africa in 2006.

* The authors did not provide the reason for the late submission of this preliminary report, which is required in accordance with paragraph 8, section B, of General Assembly resolution 53/208.

Introduction

1. At its fifty-sixth session, the Sub-Commission on the Promotion and Protection of Human Rights examined the expanded working paper on the topic of discrimination based on work and descent (E/CN.4/Sub.2/2004/31), submitted by Asbjörn Eide and Yozo Yokota pursuant to Sub-Commission resolution 2003/22. The paper examined legal, judicial, administrative and educational measures taken by certain Governments concerned, on the basis of information available on the United Nations human rights treaty body database, in the form of State party reports submitted by Governments, or concluding observations adopted by the treaty bodies. The authors of the paper stated: “The account given of relevant measures taken in the countries concerned is therefore by necessity incomplete and dated. It should therefore only be seen as a step in a process aimed at a more substantive and comprehensive analysis of governmental responses to discrimination based on work and descent” (para. 9). The expanded working paper further discussed additional communities affected by discrimination based on work and descent, in particular, diaspora communities.

2. The expanded working paper lastly dealt with the third element of the mandate contained in Sub-Commission resolution 2003/22, i.e. “a draft set of principles and guidelines”. In this regard, the authors noted:

“the explicit reference in this mandate not only to the content of the valuable general recommendation XXIX [of the Committee on the Elimination of Racial Discrimination], but also to the need to cooperate and collaborate in particular with the Committee on the Elimination of Racial Discrimination, the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization in the preparation of the requested principles and guidelines. Due to the limitations of time and resources, it has not been possible to undertake such cooperation and collaboration with the bodies mentioned” (para. 72).

The authors noted in addition the indications given by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance of his intention to focus on similar issues in the next period of his mandate.

3. In view of a need, strongly felt by the authors, to secure not only more comprehensive information from concerned Governments but also cooperation and collaboration with the various United Nations organs, agencies and mandates that have developed or are developing an expertise in this area, with a view to preparing an effective set of draft principles and guidelines, they offered in the expanded working paper a framework for such a draft.

4. In its resolution 2004/17, the Sub-Commission decided to appoint Mr. Yokota and Ms. Chin-Sung Chung as Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent on the basis of the three working papers submitted on this issue (E/CN.4/Sub.2/2001/16, E/CN.4/Sub.2/2003/24 and E/CN.4/Sub.2/2004/31) as well as the comments made and the discussions that took place during the sessions of the Sub-Commission to which those working papers were submitted, and requested the Special Rapporteurs to submit a preliminary report to the Sub-Commission at its fifty-seventh session, a progress report at its fifty-eighth session and a final report at its fifth-ninth session. The Sub-Commission also requested the Special Rapporteurs “to focus on the finalization of a draft

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 third working paper and the contents of general recommendation XXIX”.

5. The Sub-Commission further requested the Special Rapporteurs, “for the purpose of identifying best practices, to obtain more comprehensive information on constitutional, legislative, judicial, administrative and educational measures taken to address discrimination based on work and descent, including through the elaboration and submission of a questionnaire to Governments, national human rights institutions, relevant organs and agencies of the United Nations system and non-governmental organizations”.

6. Finally, the Sub-Commission encouraged the Special Rapporteurs to undertake the study in cooperation and collaboration with relevant treaty bodies and United Nations organs, agencies and mandates, including the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization, and in consultation with representatives of affected communities.

7. At its sixtieth session, the Commission on Human Rights, in decision 2005/109, decided to approve the decision of the Sub-Commission. The present preliminary report is submitted accordingly.

Plan of work

8. From 11 to 13 June 2005, Mr. Yokota and Ms. Chung met in Tokyo and conducted intensive discussions on the issue of discrimination based on work and descent and the plan of work for their study. Ms. Chung reported on the International Consultation on Caste-Based Discrimination: Establishing Dalit Rights in the Contemporary World; the Role of Governments, the United Nations and the Private Sector, held in Kathmandu from 29 November to 1 December 2004, which she had attended. The authors agreed that the document prepared by the organizer of the consultation, the International Dalit Solidarity Network, which contains a list of draft principles on the elimination of discrimination based on work and descent, would be one of the useful sources of information.

9. Mr. Yokota for his part introduced a document prepared by the Buraku Liberation League entitled “Proposals for ‘Principles and Guidelines for the Elimination of Discrimination Based on Work and Descent’”, which contains suggested guiding principles and guidelines from the perspective of the League’s past efforts for the elimination of discrimination against Buraku in Japan.

10. The authors agreed that the two documents prepared by NGOs should form a source of insights in the future work of the Sub-Commission in formulating a draft set of principles and guidelines for the effective elimination of discrimination based on work and descent, together with the proposed framework for principles and guidelines in the expanded working paper by Mr. Eide and Mr. Yokota (E/CN.4/Sub.2/2004/31) and general recommendation XXIX.

However, the authors were of the view that, in light of the planned questionnaire to be sent to Governments and other relevant bodies and agencies, it was premature to attempt deep analyses of the contents of these documents and to propose a set of draft principles and guidelines in this preliminary report. Instead, the authors agreed on the following plan of work:

- (a) To send a questionnaire to Governments and other relevant bodies and agencies in September 2005;
- (b) To hold a general consultation in Geneva in mid-March/April 2006;
- (c) To organize, if funding was available, two regional workshops, one in Asia and the other in Africa, sometime between January and March 2006; and
- (d) To reflect the results of the questionnaire, consultation and regional workshops and their analyses in the progress report to be submitted to the fifty-eighth session of the Sub-Commission.

The questionnaires

11. The authors propose to send the questionnaires contained in the annex to States Members of the United Nations, relevant United Nations bodies, specialized agencies, national human rights institutions and non-governmental organizations.

The consultation

12. In studying and analysing the issue of discrimination based on work and descent, the authors have found the usefulness and importance of cooperation with, and input from, Governments, United Nations bodies and specialized agencies, non-governmental organizations and, in particular, the affected communities. For this reason, the authors consider it essential to hold consultations and workshops with those groups.

13. The authors propose two kinds of consultations: one general consultation to take place in Geneva to coincide with the annual session of the Commission on Human Rights so that travel costs of many participants would be minimized, and the two regional workshops, one in Asia and one in Africa. The workshops are intended to encourage the representatives of the affected communities to actively participate in the discussions on the topic of discrimination based on work and descent.

Conclusions

14. It has become abundantly clear that the practice of discrimination based on work and descent is a serious violation of human rights and human dignity. It is also true that, despite the efforts of some Governments to eliminate such discrimination, the affected communities and their members, put by some estimates at 260 million persons worldwide, continue to suffer from discriminatory treatment by Governments, members of other communities, companies, schools, and even judges. In order to eradicate this type of discrimination, it is essential that the Governments concerned: (a) acknowledge the existence of such discrimination; (b) conduct a survey to determine the extent and nature of such discrimination; (c) prohibit any act of discrimination based on work and descent; (d) punish offenders; (e) educate and train

Government officials, including law enforcement officers; (f) raise public awareness of the issue; (g) provide effective protection and remedies to the victims of this type of discrimination; (h) take other measures, including affirmative action and special budgetary allocations, to eliminate such discrimination.

15. While the role and responsibility of the Governments in eliminating discrimination based on work and descent are essential, it should be stressed that the role and responsibility of other actors, such as international and regional organizations and mechanisms, including donors of development assistance and financial institutions and agencies and international human rights treaty bodies, as well as national human rights institutions and mechanisms, are equally important. In the tsunami tragedy of December 2004, which claimed more than 100,000 lives and caused incalculable property damage, the people most marginalized and weakest, in particular the Dalit communities in South Asia, were reported to have suffered most because of discrimination against them in the provision and distribution of emergency aid. International aid agencies are sometimes criticized for selectivity in supporting projects favouring only the majority people. Furthermore, the role and responsibility of private sector organizations, such as transnational corporations, international non-governmental organizations, schools, religious institutions and the media, should not be underestimated, both as potential offenders of the human rights of those who are discriminated against on the basis of work and descent and as promoters and defenders of the rights of such people.

16. The authors are hopeful that the questionnaire survey to be conducted will disclose the extent and nature of the issue of discrimination based on work and descent more comprehensively and accurately. Understanding the issue more deeply in this manner is an important starting point in the effort to resolve the problem.

Recommendations

17. The authors recommend that the Sub-Commission approve the proposal to send the questionnaires elaborated in this preliminary report to Governments, national human rights institutions, relevant United Nations bodies and specialized agencies and NGOs. The authors also hope that those to whom the questionnaire is addressed will respond in a timely manner.

18. The authors also recommend that the Sub-Commission endorse the proposal to hold consultations in accordance with the schedule outlined in paragraph 10 above.

19. The authors finally recommend that, although a draft set of principles and guidelines would play an important role in addressing this issue, Governments and other bodies and agencies should not wait for the adoption of such principles and guidelines, which may take another year or two, but proactively take the necessary measures immediately to eliminate such discrimination. In particular, the authors are keenly aware that the General Assembly has launched the World Programme for Human Rights Education, whose first phase began on 1 January 2005 and will focus on elementary and secondary school education. The authors therefore recommend that the first phase of the World Programme include education to eliminate discrimination based on work and descent.

Annex

QUESTIONNAIRE ON DISCRIMINATION BASED ON WORK AND DESCENT

A. Questionnaire to Governments

1. Identify any community (including diaspora communities), group of people or area in your country that has been discriminated against based on work and descent, in reasonable detail with regard to the number of people affected, historical, social, religious and cultural backgrounds and types of discrimination (for example, discrimination with regard to education, occupation, employment, land ownership, housing, water, marriage, name system, religion, access to public facilities and services, allocation of public resources, and violence by police and other law enforcement officers and members of other communities).
2. Provide information regarding legal provisions, administrative orders, court decisions, or any other practices or measures that treat the affected community and their members in a discriminatory manner based on work and descent.
3. Provide information regarding legal provisions, administrative orders, court decisions, or any other practices or measures that prohibit discrimination based on work and descent, punish offenders of such prohibition, encourage affirmative action, promote education and training, and any other good practice to eliminate such discrimination, including a programme or policy for public awareness-raising and special budgetary allocations for improvement of life in affected communities.
4. Provide information regarding the ratification and implementation of international and regional human rights conventions and regimes that deal with the issue of discrimination based on work and descent such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.
5. Provide information regarding the legal, administrative, judicial or any other institution, including national human rights institution, that protects victims of discrimination based on work and descent and provides them with an opportunity to file complaints, restore dignity and receive compensation or remedies.
6. Comment on the proposed framework for a draft set of principles and guidelines for the elimination of discrimination based on work and descent proposed in the expanded working paper by Mr. Eide and Mr. Yokota (E/CN.4/Sub.2/2004/31 chap. III).*

* The text would be attached to the questionnaire.

B. Questionnaire to national human rights institutions

1. Describe briefly the history of the creation of your institution, its legal basis, powers, and functions and organization.
2. Does your organization deal with the issue of discrimination based on work and descent? Give some details with regard to the legal basis and the unit or section dealing with this issue.
3. Provide information in detail about the cases of discrimination based on work and descent that your institution has dealt with. What were the results?
4. Is your institution aware of the existence of communities (including diaspora communities), groups of people or areas that are discriminated against in your country? If so, provide information in reasonable detail with regard to the number of people affected, social, religious and cultural backgrounds and types of discrimination (for example, discrimination with regard to education, occupation, employment, land ownership, housing, water, marriage, name system, religion, access to public facilities and services, allocation of public resources and services, violence by police and other law enforcement officers and members of other communities).
5. Provide information regarding legal provisions, administrative orders, court decisions, or any other practices or measures that treat the affected communities and their members in a discriminatory manner based on work and descent.
6. Provide information regarding legal provisions, administrative orders, court decisions, or any other practices or measures that prohibit discrimination based on work and descent, punish offenders of such prohibition, encourage affirmative action, promote education and training, and any other good practice to eliminate such discrimination, including a programme or policy for public awareness-raising and special budgetary allocations for improvement of life in affected communities.
7. Comment on the proposed framework for a draft set of principles and guidelines for the elimination of discrimination based on work and descent proposed in the expanded working paper by Mr. Eide and Mr. Yokota (E/CN.4/Sub.2/2004/31, chap. III).*

C. Questionnaire to relevant United Nations bodies and specialized agencies

1. Does your organization deal with the issue of discrimination based on work and descent? Provide information regarding the nature and extent of the work of your organization to eliminate such discrimination.
2. Identify communities (including diaspora communities), groups of people or areas that are discriminated against based on work and descent in any country that your organization is aware of in reasonable detail with regard to the number of people affected, historical, social, religious and cultural backgrounds and types of discrimination (for example, discrimination with

regard to education, occupation, employment, land ownership, housing, water, marriage, name system, religion, access to public facilities and services, allocation of public resources and services, and violence by police and other law enforcement officers and members of other communities).

3. Comment on the proposed framework for a draft set of principles and guidelines for the elimination of discrimination based on work and descent proposed in the expanded working paper by Mr. Eide and Mr. Yokota (E/CN.4/Sub.2/2004/31, chap. III).

D. Questionnaire to non-governmental organizations

1. Describe briefly the history, nature and extent of the work and structure of your organization.

2. Does your organization deal with the issue of discrimination based on work and descent? Provide information regarding the nature and extent of the work of your organization to eliminate such discrimination. If your organization does not deal with such issue, state reasons.

3. Is your organization aware of communities (including diaspora communities), groups of people or areas that are discriminated against based on work and descent in any country? If yes, provide information in reasonable detail with regard to the number of people affected, historical, social, religious and cultural backgrounds and types of discrimination (for example, discrimination with regard to education, occupation, employment, land ownership, housing, water, marriage, name system, religion, access to public facilities and services, allocation of public resources and services, and violence by police and other law enforcement officers and members of other communities).
