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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai*

Summary

According to the Durban Declaration, racism, racial discrimination, xenophobia and related intolerance “occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status” (para. 2). Furthermore, according to the Durban Review Conference outcome document, “all victims of racism, racial discrimination, xenophobia and related intolerance should receive the same necessary attention and protection and accordingly appropriate treatment” (para. 17). Against this background, in addition to reporting on his activities, the Special Rapporteur has taken a victim-oriented approach presenting an analysis of the racism and racial discrimination against Roma, and discrimination based on work and descent.

* Late submission.

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I. Introduction

1. The present report is prepared pursuant to Human Rights Council resolution 7/34, as updated in Council resolution 16/33.

2. At the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, States adopted a victim-oriented approach and declared that “the victims of racism, racial discrimination, xenophobia and related intolerance are individuals or groups of individuals who are or have been negatively affected by, subjected to, or targets of these scourges”,¹ recognizing further that “racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status”.² Similarly, at the Durban Review Conference, States acknowledged “that all victims of racism, racial discrimination, xenophobia and related intolerance should receive the same necessary attention and protection and accordingly appropriate treatment”.³

3. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has previously emphasized the need to adopt a victim-oriented approach, to ensure that actions undertaken truly respond to the concrete needs of those experiencing racism and discrimination. In line with the Durban documents, the Special Rapporteur has highlighted that all victims should receive the same attention and protection and that it is essential to avoid establishing any hierarchy among the different manifestations of discrimination, even if they may vary in nature and degree depending on the historical, geographical and cultural context. All forms of racism and discrimination should be addressed with the same emphasis and determination. The Special Rapporteur is further convinced of the need to have a comprehensive approach which encompasses all manifestations of racism and discrimination. It is with this background in mind that he focuses in the present report on racial discrimination and racism against Roma, and discrimination based on work and descent.

4. Racism, racial discrimination, xenophobia and related intolerance against Roma is addressed in chapter II, and discrimination based on work and descent in chapter III. Chapter IV contains a summary of the activities of the Special Rapporteur undertaken since June 2010. Finally, conclusions and recommendations are presented in chapter V.

II. Racism, racial discrimination, xenophobia and related intolerance against Roma

5. The human rights situation of Roma⁴ remains a pressing issue widely addressed by different actors. Since the establishment of the mandate on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, all three mandate holders have

¹ Durban Declaration, para. 1.

² *Ibid.*, para. 2.

³ Outcome document of the Durban Review Conference, para. 17.

⁴ The term Roma, without going into the different and at times controversial definitional discussions, refers to such persons who self-define themselves as such. Policies and practices referred to in this report covering such persons may also have an impact on other marginalized minorities groups.

considered this issue.⁵ In the present chapter, the Special Rapporteur aims to show that despite the wide range of measures taken by States in order to eliminate racism and racial discrimination against Roma, they continue to be discriminated against in a number of areas. The current chapter also addresses the reasons of such a situation. The Special Rapporteur would like to emphasize that while the situation in the countries referred to in the present report raise concern as to racial discrimination against Roma, this does not imply that Roma living in other countries do not encounter similar violations.

A. Legal, political and institutional initiatives at regional and national levels

6. The need to develop effective policies and implementation mechanisms for the full achievement of the equality of Romas/Gypsies/Sinti/Travellers is recognized in the Durban Declaration.⁶ Valuable initiatives to eliminate racism and racial discrimination against Roma have been developed by a number of Governments including in Europe, where Roma represent a large minority. In this regard measures have been initiated within the European Union, the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE).

7. The Council of Europe has developed a number of legal instruments relevant to Roma that includes, inter alia, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. In this regard the Special Rapporteur would like to emphasize the important contributions of the European Court of Human Rights, the European Committee of Social Rights and the Advisory Committee on the Framework Convention for the Protection of National Minorities. The resolutions and recommendations of the Parliamentary Assembly and the recommendations of the Committee of Ministers on Roma and Travellers in the areas of education, employment, housing, access to health care, as well as policies for Roma and/or Travellers, should also be highlighted. Furthermore, the Special Rapporteur notes with appreciation the expertise provided to the Council of Europe by the Ad hoc Committee of Experts on Roma Issues (CAHROM), the European Commission against Racism and Intolerance, and the team working specifically on Roma issues under the supervision of the Special Representative of the Secretary General for Roma Issues.

8. OSCE also contributes widely to the prevention of racism and racial discrimination against Roma. The High Commissioner on National Minorities, the Contact Point for Roma and Sinti Issues within the Office for Democratic Institutions and Human Rights, the Representative on Freedom of the Media and the different OSCE field operations play important roles in this regard. The Special Rapporteur welcomes in particular the OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, Ministerial Council decision No. 6/08 (2008) on enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, and Ministerial Council decision No. 8/09 (2009) on enhancing OSCE efforts to ensure Roma and Sinti sustainable integration.

9. The European Union has a strong human rights legal framework and a range of policies and mechanisms to address racial discrimination and racism against Roma. The

⁵ See A/64/271; A/63/339; A/HRC/14/43/Add.2; A/HRC/7/19/Add.2; A/HRC/7/19/Add.3; A/HRC/7/19/Add.4; A/HRC/4/19/Add.3; A/HRC/4/19/Add.4; E/CN.4/2005/18; E/CN.4/2004/18/Add.3; E/CN.4/2003/24; E/CN.4/2000/16/Add.1.

⁶ Para. 68.

European Commission and the European Union Agency for Fundamental Rights play an important role in this regard. Among other initiatives, the Special Rapporteur notes with interest the regular European Union Roma Summits, the European Commission's communication on a framework for national Roma integration strategies, the 2010 amendment of Regulation (EC) No. 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund as regards the eligibility of housing interventions in favour of marginalized communities, and the activities of the Integrated European Platform for Roma Inclusion. At the subregional level, the involvement of a number of European States in the Decade of Roma Inclusion 2005-2015 and the activities of the Roma Education Fund have also been important.

10. While the Special Rapporteur encourages cooperation of States with international and regional institutions, he also welcomes efforts taken by States at the national and local levels. He notes in particular the development of national action plans and strategies for Roma, national laws against racism and racial discrimination that provide good protection, and the emergence of good practices. For instance, the Special Rapporteur noted that Roma and Sinti communities in Germany acknowledged the commitment on the part of public institutions to ensure that the memory of the Roma and Sinti people is preserved (A/HRC/14/43/Add.2, para. 57). As further positive examples he also notes the establishment and training of Roma employment and health mediators, the establishment of mobile health clinics, the creation of job fairs, the establishment of Roma consultation mechanisms, and initiatives such as municipal Roma mediators. He also takes note of encouraging initiatives such as awareness campaigns focusing on the education of Roma girls, initiatives to ensure access to justice for Roma, and programmes on the training of Roma teacher assistants.

11. This non-exhaustive list of different initiatives developed at regional and national levels seems to demonstrate a certain degree of political will to prevent and eliminate racism and racial discrimination against Roma. Nevertheless, more remains to be done in the light of the current situation of Roma in Europe and in other regions, including Central Asia and Latin America.

B. Persistent racism, racial discrimination, xenophobia and related intolerance against Roma

12. Roma are particularly exposed to racism, racial discrimination, xenophobia and intolerance when it comes to the enjoyment of their rights to education, health, employment, housing, their political participation, access to citizenship and justice. The widespread discrimination Roma face feeds their marginalization and social exclusion in a vicious manner. For the most vulnerable, the situation can even be worse. This is the case, in particular, for Roma children, Roma women who suffer multiple forms of discrimination, and Roma migrants who face double discrimination as Roma and non-citizens. Furthermore, Roma are also victims of racist violence and abuse by private actors and public officials.

1. Challenges in the areas of economic, social and cultural rights

13. Roma children remain subjected to discrimination in the area of education. They suffer higher drop-out rates and poorer educational achievements, and are often victims of racial prejudices and harassment, both by teachers and students. In some countries, the lack of identification documents and the ignorance or limited knowledge of the teaching language are further barriers to their access to education. This was evidenced for instance

by data from the United Kingdom of Great Britain and Northern Ireland, France and Serbia⁷ and raised by the then Special Rapporteur during his country visits to Latvia (A/HRC/7/19/Add.3, para. 62) and Lithuania (A/HRC/7/19/Add.4, para. 57). Roma children also face segregation in schools. They continue to be placed in separate schools or separate classes in mainstream schools, or in special schools for children with disabilities. Such segregation was reported for instance in Bulgaria⁸, the Czech Republic⁹, France (A/HRC/7/23/Add.2, para. 67), Greece¹⁰, Hungary¹¹, Portugal¹², the Republic of Moldova¹³, Romania¹⁴, the Russian Federation¹⁵, Slovakia¹⁶, Spain¹⁷, the former Yugoslav Republic of Macedonia¹⁸ and the United Kingdom (in particular Northern Ireland)¹⁹.

14. Roma are also discriminated against in the area of employment in a number of countries, where their rate of unemployment is often high. This situation is exacerbated by their lack of educational skills and qualifications. It should be highlighted that Roma are victims of racial discrimination at all stages of access to labour markets, where they are often offered short-term or low-skilled employment and are subjected to racial prejudice and harassment in the workplace. These concerns were reported for instance in Denmark²⁰ and the United Kingdom.²¹

15. The poverty resulting from discrimination faced in employment aggravates the situation of Roma in terms of access to housing. Indeed Roma are discriminated against in their access to private and public rental housing, lack security tenure and remain exposed to racist violence in this context. Often they live in the worst housing conditions, in segregated, unhealthy neighbourhoods lacking the most basic services and infrastructures. Reports of Roma living in slums where they are exposed to environmental hazards such as flooding are also of concern. In 2010, concerns were expressed about the degrading housing and living conditions of Roma in Croatia (A/HRC/16/42/Add.2, para. 56); similar concerns about the housing conditions of Roma in Hungary had been expressed in 2006 (A/HRC/4/9/Add.2, paras. 79-84). Housing segregation of Roma is growing in many countries. In 2009, it was reported that such segregation remains evident in Bulgaria, Cyprus, the Czech Republic, France, Greece, Hungary, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia and Spain.²² Roma are also exposed to forced evictions, sometimes in violation of international human rights law and without adequate alternative housing

⁷ Theadora Koller, ed., *Poverty and Social Exclusion in the WHO European Region: Health Systems Respond* (Copenhagen, World Health Organization Regional Office for Europe, 2010), p. 226.

⁸ European Roma Rights Centre (ERRC), "Factsheet: Roma rights record", 4 October 2010, p. 2. Available from www.errc.org/cms/upload/file/factsheet-4october2010.pdf.

⁹ CERD/C/CZE/CO/7, para. 17.

¹⁰ A/HRC/10/11/Add.3, para. 64.

¹¹ A/HRC/4/9/Add.2, paras. 61-69.

¹² ERRC, "Factsheet" (note 8), p. 2.

¹³ CRC/C/15/Add.192, para. 50.

¹⁴ CERD/C/ROU/CO/16-19, para. 14.

¹⁵ CERD/C/RUS/CO/19, para. 27.

¹⁶ CERD/C/65/CO/7, para. 8.

¹⁷ ERRC "Factsheet" (note 8), p. 2.

¹⁸ CRC/C/MKD/CO/2, para. 65.

¹⁹ ERRC, "Factsheet" (note 8), p. 2.

²⁰ European Commission against Racism and Intolerance (ECRI), "Third report on Denmark", 16 May 2006, para. 94.

²¹ ECRI, "Third report on the United Kingdom", 14 June 2005, para. 126.

²² European Union Agency for Fundamental Rights (FRA), *Housing Conditions of Roma and Travellers in the European Union: Comparative report* (Vienna, October 2009), pp. 5 and 77. Available from www.fra.europa.eu/fraWebsite/attachments/ROMA-Housing-Comparative-Report_en.pdf.

solutions. Destruction of property and racist attacks also occur in this context. Such evictions of Roma were reported for instance in the Czech Republic, Italy, Portugal and Slovakia.²³ The Special Rapporteur has also expressed concern in this regard with respect to cases in Bulgaria²⁴, Greece²⁵ and Serbia.²⁶ Roma who have a nomadic lifestyle are also affected in this context. They are often forced to move from one place to another because of a lack of, and strict legislation on, “camp sites”, which endangers their traditional lifestyle.

16. The Special Rapporteur is also concerned about the significant barriers that racial discrimination represents for their access to health care and services. Indeed, discriminatory practices such as health services refusing to treat Roma, the refusal to send emergency services into Roma communities, verbal abuse, and segregation of Roma in hospital facilities reportedly remain common practices.²⁷ The Special Rapporteur regrets that the practice of forced sterilization of Roma women has been reported in countries such as the Czech Republic in 2006 and 2007²⁸, Hungary in 2006²⁹ and Slovakia in 2009 and 2010.³⁰ He calls for its immediate cessation where it still occurs and for the ensured enactment of preventive measures.

2. Challenges in the areas of civil and political rights

17. While the socio-economic marginalization and exclusion of Roma is one of the most frequent manifestations of the racism and racial discrimination they face, Roma are also victims of discrimination in the enjoyment of their civil and political rights. Indeed, a number of Roma are discriminated against in their access to citizenship and as a result are unable to exercise the full range of rights afforded by citizenship. Such concerns were emphasized by the then Special Rapporteur during his country visits to Italy (A/HRC/4/19/Add.4, para. 38) and the Russian Federation (A/HRC/4/19/Add.3, para. 53). Discrimination in access to justice is also a concern for a number of Roma, including in the criminal justice system where discriminatory attitudes by prosecutors, excessive delays in dealing with cases brought by Roma and racial profiling by the police were reported. Such concerns were raised for instance in Greece (A/HRC/10/11/Add.3, para. 65) and Hungary (A/HRC/4/9/Add.2, para. 48).

18. Roma are still widely excluded from the public and political life of many countries, where they remain underrepresented or not represented at all in States’ public administration and institutions, or in political parties. A number of factors hamper their effective participation in the conduct of public affairs, including the persistence of negative stereotypes assuming that Roma have no interest in politics or do not have the capacity to engage, as well as the fear of political actors that the inclusion of Roma issues in political debate or political parties’ programmes would engender a reaction of the majority of the population that may damage their political prospects. Legal and practical obstacles such as discriminatory regulations regarding voter registration, their poor educational levels and lack of political experience further contribute to the political exclusion of Roma. The lack of identification documents is also an important problem affecting some Roma that hampers the enjoyment of other rights and underlines the fragility of their legal status in a

²³ Ibid., p. 61.

²⁴ A/HRC/14/43/Add.1, paras. 31-46.

²⁵ A/HRC/11/36/Add.1 and Corr.1, paras. 16-24.

²⁶ A/HRC/14/43/Add.1, paras. 111-116.

²⁷ Koller, ed., *Poverty and Social Exclusion* (note 7), p. 227.

²⁸ CEDAW/C/CZE/CO/3, para. 23; CERD/C/CZE/CO/7, para. 14.

²⁹ CEDAW/C/HUN/CO/6, para. 8; Committee on the Elimination of Discrimination against Women, communication No. 4/2004, *Ms. A.S. v. Hungary*, Views adopted on 14 August 2006.

³⁰ CAT/C/SVK/CO/2, para. 14; CERD/C/SVK/CO/6-8, para. 18.

number of countries. Sometimes this lack of identification documents can be the result of a lack of registration in the country, administrative and financial barriers or the denial of States to recognize the validity of such documents.

19. Violence against Roma by private and public actors, sometimes resulting in injuries, death and the destruction of property remains a serious and increasing problem in many countries. In 2010, for instance the Committee on the Elimination of Racial Discrimination expressed its concern at the increase in manifestations of racism and racist violence against Roma in France (CERD/C/FRA/CO/17-19 and Corr. 1, para. 14). Similar concerns were expressed by the Committee with regard to Germany in 2008 (CERD/C/DEU/CO/18, para. 18). Roma are also subjected to police violence and abuse, as reported for instance in France³¹ and in Slovakia³². Others racist incidents against Roma were also reported in countries such as the Czech Republic³³, Hungary³⁴, Italy³⁵, the Russian Federation³⁶, the United Kingdom³⁷ and Turkey³⁸. The Special Rapporteur is particularly concerned that investigations of racially motivated violence and crimes against Roma remain limited. The rise of extremism in Europe increases Roma vulnerability to racist violence. The then Special Rapporteur addressed this concern during his country visits to Latvia (A/HRC/7/19/Add.3, para. 61) and the Russian Federation (A/HRC/4/19/Add.3, para. 53). Furthermore it was reported that a group of skinheads assaulted Roma in Bulgaria in 2007.³⁹ In February 2011, the Special Rapporteur received information about racist slogans against Roma, written on walls by a neo-Nazi group named Nazi Swastika in Rome. The persistence of racist and xenophobic discourse against Roma by public officials and politicians is also of concern. In recent years anti-Roma statements have been made by high-ranking State officials including Heads of State, as reported in France, and Government ministers, as reported in Bulgaria⁴⁰, Denmark⁴¹, Czech Republic⁴², and Romania⁴³.

3. Particular vulnerable groups of Roma

20. The situation of Roma migrants has recently received more attention. The poverty they experience in their country of origin, as well as racism, racial discrimination and

³¹ Council of Europe, Parliamentary Assembly, "Report of the Committee on Legal Affairs and Human Rights on the situation of Roma in Europe and relevant activities of the Council of Europe", section C: Explanatory memorandum, para. 18. Available from <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12174.htm>.

³² Ibid., para. 29.

³³ Ibid., para. 16.

³⁴ Ibid., paras. 20-21.

³⁵ Ibid., paras. 22-25.

³⁶ Ibid., para. 27.

³⁷ Ibid., para. 32.

³⁸ ERRC, "Factsheet" (note 8), p. 1.

³⁹ Council of Europe, Parliamentary Assembly, "Report of the Committee" (note 31), para. 14.

⁴⁰ ERRC, "Factsheet" (note 8), p. 2.

⁴¹ ERRC, submission concerning Denmark for consideration under the universal periodic review by the Human Rights Council at its eleventh session, para. 2.1. Available from www.errc.org/cms/upload/file/denmark-submission-un-upr-19112010.pdf. See also Claus Blok Thomsen, "Kobenhavn vil af med kriminella romaer", *Politiken*, 6 July 2010. Available from <http://politiken.dk/indland/ECE1011458/kobenhavn-vil-af-med-kriminelle-romaer/>.

⁴² ECRI, "ECRI report on the Czech Republic (fourth monitoring cycle)", 15 September 2009, paras. 43-46. Available from www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf.

⁴³ ERRC, "Factsheet" (note 8), p. 2.

marginalization, often helps explain their emigration. Once in the country of destination, Roma migrants who suffer double discrimination as Roma and non-citizens are often stereotyped as causing security problems and abusing the welfare system, and they remain discriminated against in a number of areas. In the field of housing they are frequently subjected to forced evictions, sometimes in a growing anti-Roma climate. In 2009 for instance, a number of Roma families, many of whom were migrants from Kosovo and the former Yugoslav Republic of Macedonia, were evicted and accommodated in overcrowded and cold metal containers in Serbia (A/65/261, para. 61). In France, in 2010, the Government ordered 300 illegal camps of Travellers and Roma to be dismantled and the undocumented migrants residing there to be deported (ibid., para. 62). For several years Roma migrants have frequently been targeted by security policies and discourse that has sometimes resulted in their expulsion. In this regard, the Special Rapporteur would like to express his concern about the targeted expulsions of Roma migrants to their country of origin, which are sometimes undertaken without their free, full and informed consent, including to countries where they are likely to face discrimination. In 2010, about 8,000 Roma were reportedly expelled from France⁴⁴ and cases of expulsion of Roma from Denmark⁴⁵, Germany⁴⁶, Italy⁴⁷ and Sweden⁴⁸ were also reported.

C. Addressing the reasons for the failure to eliminate racism, racial discrimination, xenophobia and related intolerance against Roma

21. While the Special Rapporteur is aware that assessing the reasons for racial discrimination and racism against Roma remains complex, he believes that three main factors, which should not be considered as exhaustive, may explain the persistence of such a situation. They include the lack of participation of Roma in decision-making processes, the lack of implementation of policies and legislation targeting Roma, and the structural dimension of the racism and racial discrimination they face.

22. It is important to reconsider the place given to Roma in decision-making processes. In many countries Roma individuals are not sufficiently involved in the design and implementation of policies, and are not therefore able to voice their concerns and make their own propositions to protect their rights. The lack of implementation resulting from the absence of political will and the limited resources is also an important factor. Indeed, the elimination of racial discrimination and racism against Roma is not always seen as a priority at the national level and local authorities often fail to implement properly the legislation and policies developed for Roma. Furthermore, the refusal of some countries to collect ethnically disaggregated data in order to assess the effectiveness of the measures taken also remains a major obstacle for the implementation process.

23. As stated by the former Special Rapporteur in his report on the country visit to Estonia, the Roma community suffers mostly from structural discrimination (A/HRC/7/19/Add.2, p. 2 and para. 81). Structural discrimination experienced by Roma finds its origins in the past historical injustices perpetrated against them for centuries, which created structural inequalities that still persist and continue to have a

⁴⁴ ERRC, "Factsheet" (note 8), p. 1.

⁴⁵ Council of Europe, Parliamentary Assembly, "Recent rise in national security discourse in Europe: the case of Roma", 6 October 2010, para. 5. Available from <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12392.htm>.

⁴⁶ Human Rights Watch, *Rights Displaced: Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo*, October 2010, p. 29.

⁴⁷ Council of Europe, Parliamentary Assembly, "Recent rise" (note 45), para. 5.

⁴⁸ Ibid.

disadvantageous or disproportionate effect on them. Furthermore, Roma encounter a societal structural racism and racial discrimination manifested by racist, discriminatory, xenophobic or intolerant behaviours within societal structures, including racial prejudice and negative stereotypes, as well as racist violence by individuals. The building in 2008 of walls to separate Roma from the non-Roma population in Brasov, Romania and in the district of Beja, Portugal demonstrate the extent to which racism and intolerance against Roma is sometimes deeply rooted in people's mindsets.⁴⁹

24. Racism and racial discrimination against Roma is also deeply rooted in State institutions. While the Special Rapporteur is aware of the difficulty in acknowledging such a reality, he is however convinced that recognition is the necessary first step towards ending racial discrimination against Roma by State officials. Indeed, Roma are confronted with an institutionalized discrimination reflected both in legislation, policies and administrative measures, and in the discriminatory attitudes of State officials. This institutionalized discrimination may be reflected by, inter alia, the exclusion of Roma from national policies or their absolute non-existence in data and figures. Policies such as the fingerprinting of Roma, abuse by police, and racist statements by public officials, or the refusal to employ Roma in public administrations, outlined above, are further symptoms of the existence of racism and racial discrimination within State institutions in a number of countries, including at the highest level.

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

25. Over the past three years, the Special Rapporteur has recalled that racial discrimination affects individuals in all societies and regions of the world. While the manifestations of racism may vary in nature and degree depending on the historical, geographical and cultural context, all individuals, regardless of their race, colour, descent or national or ethnic origin, should be offered robust and effective protection against discrimination. In this regard, the Special Rapporteur highlighted last year at the General Assembly that since the 2001 World Conference against Racism, the issue of discrimination based on descent has been on the international agenda. He has noted that the main human rights bodies working in the area of racism and discrimination have clearly stated that the prohibition of this type of discrimination falls within the scope of existing instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention). The Special Rapporteur has also referred to the draft principles and guidelines for the effective elimination of discrimination based on work and descent and has encouraged States to engage in substantive discussions on this topic and eventually rally around these draft principles.

26. The Special Rapporteur has associated himself with the position taken by the Committee on the Elimination of Racial Discrimination, which, in its concluding observations, has stated that "the term 'descent' in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of scheduled castes and scheduled tribes falls within the scope of the Convention" (CERD/C/304/Add.13, para. 14). The Committee also stated that "discrimination on the grounds of caste constituted a form of racial discrimination" (A/64/271, para. 57) and that "the term 'descent' had its own meaning and was not to be confused with race or ethnic or national origin" (CERD/C/304/Add.114, para. 8). More broadly, in its general recommendation No. 29

⁴⁹ Council of Europe, Parliamentary Assembly, "Report of the Committee" (note 31), para. 26.

(2002) on article 1, paragraph 1 (descent), the Committee further clarified its position by “strongly reaffirming that discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights” (preamble).

27. Within the context of the Durban Review Conference, the Special Rapporteur highlighted his serious concern about an estimated 250 million people around the world being at risk of human rights violations on the grounds of caste and other systems based on inherited status.⁵⁰ He expressed concern at reports of the prohibition of or limitations on the ability to alter inherited status; socially enforced restrictions on marriage outside the community; public and private segregation, including in housing and education, and access to public spaces and places of worship and public sources of food and water; limitations on the freedom to renounce inherited or degrading occupations or hazardous work; and subjection to debt and bondage.

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

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

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

A. Manifestations

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

1. Caste-based occupations and untouchability

32. Discrimination against members of the affected groups manifests itself in work or occupation. Designated tasks considered ritually polluting and unclean to others in the social system further marginalize them as they are considered “untouchables” based on their employment. Untouchability has been banned in many countries (along with caste-

⁵⁰ Joint contribution of mandate holders (A/CONF.211/PC/WG.1/5), para. 44.

based discrimination), but notions of impurity and pollution linked to jobs continue to persist through descent-based discrimination. Therefore, the notion of pollution ascribed through work is intertwined with caste-based occupations, which include sweeping and manual scavenging (the cleaning of excreta from dry latrines).

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

2. Multiple discrimination

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

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

36. Discriminated against in terms of education (CERD/C/IND/CO/19, para. 25), children of lower castes are among the most vulnerable, facing recruitment as child labour, soldiers or as sex workers, and rampant torture and corporal punishment. Trafficking (*ibid.*) and the sale of children, especially young girls, and infanticide of female children are other multiple forms of discrimination.⁵¹

37. Women and girls face multiple discrimination, including through sexual exploitation or forced prostitution (A/HRC/7/19 and Corr. 1, para. 71). Women are socio-economically positioned at the bottom of the caste, gender and class hierarchy, and face violence in their family and communities, and from actors in other castes.⁵² Women in Dalit Communities in Asia are subjected to physical abuse, sexual harassment, trafficking and sexual violence (E/CN.4/Sub.2/2001/16, para. 45). Violations of land and property rights also affect these women (A/HRC/10/7/Add.1, para. 52), who suffer disproportionately in terms of health care, education, and subsistence wages. Dalit women in India and Nepal make up the majority of landless labourers and scavengers.⁵³

38. The practice of *devadasi* (in which girls are pledged for life to temples at an early age by parents in return for heavenly favours and to placate the gods) continues in India.⁵⁴ However, once women are ceremonially “dedicated”, they are forced to become prostitutes for upper-caste community members.⁵⁵ Recently, most devadasis have ended up working in the sex trade industry. In some cases, sexual violence is linked to debt bondage.⁵⁶ In Nepal,

⁵¹ CRC/C/15/Add.261, para. 95; CRC/C/15/Add.115, para. 32.

⁵² Human Rights Watch, “Caste discrimination: a global concern” (New York, 2001), pp. 20-21.

⁵³ *Ibid.*, p. 21.

⁵⁴ See E/CN.4/2002/73/Add.2, para. 162.

⁵⁵ Human Rights Watch, “Caste discrimination”, p. 21.

⁵⁶ *Ibid.*

badis are viewed as a prostitution caste.⁵⁷ Many Dalit women and girls, including badis, are trafficked into sex work. In Pakistan, it is reported that rape of female bonded labourers is one of the most pressing problems facing the movement to end debt bondage.⁵⁸ In Mauritania, women referred to as “slaves” are often forced to remain with their “masters” as they are threatened with separation from their children if they escape.⁵⁹

Intermarriage

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

Religious conversion

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

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

B. Good practices and contemporary challenges

1. International

Sub-Commission on the Promotion and Protection of Human Rights

42. The Sub-Commission on the Promotion and Protection of Human Rights invested efforts to address discrimination based on work and descent. Four substantive reports⁶⁰ and a draft set of principles and guidelines for the elimination of discrimination based on work and descent were considered by this body. These draft principles⁶¹ have been cited and referred to, on various occasions, by treaty bodies, special procedures, civil society and national human rights institutions.

⁵⁷ Ibid. See also E/C.12/NPL/CO/2, para. 15.

⁵⁸ Human Rights Watch, “Caste discrimination” (note 52), p. 21.

⁵⁹ Ibid., pp. 21-22.

⁶⁰ E/CN.4/Sub.2/2001/16; E/CN.4/Sub.2/2003/24; E/CN.4/Sub.2/2004/31; E/CN.4/Sub.2/2005/30.

⁶¹ Available from <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/CRP/A-HRC-11-CRP3.pdf>.

2. National

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

(a) Asia

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

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

46. The Government of India has committed itself to developing policies aimed at the advancement of the Dalit population. The Special Central Assistance to Scheduled Castes Sub Plan⁶² is an example, as is the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993. Despite this Act and Government investment, the National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents has failed to achieve its objectives.⁶³

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

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

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

⁶² See <http://socialjustice.nic.in/scatoscp.php>.

⁶³ India, Comptroller and Auditor General of India (2003). Available from www.cag.gov.in/reports/reports/civil/2003_3/chapter1.htm.

50. In Sri Lanka there are two caste systems: one for the Sinhalese and one for the Tamils (E/CN.4/Sub.2/2001/16, para. 28). Caste differentiation occurs in both of Sri Lanka's main Tamil communities.⁶⁴ Caste-based discrimination is sometimes applied to non-Hindus—including Tamil Christian and Muslim converts and members of other minority groups. Caste differences between Indian-origin Tamil plantation workers also remain prominent. Untouchables are made to perform specific tasks during Hindu rituals that are particular to their low-caste status.

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

52. In Japan, discrimination against Buraku, also known as *eta* ("pollution abundant" or "unclean"), persists despite the official abolition of the Buraku system by the Emancipation Edict of 1871 and other Government measures. Nevertheless, the implementation of special policy measures, based on the Law on Special Measures of 1969 aimed at improving the living environment of Buraku districts and improving access to employment and education for Buraku (E/CN.4/2006/16/Add.2 and Corr. 1, para. 15), gave positive results. Other achievements include the increase in the rate of Buraku children going to senior high school, and a certain increase of public understanding of the problems facing Buraku.⁶⁵

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

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

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

(b) *Africa*

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

⁶⁴ Human Rights Watch, "Caste discrimination" (note 52), p. 8.

⁶⁵ Kenzo Tomonaga, "The Buraku liberation movement and legislative measures towards elimination of discrimination – the Japanese experience", sect. 8. Available from http://blhri.org/blhri_e/article/20110303/article1.htm.

⁶⁶ A. Tuden and L. Plotnicov, *Social Stratification in Africa* (New York, The Free Press, 1970), p. 16.

descendants. This marginalization may contain aspects of a purity-pollution dyad, as well as degrees of real or perceived occupation specialization.⁶⁷

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

58. In Nigeria, discrimination against Osu descendants remains a concern. Osu people were historically “owned” by deities among communities in Igboland, in south-east Nigeria. They were dedicated and “sacrificed” to these gods and were forced to live on the outskirts of villages to be the target of any bad luck that might occur. Being an Osu is a position ascribed at birth, based on descent.⁶⁸

59. Chapter IV, article 42, of the Constitution guarantees the right to freedom from discrimination for every citizen of Nigeria. In addition, the 1958 Osu Abolition Law legally abolished work- and descent-based discrimination. However, concerns remain about persistent allegations that members of Osu and other similar communities are still subjected to social exclusion, segregation and mistreatment, as well as discrimination in employment⁶⁹ and marriage (CERD/C/NGA/CO/18, para. 15). Since the enactment of the Osu Abolition Law, no cases have been prosecuted in connection with the law because no claims of its violation have been made (CERD/C/SR.1720, para. 3). In this regard, the Committee on the Elimination of Racial Discrimination has made recommendations to Nigeria (CERD/C/NGA/CO/18, para. 15).

60. Caste systems exist within several ethnic groups in Senegal. All characteristics of caste can be found among the Wolof community, principally divided between the *geer* and the *neeno*. The Constitution of Senegal proclaims the right of all citizens to equal protection of the law regardless of race, religion, sex, or origin, a reference to one’s caste background (art. 1), and prohibits all acts of racial, ethnic and religious discrimination (art. 5). However, the extent to which neeno castes approach the courts for legal redress on discrimination claims is negligible.⁷⁰

61. In Somalia, society is divided into patrilineal segmented and ranked clan groups. Among Somalia’s minorities, the “occupational groups” include Midgan (or Madhiban), Tumul and Yibro.⁷¹ These groups are also known as “sab”, a collective term for “low-caste”. Tumul are traditionally blacksmiths; Yibro, ritual specialists; and Midgan, traditionally hunters and leatherworkers, but who also undertook various arts and craft work, male circumcision and female genital mutilation. The few educated members of occupational groups work in any chosen field, but most work in manual and service jobs.⁷² The occupations of the sab groups are generally regarded as polluting. The sab groups are also feared and avoided as they have a reputation for occult practices. With the disappearance of their traditional lifestyles, and as a result of conflict, many have moved to urban settlements or internally displaced persons camps or fled to refugee camps in

⁶⁷ The International Dalit Solidarity Network, “Discrimination based on descent in Africa” (London), seventh to ninth pages.

⁶⁸ Human Rights Watch, “Caste discrimination” (note 52), p. 9.

⁶⁹ ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111), 2008, Geneva, doc. No. (ILOLEX) 092008NGA111, para. 4.

⁷⁰ Human Rights Watch, “Caste discrimination” (note 52), p. 9.

⁷¹ Martin Hill, *No Redress: Somalia’s Forgotten Minorities* (Minority Rights Group International, 2010), p. 12.

⁷² *Ibid.*

neighbouring countries. It is also reported that members of sab groups in the Somali refugee diaspora continue to suffer discrimination from members of other Somali clans.

62. The situation of minorities varies in terms of geographical areas. In Somaliland, article 8, paragraph 1, of the Constitution of May 2001 states that all citizens “shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property, status, opinion, etc”. Under article 8, paragraph 2, “precedence and discrimination on grounds of ethnicity, clan affiliation, birth and residence is prohibited”; and “programmes aimed at eradicating long lasting bad practices shall be a national obligation”. However, there is no specific anti-discrimination legislation.⁷³ Puntland has provided little protection or assistance to minorities and the parliament has no seats reserved for small minority communities, including for Madhiban.⁷⁴

(c) *Other parts of the world and the diaspora*

Middle East

63. In Yemen, work- and descent-based discrimination affects the Akhdam (“servant” or “the marginalized ones”) social group. Traditionally, land was the most important resource and those who did not own agricultural land worked in marginal occupations and services, and became part of the servant class (CERD/C/YEM/16, para. 159). Typical Akhdam occupational roles include garbage collection, street sweeping, and cleaning toilets and drains. They are often referred to generically as “sweepers” and are widely regarded as being dirty, immoral and dependent. The “low social status of this group stems from the members occupation as well as their [reputed] ethnic origins” (E/CN.4/Sub.2/2003/24, paras. 31-34). Dominant social opinion considers their men unscrupulous, lazy, unfit and unable to hold respectful jobs. The women are often stereotyped as promiscuous, unclean and leading lives as beggars and even prostitutes⁷⁵ and children are considered to belong to a social category of so-called “servants” (E/CN.4/Sub.2/2004/31, para. 32).

64. The Yemeni Constitution maintains a bill of rights guaranteeing a wide range of rights and freedoms (arts. 41-61) to “all citizens”. It also provides for equal opportunities in all economic, social, political and cultural activities (art. 24) and guarantees equal treatment before the Law. According to article 5 of the Code of Criminal Procedure, “citizens are equal before the law and an individual may not be punished or harmed on grounds of nationality, race, origin, language, belief, occupation, standard of education or social status” (CCPR/C/YEM/2001/3, para. 9). However, de facto discrimination persists. The Constitution is neither implemented nor adequate to address the specific discrimination against this minority.⁷⁶

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

⁷³ Ibid., p. 17.

⁷⁴ Ibid., p. 19.

⁷⁵ Hassan Ansah, “Yemen’s Untouchable Class: The Akhdam”, *Yemen Today Magazine*. Available from www.yemen-today.com/go/special_reports/4603.html.

⁷⁶ Alternative World/Partnership for Equitable Development and Social Justice in association with the International Dalit Solidarity Network, “Alternative report to the joint 15th and 16th periodic report of the State party Yemen to the Committee on the Elimination of Racial Discrimination (CERD)” (July 2006), p. 26.

Diaspora communities

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

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

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

IV. Activities of the Special Rapporteur

A. Country visits

69. Country visits are an essential part of the Special Rapporteur's activities. They provide an important opportunity for the mandate holder to interact with Government representatives and members of civil society. In the planning of such fact-finding missions the Special Rapporteur pays particular attention to geographic balance.

70. From 21 to 28 April 2010, the Special Rapporteur visited Singapore. He expresses his sincere gratitude to the Government of Singapore for its full cooperation and openness in the preparation and conduct of his visit. The report is included in document A/HRC/17/40/Add.2.

71. The Special Rapporteur would like to thank the Government of the Plurinational State of Bolivia, which has accepted his request to visit the country. He plans to undertake the mission before the end of 2011.

72. He would like also to thank the Government of South Africa for inviting him to conduct a mission, which he plans to carry out before the end of 2011.

B. Other activities

73. The Special Rapporteur has participated in several seminars and conferences since June 2010. On 1 June 2010, he delivered a statement on racism and xenophobia affecting migrants at a conference on human rights and migrants organized by the Council of Europe,

the Government of Portugal and the Office of the United Nations High Commissioner for Human Rights (OHCHR). On 15 June 2010, he addressed the issue of racism and conflict in a joint press release concerning ethnic violence in Kyrgyzstan. On 30 June 2010, he participated for the first time in the session on xenophobia organized within the framework of the annual consultations of the Office of the United Nations High Commissioner for Refugees with non-governmental organizations in Geneva. On 18 October 2010, he delivered a statement at the thematic discussion on “Structural discrimination: definitions, approaches and trends” during the eighth session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action.

74. In the context of the International Year for People of African Descent, the Special Rapporteur contributed in writing to the thematic discussion on “Racial discrimination against People of African Descent” held by the Committee on the Elimination of Racial Discrimination in Geneva on 7 March 2011. In addition, on 29 March 2011, he delivered a statement at the tenth session of the Working Group of Experts on People of African Descent.

75. The Special Rapporteur has also submitted written contributions to the following meetings: the seminar on data collection and the use of indicators to promote and monitor racial equality and non-discrimination held by OHCHR in Rio de Janeiro from 3 to 5 May 2010; the seminar on the fight against discrimination based on racial, ethnic, religious, or other bias held by the European Commission against Racism and Intolerance in Ankara on 10 and 11 January 2011; and the expert workshops on the prohibition of incitement to national, racial or religious hatred, held by OHCHR in Vienna on 9 to 10 February 2011 and in Nairobi on 6 and 7 April 2011.

V. Conclusions and recommendations

Racism, racial discrimination, xenophobia and related intolerance against Roma

76. **The Special Rapporteur takes note of efforts undertaken to eliminate racism, racial discrimination, xenophobia and related intolerance against Roma. However, while positive developments and good practices have been identified, both at the regional and national levels, they have been insufficient. Indeed, important challenges remain that reveal grave and deep-rooted problems of racism, racial discrimination, xenophobia and related intolerance against Roma that need to be addressed in the most vigorous manner.**

77. **To this end, it is essential that States develop a comprehensive approach based on stronger legal, political and institutional measures that would: (a) take into account the structural dimension of racism, racial discrimination, xenophobia, and related intolerance against Roma; (b) duly consider the interrelation between the racism and racial discrimination they suffer and their socio-economic marginalization and political exclusion; and (c) pay due attention to the situation of the most vulnerable Roma. In this regard the necessary legislative measures should be adopted and complemented by key measures such as: (a) affirmative actions to redress historical inequalities; (b) human rights training of State agents; and (c) educational and awareness-raising measures to foster mutual understanding, respect and tolerance. States should bear in mind that efficiency could be achieved and progress realized only with appropriate implementation of the measures adopted for Roma, effective participation of Roma, and due cooperation with civil society, and international and regional mechanisms. States are also encouraged to share good practices that have**

contributed to improving the human rights situation of Roma. In line with this, the following recommendations can be used by States as tools for further progress.

78. Concerning the challenges faced by Roma in education, employment, housing, and health, the Special Rapporteur recommends that States:

(a) Ensure that Roma children and youth, including girls, are given equal access to education, and refrain from any legal or any other measures leading to imposed racial segregation in any form in access to schooling. Firm measures to eliminate racial prejudices and harassment of Roma children in schools should also be taken;

(b) Ensure a more robust enforcement of their legislation prohibiting discrimination in employment and take further measures to protect Roma against the discriminatory practices that affect them in the labour market. Affirmative action to promote their employment is also encouraged;

(c) Guarantee the right of Roma to housing without discrimination as provided in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) and act firmly against any discriminatory practices affecting them in this area, taking into consideration general recommendation No. 27 (2000) of the Committee on the Elimination of Racial Discrimination on discrimination against Roma and general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights on forced evictions;

(d) Take all the necessary measures to ensure that Roma enjoy the full right to health and health care, and address the discriminatory practices among medical professionals, including through sensitization measures on Roma rights, culture and identity among such personnel. Forced sterilization of Roma women must be prohibited under the law and sanctioned properly, and the victims should be provided with effective remedies and appropriate medical assistance.

79. Regarding racial discrimination and racism experienced by Roma in the enjoyment of their civil and political rights, the Special Rapporteur recommends that States:

(a) Further promote the participation of Roma in political and public life, and ensure their adequate representation in State institutions and political parties. In this regard, special measures to improve their political, policymaking and public administration skills should be taken. Political parties should also work towards fair representation of Roma within and at all levels of their party system;

(b) Ensure that their legislation regarding nationality, citizenship and naturalization does not discriminate against Roma, and take appropriate measures to ensure their access to justice and effective remedies without discrimination. Furthermore, all the necessary measures should be taken to ensure that Roma individuals have access to personal documents to effectively enjoy all their human rights;

(c) Condemn and prohibit racial violence against Roma. In this regard States should introduce in criminal law a provision according to which committing an offence with racist or xenophobic motivations or aims constitutes an aggravating circumstance allowing for enhanced penalties. Prompt, thorough and impartial investigations of racist acts against Roma should also be undertaken and the responsible persons adequately prosecuted and sanctioned. Roma victims should be provided with access to effective legal remedies and adequate reparation. Efforts should also be taken to improve relations between the police and Roma to restore confidence and allow a better reporting of racist acts to the police. Furthermore, due

to the audience they reach and the moral authority they carry, politicians are urged to avoid the stigmatization of Roma in their statements and political debates, and to firmly condemn any racist or xenophobic action or discourse against Roma.

80. The Special Rapporteur recommends that States avoid portraying the situation of Roma migrants as an issue of public security and refrain from implementing security policies targeting Roma migrants in violation of international human rights standards and which lead to their collective expulsions. He calls upon States to respect the rights of Roma migrants as guaranteed by the relevant regional and international human rights instruments.

81. States are urged to adopt appropriate measures to ensure that Roma, including Roma women, participate effectively in the design, decision-making, implementation, and evaluation processes of the policies that affect them. States are also encouraged to strengthen and better coordinate their implementation efforts at the national and local levels, and to allocate the requisite resources in this regard. Regular assessment of the measures taken, including through the collection of ethnically disaggregated data, is also recommended. Such a collection must be done in consultation with Roma and in accordance with international human rights standards. Finally, appropriate mechanisms of dialogue between Roma and local authorities should be established to ensure appropriate implementation of the policies and legislation applying to Roma at the local level.

82. To address the root causes of racism and racial discrimination against Roma within society and build a society based on tolerance, respect for cultural diversity and non-discrimination, the Special Rapporteur strongly recommends that States invest in education. In this regard he recommends in particular the teaching in school of the history of Roma, including the genocide they suffered during the Nazi regime. Awareness-raising measures to inform and sensitize non-Roma populations about the Roma history, identity and culture should complement education efforts.

83. Racial discrimination and racism within State institutions is a reality that States should not deny. In this regard it is important to ensure that their legal framework and the attitudes of their agents comply with their international human rights obligations. Therefore, States should ensure that their legal framework is consistent with international human rights standards, including the Convention, the Durban Declaration and Programme of Action, and the outcome document of the Durban Review Conference. They should also provide mandatory human rights trainings focusing on racism, racial discrimination, xenophobia and related intolerance to States officials, and take measures to ensure that the composition of State institutions and the public administration reflects the multicultural diversity of their population. Special measures to promote the employment of Roma in the public administration and institutions at all levels should be taken in this regard.

84. To conclude, the Special Rapporteur would like to recall the importance of cooperating with civil society and international and regional human rights institutions to effectively eliminate discrimination against Roma.

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

85. The Special Rapporteur encountered difficulties in researching for the present report, particularly in the area of discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status. These difficulties included the paucity of sources and lack of recent public

information, in particular regarding affected communities outside Asia. Further study of this issue is necessary.

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

87. However, the Special Rapporteur notes with satisfaction that some Governments have taken initiatives to address the problems facing communities affected by discrimination based on work and descent, and encourages them to continue their efforts, share best practices and take the lead in regional and international initiatives to eliminate this form of discrimination.

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

89. The Special Rapporteur:

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

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

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

90. Moreover, the Special Rapporteur recommends:

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

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

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

91. **The Special Rapporteur invites Governments:**

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

(b) **To implement recommendations of United Nations human rights mechanisms, civil society and NHRIs pertaining to patterns of human rights violations against the so-called lower castes, and, where necessary, to expand the mandates of NHRIs to ensure appropriate monitoring and follow up to recommendations;**

(c) **To consider creating a consultative body of regional human rights institutions to study the issue and raise regional awareness;**

(d) **To include information on the issue of discrimination based on caste and other analogous systems of inherited status in their reports to United Nations human rights bodies.**

92. **The Special Rapporteur recommends that the full spectrum of special procedures address the issue of discrimination based on caste and other analogous systems of inherited status in the context of their respective mandates.**
