



ГЕНЕРАЛЬНАЯ АССАМБЛЕЯ

Distr.
GENERAL

A/HRC/11/36/Add.2
16 March 2009

RUSSIAN
Original: FRENCH

СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА

Одиннадцатая сессия

Пункт 2 повестки дня

**РАСИЗМ, РАСОВАЯ ДИСКРИМИНАЦИЯ, КСЕНОФОБИЯ И
СВЯЗАННАЯ С НИМИ НЕТЕРПИМОСТЬ: ПОСЛЕДУЮЩИЕ
МЕРЫ И ОСУЩЕСТВЛЕНИЕ ДУРБАНСКОЙ ДЕКЛАРАЦИИ
И ПРОГРАММЫ ДЕЙСТВИЙ**

**Доклад Специального докладчика по вопросу о современных формах
расизма, расовой дискриминации, ксенофобии и связанной
с ними нетерпимости Дуду Дьена**

Добавление

МИССИЯ В МАВРИТАНИЮ*

* Резюме настоящего документа распространяется на всех официальных языках. Сам документ, содержащийся в приложении к резюме, распространяется только на языке оригинала, на арабском и на английском языках.

Резюме

Специальный докладчик по современным формам расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости Дуду Дьен совершил поездку в Мавританию 20-24 января 2008 года по приглашению ее правительства. Главная цель поездки заключалась в том, чтобы в контексте текущих демократических преобразований содействовать преодолению исторического наследия дискриминации, которая на протяжении долгого времени пронизывала все общество.

По итогам своей поездки Специальный докладчик пришел к главному выводу о том, что, хотя в Мавритании отсутствуют какие-либо проявления расизма в праве или в политике на государственном уровне, мавританское общество глубоко затронуто сохраняющейся практикой этнической и расовой дискриминации, уходящей своими корнями в культурные традиции и присутствующей в социальных структурах, основных институтах государства (прежде всего в вооруженных силах и судебной системе) и в образе мышления. В числе сохраняющихся факторов, которые дают практическое выражение таким проявлениям дискриминации в мавританском обществе в долгосрочном плане, следует выделить, в частности, традиционное рабство, глубоко укоренившуюся в культуре и общественной жизни систему каст и использование этнической принадлежности в качестве инструмента политики, особенно языковой политики, которая усугубляет поляризацию различных общин. Сохранение культуры расизма и дискриминации представляет собой главное препятствие для построения демократии и уважения прав человека в мавританском обществе.

Специальный докладчик считает, что в настоящее время Мавритания сталкивается с тремя основными вызовами: строительством демократического, эгалитарного и интерактивного общества; искоренением и преодолением дискриминационных традиций и культурной практики; и выправлением политического, экономического и социального неравенства, обусловленного историческим наследием дискриминации. Специальный докладчик сформулировал ряд рекомендаций для мавританских властей, включая:

- a) в политическом плане - постоянное публичное изъявление политической воли вести борьбу со всеми проявлениями расизма, дискриминации и содействовать демократическому эгалитарному и интерактивному мультикультурализму на основе признания, уважения и поощрения культурного многообразия;
- b) в стратегическом плане - признание важности искоренения расизма и дискриминации для построения прочного демократического общества в Мавритании;

с) в законодательном плане - принятие всестороннего законодательства, охватывающего все формы дискриминации, включая определение дискриминации, применимого во всех сферах общественной жизни, с одной стороны, и признание в Конституции многокультурного и многоэтнического характера мавританского общества и основных этнических групп или общин, его составляющих, их языков и их культур, с другой стороны;

d) в институциональном плане - создание специальной независимой комиссии для разработки "белой книги" о состоянии, коренных причинах, проявлениях и последствиях дискриминации в истории развития общества и разработка национальной программы действий по борьбе со всеми видами дискриминации, а также создание независимого национального учреждения в соответствии с Принципами, касающимися статуса национальных учреждений, занимающихся поощрением и защитой прав человека (Парижскими принципами), для поощрения прав человека, борьбы против дискриминации и содействия демократическому, эгалитарному и интерактивному многокультурализму;

e) параллельно с осуществлением политической, юридической и институциональной стратегии - принятие культурно-этнической стратегии с целью полной и долговременной ликвидации глубинных причин дискриминации в культуре и мышлении и создания гармоничного сообщества народов, в частности путем образования, культуры и коммуникации.

Специальный докладчик хотел бы подчеркнуть, что настоящий доклад касается ситуации, существовавшей в момент его посещения страны в январе 2008 года.

Annex
REPORT SUBMITTED BY MR. DOUDOU DIÈNE, SPECIAL RAPPORTEUR
ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION,
XENOPHOBIA AND RELATED INTOLERANCE
MISSION TO MAURITANIA (20-24 JANUARY 2008)
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Introduction

1. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, visited Mauritania from 20 to 24 January 2008 at the Government's invitation. The main purpose of the visit, the first by a special procedure mandate holder, was to contribute to the elimination, in the context of the current drive towards democracy, of the historical legacy of ethnic discrimination which has long characterized that society.
2. The Special Rapporteur's visit included the cities of Nouakchott and Rosso. He met with the President of the Republic, Mr. Sidi Mohamed Ould Cheikh Abdallahi and Prime Minister, Mr. Zein Ould Zeidane, the Ministers for Foreign Affairs and Cooperation, Education, the Advancement of Women, Children and the Family, Islamic Affairs and Basic Education, and senior officials of the Ministry of Justice. He also met with the President of the Supreme Court and the Speaker of the Senate. At the local level he met with the President of the Nouakchott metropolitan area and the wali (governor) of Rosso.
3. The Special Rapporteur likewise met representatives of non-governmental organizations (NGOs), spiritual and religious leaders, political party leaders, intellectuals, journalists and other members of civil society involved in the efforts to eliminate racism and racial discrimination. He also met with the Ombudsman of the Republic and the members of the new National Human Rights Commission. He made a point of visiting the deprived El-Mina neighbourhood and the Dar Naim prison in Nouakchott and the Toulel II area near Rosso, where he met with Mauritanian refugees from 1990 who had since returned from Senegal.
4. The Special Rapporteur wishes to thank the Government of Mauritania for its invitation, the warm welcome he received and the openness it showed throughout his visit. He believes the invitation extended to him testifies to the existence of a real desire at the highest levels of the State to cooperate in an independent and objective review of the situation of racism and discrimination in the country. He would also like to thank the various civil society stakeholders for taking the time to meet with him and for the information they provided. He would also like to express his gratitude to the United Nations country team for its assistance during the preparation and visit phases of his mission.

I. GENERAL INFORMATION

A. Historical and political context

5. Since achieving independence from France on 28 November 1960, the Islamic Republic of Mauritania has been governed by authoritarian civilian or military regimes that created a political identity based on the Arabization of the country and Arab nationalism. Measures to promote that policy of identity politics took many forms: for example in the area of education, starting in 1965, successive laws made the use of Arabic compulsory in primary education and at the political level, Mauritania strengthened its relations with the Arab world while gradually disengaging from sub-Saharan Africa. That policy took a dramatic turn when Colonel Maaouya Ould Sid'Ahmed Taya took power, and Halpular officers were executed in 1987, followed by a wave of arrests and the demobilization of thousands of Halpular soldiers, who were accused of trying to overthrow the Government. Between 20 and 29 April 1989 there was a series of

pogroms against Mauritians in Senegal and Senegalese in Mauritania; hundreds were killed and nearly 300,000 people made refugees, displaced or repatriated. The repression organized by the Taya regime against Mauritanian citizens of black African origin, accused of “sénégalité”, led to the expulsion or flight of tens of thousands of Mauritians to Senegal and Mali. This campaign of ethnic cleansing was accompanied by the destruction of identity documents, confiscation of property and land, arbitrary arrests, rape and summary executions. In the early 1990s nearly 60,000 black Mauritians were living in refugee camps located along the border with Senegal and 40,000 were in camps in Mali.

6. The emergence in those camps of resistance movements that challenged the Arab-Berber political and economic domination of Mauritania led to new human rights violations against black Mauritians in 1990-1991, in particular within the army and the administration. In 1990, on the basis of an alleged conspiracy among black Mauritanian officers, more than 3,000 black Mauritanian soldiers, civil servants and managers were detained and imprisoned and 500 of them executed in extrajudicial killings.

7. On 3 August 2005 a coup d'état led by Colonel Ely Ould Mohamed Vall overthrew the Taya regime after more than 20 years in power. The Military Council for Justice and Democracy was established as a temporary body charged with “putting an end to the regime’s totalitarian practices, which had caused so much suffering among the population in recent years” and organizing “democratic elections open to all political groups”.

8. During this period, commonly referred to in Mauritania as the “period of transition to democracy”, major reforms were undertaken and several elections organized, including: a referendum in 2006 on amending the 1991 Constitution; legislative, municipal and Senate elections, likewise in 2006; and, in 2007, presidential elections that marked the end of the transition period. Mr. Sidi Mohamed Ould Cheikh Abdallahi was elected President following multiparty elections generally considered to have been free and transparent, and took office on 19 April 2007.

B. Population and ethnic, linguistic and religious composition

9. Mauritania is a multicultural and multi-ethnic country with a surface area of more than 1 million square kilometres. The population, estimated to be 3 million is made up of two major cultural and ethno-linguistic groups: the Arab-Berber or Beidane peoples, commonly referred to as Moors, largely nomadic and inhabiting mostly the north of the country; and the black African population, made up of Halpular, Soninke, Wolof and Bambara, mostly settled and inhabiting the south and east of the country. In addition to these two large groups there is a Harratin community, also called the black Moors, as opposed to the white Moors, black African by skin colour but an integral part of the Moorish ethnic group, whose language and culture they share.

10. Pursuant to article 6 of the Constitution of 2006 only Arabic has the status of official language whereas Arabic, Pular, Soninke and Wolof have the status of national languages. Hassanya, an Arabic language with Berber influences, is spoken by the Arab-Berber population, while Pular, Soninke and Wolof are spoken by the black African population. Article 5 of the Constitution makes Islam the official religion of the population and the State.

C. Political and judicial structure

11. Mauritania has a presidential political regime. Pursuant to the Constitution of 20 July 1991, as amended and restored by Order No. 2006/14 of 12 July 2006, the President of the Republic is the Head of State. He exercises executive power, chairs the Council of Ministers and is the Commander-in-Chief of the armed forces. He is elected for a term of five years by direct universal suffrage and may be re-elected once.

12. Legislative power is exercised by Parliament, composed of two representative chambers, the Senate and the National Assembly. Article 89 of the Constitution establishes the principle of separation of judicial, legislative and executive branches. The President of the Republic is the guarantor of the independence of the judiciary and is assisted by the High Council of the Judiciary, which he chairs.

D. International human rights instruments

13. Mauritania is a party to the main international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Mauritania has also acceded to the Slavery Convention.

14. Mauritania has ratified the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

E. Methodology

15. The Special Rapporteur had a number of meetings with representatives of the executive, legislative and judicial branches with a view to obtaining their opinion on the situation of racism and racial discrimination in Mauritania, on the adequacy of the current legal framework on the elimination of racism and racial discrimination, and on the programmes and policies implemented by the authorities for that purpose. The Special Rapporteur also met with representatives of NGOs, spiritual and religious leaders, political party leaders, intellectuals, journalists and other members of civil society.

16. In order to make his analysis as comprehensive and objective as possible, the Special Rapporteur organized his meetings with all stakeholders around three main issues: (a) the existence of racism, racial discrimination and xenophobia in Mauritania; (b) their causes and principal forms and manifestations; (c) measures and programmes adopted by the Government to address them on the political, legal and cultural levels as well as policy alternatives.

17. In the first part of this report the Special Rapporteur describes the legal and political strategy implemented by the authorities to combat the forms and manifestations of racism and racial discrimination in Mauritania. In the second part he describes the positions of civil society and of representatives of the victimized communities. The third part contains the Special

Rapporteur's analysis of the problem of racism in Mauritania based on information received. The final part contains his recommendations to the Government of Mauritania.

II. LEGAL AND POLITICAL STRATEGY IMPLEMENTED BY THE AUTHORITIES

A. Legal and institutional framework to combat racism and racial discrimination

1. Legal provisions against racism and discrimination

18. Article 1 of the Constitution of Mauritania enshrines the principle of the right to equality, declaring that “the Republic guarantees equality before the law to all of its citizens without distinction as to origin, race, sex, or social condition”. Article 15 of the Constitution guarantees the right of property and the right of inheritance to all citizens without distinction.

19. Other laws and regulations enshrine the principle of non-discrimination, in particular article 395 of the Labour Code, which explicitly establishes equal access to employment and prohibits any discrimination, exclusion or preference based on race, national origin, colour, sex, religion, political opinion or social origin.

20. Mauritanian law, including article 1 of the Constitution, prohibits incitement to acts of racial or ethnic discrimination and contains a series of provisions that criminalize the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and violence or provocation against another race or a group of a different colour or ethnic origin. Article 3 of Order No. 91-023 of 25 July 1991 on freedom of the press prohibits ethnic or regional hatred and prejudice and any acts considered crimes or offences. In addition, article 4 of Order No. 091-024 of 25 July 1991 on political parties states that “political parties shall ensure that their statutes, programmes, public statements and political activities are free from incitement to intolerance and violence or propaganda intended to undermine territorial integrity or national unity”.

21. In the area of criminal legislation, no provision of Order No. 083-162 of 9 July 1983 on the Criminal Code deals specifically with racial or ethnic discrimination. In that regard, in March 2004, in its sixth and seventh periodic reports to the Committee on the Elimination of Racial Discrimination (CERD/C/421/Add.1), Mauritania states that the provisions contained in the chapter of the Criminal Code entitled “Crimes and offences against the person” authorize a judge to draw on a wide range of criminal sanctions in order to punish any racist practice in a manner commensurate with its severity but nevertheless states that “to date, no case law exists in respect of racist offences, as such offences are alien to Mauritanian society, where making a distinction on grounds of race or colour is inconceivable”.

2. Legal provisions against slavery

22. Slavery has long been a problem in all ethnic communities in Mauritania. Differences of opinion exist even among those who admit that the practice continues to exist and has left its mark on contemporary Mauritanian society: some deny it exists in their community, but point the finger at other ethnic groups; others claim it is limited to the Arab-Berber community; still others say it also exists in the other communities but in the form of a caste-like system.

23. Slavery was first abolished in Mauritania in 1905 following colonization by France, in a colonial decree implementing in Mauritania the law adopted in 1848 abolishing slavery in all French colonies. Abolition was reaffirmed at independence by the 1961 Constitution, which incorporated the principles of the Universal Declaration of Human Rights.

24. Order No. 081-234 of 9 November 1981 on the abolition of all forms of slavery was promulgated in the context of a review of basic legal texts following the proclamation of sharia law in 1980 in order to underscore the acceptance by Muslim jurists of laws adopted under positive law. Article 1 of the Order definitively abolished slavery throughout the national territory but did not impose a criminal penalty for slavery. Article 2 stated that compensation for the abolition of slavery would be provided to rightful claimants, i.e., slave-owners. However, no implementing regulations were adopted for the Order, which rendered it without practical effect.

25. On 25 June 2003 the Government adopted Act No. 025/2003 on combating human trafficking. Pursuant to that Act, the expression human trafficking means, *inter alia*, the recruiting, transport or transfer of persons by force, intimidation or other forms of constraint; by abduction, deceit, abuse of authority or exploitation of a person in a vulnerable situation; or by offering or accepting payment or other advantages with a view to obtaining the consent of a person in a position of authority over another, for the purpose of exploitation. The Act provides for criminal penalties up to hard labour for life for the perpetrators of such crimes.

26. The adoption on 3 September 2007 of the Act criminalizing slavery and punishing slavery-like practices was a turning point in the approach to this issue in Mauritania. The Prime Minister, introducing the bill, described it as “a decisive turning point, aimed at the elimination of all the wrongs inherited from the past, the promotion of a culture of equality, tolerance and citizenship and the establishment of favourable conditions for progress and the emancipation of all Mauritania”. That position is in contrast to the attitude of complete denial at the highest level of the State in the past, as evidenced for example in 1997 when President Ould Taya stated that those who raised the issue of slavery were only trying to tarnish the country’s image and must be linked to a group previously involved in an attempted coup d’état. More recently, in September 2001, a representative of the Government of Mauritania stated to the Committee on the Rights of the Child that “Mauritanian society had never known servitude, exclusion or discrimination [...] and no vestiges of such practices could thus persist”.¹

27. Article 2 of the Act defines slavery as “the exercise of all or some of the rights of property over one or more persons”. Article 3 prohibits “discrimination, in any form, against a person alleged to be a slave”. The crime of slavery is held to occur when “any person reduces another person, or a person under their care or responsibility, to slavery or incites them to forfeit their liberty or dignity, for the purpose of enslaving them” and is punishable by 5 to 10 years’ imprisonment and a fine of 500,000 to 1 million ouguiyas (art. 4).

¹ Summary record of the 724th meeting of the Committee on the Rights of the Child, 25 September 2001 (CRC/C/SR.724).

3. Tripartite agreement on the voluntary repatriation of Mauritanian refugees in Senegal

28. On 12 November 2007 the Governments of Mauritania and Senegal and the Office of the United Nations High Commissioner for Refugees (UNHCR) signed the Tripartite Agreement on the Voluntary Repatriation of Mauritanian Refugees in Senegal. The agreement opens the way for a lasting solution to unresolved humanitarian issues, the most grievous consequence of the tragic events of 1989 and the ensuing two-year state of emergency, with the expulsion or flight of tens of thousands of Mauritians to Senegal and Mali, mostly black Mauritians who felt their lives were endangered by the ethnic violence.

29. The Agreement sets forth each party's undertakings with a view to ensuring the satisfactory organization of the voluntary return of refugees to Mauritania, under the supervision of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Agreement is based on the principles of the right of return (art. 1), the voluntary nature of repatriation (art. 2), preservation of family units (art. 3) and repatriation in conditions of safety and dignity and in a context conducive to a sustainable return (art. 4).

30. As for Senegal's principal responsibilities, article 5 of the Agreement states that refugees who decide not to participate in the repatriation programme may continue to reside in Senegal and integrate more fully into Senegalese society, while articles 7 and 8 provide for assistance with departure formalities for Mauritanian refugees and the issuance of certificates of civil status and judicial documents to refugees.

31. Mauritania's responsibilities include the preparation of appropriate administrative structures for the realization of the return of the refugees in safety and dignity and their full legal, social and economic reintegration into the national community (art. 9); the adoption of measures to help returnees establish themselves in their communities of origin or of choice by guaranteeing protection for their movable and immovable property (art. 12); the reintegration of the returnees into economic and social life without discrimination; and the adoption of any measures needed to inform, notify and prepare the local populations with a view to facilitating harmonious and peaceful reintegration (art. 13).

B. Policies and programmes to combat racism, racial discrimination and related intolerance

32. The representatives of the Government of Mauritania indicated that, in addition to the existing legal framework, several institutional initiatives have been adopted to promote tolerance and respect for diversity and combat all forms of discrimination, xenophobia or related intolerance.

33. At the institutional level, the authorities pointed to the recent creation of the National Human Rights Commission, an independent advisory, monitoring, early warning and mediation body to promote respect for human rights. It is under the responsibility of the Prime Minister and comprises prominent persons from professional organizations, civil society, the Bar Association, unions and government institutions. The Commission is now the main institution responsible for defining and developing human rights promotion and protection policies, alongside other institutions with a more specific mandate, such as the Secretariat of State for the Status of

Women, the National Council for Children and the Ombudsman. The Special Rapporteur recognizes the essential role of the Commission and can testify personally to the lively discussions among its members on such topical issues as the new law on slavery, unresolved humanitarian issues and the importance of reinforcing social cohesion and national unity.

34. With regard to the return of Mauritanian refugees from Senegal, the authorities highlighted the creation on 2 January 2008 of the National Refugee Support and Integration Agency. The Agency's mandate is currently limited to three years and its general mission is to ensure the integration of Mauritanian refugees returning from Senegal and Mali, support the government offices and commissions responsible for the identification, return and reception of refugees, and promote the economic and social development of the areas concerned. In order to ensure its actions will have a lasting effect, the Agency's programmes are aimed not only at new returnees but also at refugees who have returned on their own account since 1996, Mauritians sent back from Senegal, known as "Moussafarines"; and the population as a whole in reception areas. The first group to return was expected on 29 January 2008, in the city of Rosso.

35. The Government likewise underscored the implementation of programmes and policies aimed at developing and protecting the various social groups, for example the National Plan of Action for the Promotion and Protection of Human Rights and the Strategic Framework for Poverty Reduction. The National Plan of Action, adopted in 2003, is intended, inter alia, to provide Mauritania with a framework for consultation and cooperation on the coordination of human rights promotion and protection programmes, promote the rule of law and a constitutional framework enshrining human rights, and strengthen national capacities and partnership between the Government and civil society for the promotion and protection of human rights. The Strategic Framework for Poverty Reduction (2001-2015) aims to give greater attention to the particularly vulnerable groups in Mauritanian society with such measures as job creation, promotion of sectors that directly help the poor in the areas where they are concentrated, development of the education system, basic health care, and the promotion of good governance.

36. The Special Rapporteur also met with the Ombudsman, an independent authority established by Act No. 93/027 of 7 July 1993. The Ombudsman deals with complaints from citizens relating to their dealings with the State bureaucracy, local authorities, public institutions and other bodies providing a public service. After reviewing the complaints the Ombudsman drafts a confidential report for the President of the Republic containing recommendations on how to remedy the complaints. During his meeting with the Special Rapporteur the Ombudsman stressed that by far the most complaints are related to land ownership and decisions affecting enforced retirement or dismissals from the civil service, and not issues involving manifestations of discrimination based on race, ethnicity or other factors.

C. Official perceptions and reactions

37. Most of the Mauritanian officials the Special Rapporteur met with underscored that Mauritanian society is multi-ethnic and multicultural, cemented together by a common history and shared Islamic values. While the authorities admit that there have been tensions between communities in the past and particularly the recent past, those tensions are not considered to be attributable to any discriminatory practices based on ethnicity or race that might have led to deep divisions between the various communities, but rather the result of a range of differences between the various ethnic groups and within ethnic groups themselves.

38. Without exception the Mauritanian authorities highlighted the political will of the current Government to resolve the problems inherited from the practices of the past that have had profound consequences for society today, in particular unresolved humanitarian issues and slavery. In that context many references were made to the solemn declaration by the President of the Republic of 29 June 2007, which was welcomed by both the political authorities and civil society representatives, and in which he expressed his compassion for all the victims of those years and reaffirmed the State's desire to ensure a dignified return for all fellow citizens who wished to return and to find a definite solution to the humanitarian situation.

39. The President of the Republic himself, during his meeting with the Special Rapporteur, said that determination was essential for the consolidation of national unity and the strengthening of social cohesion, which were his two highest priorities. He said that he was convinced that Mauritania could set an example in promoting union and unity among all communities in its population. That same political will was expressed by the Prime Minister, who told the Special Rapporteur that he was determined to overcome the heavy legacy of the past and make Mauritania a nation in which all its citizens, whatever their ethnic origin, could feel they belong to the same nation and have the same rights, obligations and equality of opportunity. In that regard he explained the reforms the Government intends to undertake, in particular in the educational sphere, to ensure that this political will and vision will lead Mauritanian society to harmonious coexistence, without any form of ethnic, tribal, social or other tension.

40. The officials who met with the Special Rapporteur emphasized the efforts being made to promote all languages and cultures in Mauritania. While they are aware of the polarization in the past of the black Mauritanian and Arab Mauritanian communities along ethnic lines, they strongly deny the existence of language policies that might give an advantage to a particular community and encourage social polarization. The Minister of Education for example recalled that since 1999 there has been a single education system for all children, whatever their ethnic or tribal origin. She also drew attention to the current programmes of the Ministry of Education, including the holding in the near future of a national conference on education to review the values and objectives the education system should transmit, and the launching of initiatives aimed at eliminating any discriminatory content from teaching materials. The Minister likewise stressed the importance, in the context of the voluntary return of Mauritanian refugees from Senegal, of developing an educational strategy to fashion a common history based on a feeling of belonging and on the acceptance by all communities of the unity of the Mauritanian nation.

41. Most of the officials who met with the Special Rapporteur stated that slavery was no longer practised and had left merely traces, underpinned to a large extent by underdevelopment, poor living conditions and poverty. In order to eradicate these remnants of slavery - which in many cases were not very different from the problem of castes, which affected all communities - the authorities stressed the importance of the new law criminalizing and penalizing slavery. They noted that a number of supporting measures will be introduced to implement the law, including the creation of mechanisms for the social and economic reintegration of the victims of slavery and a wide-ranging public awareness campaign.

42. Most of the members of the Government mentioned that there is no discrimination in access to employment in the public or private sectors and gave examples showing that all ethnic

groups are represented in the political parties, the economy and the Government. Officials from the judicial system, for example the President of the Supreme Court, also pointed out that no case of racial discrimination had been tried by the courts.

43. Such claims were in contrast to the opinions expressed by some local officials, in particular from the Nouakchott municipality, who spoke openly of the high degree of language-based polarization among the various communities. They said it was important for Mauritania to be recognized - notably in the Constitution - as an Arab-African country.

III. POINT OF VIEW OF CIVIL SOCIETY AND concerned COMMUNITIES

A. Concerns relating to Government policies and measures

44. The Special Rapporteur had a number of meetings with a diverse and representative group of persons from civil society, including representatives of NGOs, spiritual and religious leaders, leaders of the main political parties, union and employer representatives, journalists, academics and intellectuals. He commends the courage and vitality of Mauritanian civil society, which was severely oppressed for years - its commitment and energy are decisive factors in the current democratic process.

45. The great majority of civil society representatives were convinced that racism, racial discrimination and intolerance are deeply rooted in Mauritanian society. They believe that the problem of slavery, the existence of castes and, more recently, political practices that have favoured the Arab dimension in the building of a national identity, have contributed to discrimination and created divisions among the various communities.

46. Civil society representatives acknowledged that there is a legal framework containing instruments to combat such phenomena and that there is a strong political will that has led, inter alia, to the formulation of a new legal strategy and the creation of new institutions and mechanisms to eradicate the heavy legacy of the past. Yet in the effort to eradicate these problems, several representatives of human rights organizations noted the lack of implementing measures to transform a formal political commitment into real democratic progress, and the gap between the legal framework and its application.

47. The Special Rapporteur would like to deal with three specific issues in this section: the political, economic and social invisibility of certain communities, in particular the black Mauritanian communities, in the structures of political power and of the military, police and security forces, and in the business sector and the media; the tacit acceptance of relations of servitude, an example of the long-term effect of slavery; and concerns over unresolved issues relating to the voluntary repatriation of Mauritanian refugees in Senegal and to humanitarian needs.

B. Perspective of black Mauritanian and Harratin communities

48. The black Mauritanian community, which along with the Arab-Berber community, is one of the two ethno-linguistic and cultural groups in Mauritania, is itself made up of the Halpular, Soninke, Wolof and Bambara. The Harratin community, which is black African by skin colour but in fact forms part of the Moorish ethnic group, whose language and culture it has inherited, is

situated between the two main groups. Also called “black Moors”, they were enslaved by the “white Moors” for generations.

49. In a number of meetings with the Special Rapporteur members of the black Mauritanian communities expressed great frustration at their lack of representation in political circles, the military and police and security forces, business and the media. They provided many examples of this invisibility: the small number of black Mauritanian senior officials in the civil service, at most four ministers or five prefects in any Government since independence; the lack of black Mauritanian women ambassadors and ministers, despite the recent appointment of three women ministers; the lack of black Mauritanian police or military commanders; the lack of private corporations or enterprises led by black Mauritians, in particular in the banking and commercial sectors, and their low level of representation in the media, both in terms of visibility in audio-visual programmes and as regards employment in journalism, especially at the management level. This underrepresentation, which is reflected in the lack of ethnic data in census information, is accentuated by Arab-Berber officials who, in contacts with the rest of the world, depict Mauritania as an Arab country and do not mention its African roots.

50. Numerous other concerns were expressed about the existence of a language policy, a legacy of the past, which gives priority to Arabic and excludes the black Mauritanian languages. Evidence of that discriminatory policy is particularly clear in the following structures: the education system, where Arabic is entrenched as the main language, in particular at the university level, which has the direct effect of excluding black Mauritians from positions of responsibility; the judicial system, where Arabic is the only working language, which thus precludes members of those communities educated in French from obtaining posts and prevents all who do not speak Arabic and cannot afford an interpreter from obtaining access to justice; and the media, in particular television, where programmes in Pular, Soninke or Wolof receive little air time.

51. During his visit to the deprived El-Mina neighbourhood in Nouakchott, the Special Rapporteur met with women from the Pular and Soninke communities, who described their social marginalization, leading in particular to difficulties in access to decent housing; lack of drinking water and electricity; problems of access to school for their children; and obstacles caused by their poor command of Arabic. That visit highlighted for the Special Rapporteur the overlap between the distribution of socio-economic marginalization and that of ethnic communities; he was told that certain ethnic communities were increasingly being squeezed into specific areas of the capital, and that the black Mauritanian population in particular was increasingly concentrated in the most disadvantaged areas.

52. The Harratin also claimed to be the victims of discrimination not only because of the colour of their skin but also because of the profound impact of slavery on attitudes and behaviours, as manifested by continued discrimination against those who were slaves in the past and their descendants. That discrimination made itself felt in many ways, but particularly in the wholesale exclusion of the Harratin from high-level positions in such political institutions as the High Constitutional Council, the High Islamic Council, the High Council of the Judiciary and the National Chamber of Commerce, their relegation to the lower ranks in the army, gendarmerie, national guard and police, and their poor representation on national television and radio.

53. During his visit to the Dar Naim prison, the Special Rapporteur heard many claims that most of the detainees were from the communities that were traditionally discriminated against, whereas individuals from the Arab-Berber communities escaped imprisonment thanks to the discriminatory application of the law and the protection provided by their family or tribe. Despite the absence of statistics on the ethnic makeup of the prison population, the Special Rapporteur observed that most of the prison population were black Moors and black Mauritians. He was also concerned at the prison conditions, notably overcrowding, which prevented pretrial detainees from being separated from convicts and, among other things, hampered access to medical services. At the time of his visit there were 760 inmates, whereas the prison's capacity was 380.

C. Perception of new legislation and persistence of slavery-like practices

54. The adoption of the new Act criminalizing slavery was welcomed by civil society as an important step toward the effective eradication of the practice, which affects all the ethnic communities in Mauritania. Many individuals nevertheless deplored the official position that slavery is no longer practised in Mauritanian society but is rather a phenomenon of the distant past, of which only a few traces still remain.

55. Representatives of NGOs that work directly with slaves or their descendants expressed concern with regard to certain omissions in the Act that would prevent, on the legal level, the effective eradication of slavery. In the first place, they pointed out that the Act focuses only on the individual criminal responsibility of slave-owners and thus can only be applied through criminal prosecution, with no possibility for victims to take civil proceedings for reparation or compensation. They also noted that the Act does not take into account slavery-like practices, including the inextricably related issue of discrimination based on the social status of persons enslaved in the past and their descendants, who continue to be the victims of discrimination before the law, in their place of work and in their social life. They deplored the lack of reference in the Act to concrete application measures and the resulting lack of genuine supporting measures to publicize the Act and combat the effects of slavery on the attitudes and behaviour of the population in the long term.

56. During a meeting with slaves and former slaves, the Special Rapporteur heard several reports of the reluctance of the police and the courts to follow up allegations of slavery-like practices brought to their attention, either because of ignorance of the law or simply pressure from certain communities or tribes. The case of Ms. Tarba Mint M'Boyrick, born a slave in a family in the town of Guérou, in the Assaba region in south-eastern Mauritania, and the mother of two children she said she had been forced to abandon because of ill-treatment at the hands of her masters, provides an example of the authorities' attitude. In October 2007 she lodged a complaint against the family for slavery and trafficking in minors. Although the police initially freed the children on the orders of the wali (governor) of Assaba, and following the family's admission that the children were "slaves by descent" and had never attended school, the Public Prosecutor of the Court of Appeal in Kiffa ordered the release of the family and returned the two children to them on the grounds that Tarba Mint M'Boyrick had failed to bring them up but had abandoned them, whereas the family she had lodged a complaint against had fed and supported them.

57. Civil society representatives also pointed out the limits to legal liberation encountered by slaves who do not have the material or financial means to take care of themselves and integrate into society. That situation is the principal cause of the many cases of voluntary servitude, where slaves or former slaves agree to continue working for their masters or former masters in exchange for payment in cash or in kind (e.g., housing, food, or medical care). Given that reality, the representatives indicated that in addition to strengthening the legislative framework and providing appropriate training to judges and magistrates, it is essential to create mechanisms for the social and economic reintegration of persons kept as slaves, now or in the past, undertake a campaign to increase public awareness about slavery, and implement measures to provide education and literacy for victims.

D. Concerns relating to the return of refugees and unresolved humanitarian issues

58. Although the civil society representatives on the whole welcomed President Abdallahi's clear intention to make the repatriation of refugees and the resolution of humanitarian issues a Government priority, many of them were extremely concerned by the lack of concrete measures aimed at ensuring that the return of refugees took place in dignified conditions and an environment conducive to a sustainable return.

59. In that regard they expressed concern at, inter alia, the lack of decent facilities, housing, health infrastructure and drinking water in the areas designated for those who choose to return. With respect to land issues, described as a major challenge to reintegration and a possible source of friction between refugees and the communities currently living in those areas, in particular the Harratin, they stressed the importance of establishing a specific programme for restitution of lost homes and farmland or compensation, without prejudice to the legitimate rights of the owners and the current occupants. A point repeatedly made was that, to guarantee a sustainable return, it was important to reintegrate returnees into economic and social life by promoting income-generating activities, implementing cultural, social and psychological support programmes and involving the media and mosques in information and awareness programmes.

60. Concerns were likewise expressed about the vulnerability of the Mauritanian refugees who had returned from Senegal voluntarily in the 1990s. During his visit to the Toulel II area on the outskirts of Rosso, the Special Rapporteur was able to observe the difficult situation of several families who had returned to Mauritania in 1993, attributable not only to the extreme poverty in which they lived but also to the feeling that they had been forgotten because promises of the return of their land and homes had not been kept.

61. The resolution of outstanding humanitarian issues was the subject of frequent discussions, often open and emotional, in particular with regard to the establishment of a body to look into the period between 1989 and 1991. Taking into account the sensitivity of that issue and the interest expressed at the highest level of the State to launch a frank and constructive consultation process, civil society representatives all agreed on the need for a concerted approach based on the principles of historical truth, justice, reparation and reconciliation, with a view to achieving genuine and lasting national unity.

62. The Special Rapporteur also followed the discussions that took place on this issue during the conference on strengthening national unity in Mauritania held on 22 and 23 January 2008 in

Nouakchott, whose main purpose was to analyse the various models for strengthening national unity in other countries and identify the best approach for implementing a model specially suited to the situation in Mauritania. During the discussions a consensus developed on the establishment of an independent national structure to deal solely with the unresolved humanitarian issues and composed, inter alia, of representatives of victims, human rights organizations, the Bar Association, religious leaders and eminent persons.

IV. ANALYSIS AND CONCLUSIONS OF THE SPECIAL RAPPORTEUR

63. Having considered the information and analyses provided by the national and regional authorities, the members and representatives of the communities concerned, NGOs and other civil society stakeholders, the Special Rapporteur submits below his analysis of the situation of racism and ethnic and racial discrimination in Mauritania and his conclusions.

64. The Special Rapporteur's main conclusion following the visit was that, while there are no manifestations of legally endorsed or State-approved racism in the country, Mauritanian society has been deeply marked by continuing discriminatory practices of an ethnic and racial nature, rooted in cultural traditions and pervasively present in social structures and attitudes. A number of persistent features of Mauritanian society have given substance and depth to such discrimination over a long period of time, including: the central role of traditional slavery; the cultural and social entrenchment of the caste system; the pervasiveness of the racial and ethnic paradigm in the principal institutions of the State such as the armed forces and the justice system, and the use of ethnicity as a political tool, for example through language policies which have contributed significantly to the polarization of various communities.

65. The Special Rapporteur believes that Mauritania currently faces three major challenges: construction of a multicultural, democratic, egalitarian and participatory society; comprehensive and permanent eradication of discriminatory cultural traditions; and the correction of political, economic and social inequalities caused by the historical legacy of discrimination.

66. The Special Rapporteur identifies positive points and makes various critical comments regarding the need to strengthen peaceful coexistence based on respect for and recognition of the rich ethnic and cultural diversity of this society as well as a feeling of belonging and an acceptance by all communities of the unity of the Mauritanian nation.

Positive points

67. The Special Rapporteur believes that the political will expressed at the highest level of the State by President Mohamed Ould Cheikh Abdallahi, to combat the heavy legacy of racism and racial discrimination by means of a determined transition to democracy and the rule of law, constitutes the most decisive positive factor that will enable Mauritanian society to not only come to terms with its historical legacy of discrimination but also find ways and means of eradicating the root causes of discrimination and its various forms and manifestations, and remedy its consequences. He welcomes the President's commitment in that regard, which was expressed with sincerity and determination and has led, among other things, to the implementation of significant programmes and measures at the legislative and institutional levels aimed at improving the human rights situation.

68. In the area of legislation, the Special Rapporteur welcomes the adoption of the Act criminalizing slavery and penalizing slavery-like practices, which marks a turning point in Mauritania's approach to the issue. He also welcomes the stated will of the authorities to implement supporting measures in application of the Act, including the creation of mechanisms for the social and economic reintegration of the victims of slavery-like practices and preparation of a wide-ranging public awareness campaign.

69. The Special Rapporteur likewise welcomes the signing of the Tripartite Agreement on the Voluntary Repatriation of Mauritanian Refugees in Senegal by Mauritania, Senegal and the Office of the United Nations High Commissioner for Refugees (UNHCR). The terms of the Agreement, based on the fundamental principles of the right to return and the voluntary nature of repatriation, are exemplary, and pave the way for a lasting resolution of the humanitarian issues. The provisions on adapting the necessary administrative structures with a view to ensuring the effective return of the refugees and their legal, economic and social reintegration without discrimination, are particularly encouraging.

70. At the institutional level, the Special Rapporteur notes with satisfaction the creation of new democratic institutions and mechanisms, in particular the National Human Rights Commission, whose commitment to promoting and protecting human rights he commends. He also welcomes the existence of national structures, in particular the National Refugee Support and Integration Agency, whose mission of facilitating the integration of Mauritanian refugees is essential for a lasting resolution of the humanitarian issues.

71. Lastly, the Special Rapporteur welcomes the vitality and commitment of Mauritanian civil society, whose multiethnic composition, political courage, activism and support for victims make it a decisive factor in the transition to democracy. In that regard he welcomes the elimination of the obstacles to official recognition of human rights organizations and the exercise of the rights of freedom of expression and association which for many years were brutally repressed by the political authorities.

Critical comments

72. On the critical side, the Special Rapporteur underscores the central challenge of building a sense of identity for the Mauritanian nation, which means reconciling the ongoing tension between Mauritania's two poles, Arab and African identity. This tension has historically been used for political gain in Mauritania, with the Arab dimension given greater prominence in defining the country's official identity. The pervasive presence of a historical legacy of discrimination not only in social structures but in mindsets, in the relations between the communities and in their attitudes towards each other, is a particular obstacle to the eradication of the culture of discrimination and its various manifestations.

73. This pervasive discrimination manifests itself in part in the "invisibility" of its victims in the political, economic and social spheres, in public life, especially at decision-making levels in Government, the military and the police and security forces, as well as in the private sector, as evidenced by the low level of representation of certain communities in the business sector. This invisibility, which is also reflected in the victims' silence on their suffering, disproportionately affects the black Moor and black African communities.

74. The Special Rapporteur notes that the silence and invisibility of the victims also translates into a lack of census information or statistics disaggregated by descent or ethnic origin and the absence of any complaints of discrimination before the domestic courts. He recalls in that regard that the fact that victims do not apply to the courts does not necessarily mean there are no such cases; it could be attributable to several factors, including the victims' lack of resources, particularly those who do not have a good command of Arabic and cannot afford an interpreter, lack of awareness of the remedies available to them, mistrust of the public authorities, or lack of awareness of the issues relating to racial discrimination.

75. While fully aware that Mauritania is a developing country where poverty and inequalities persist, and that the current reforms require considerable economic and financial resources, the Special Rapporteur nevertheless underscores the overlap in Mauritanian society between the distribution of socio-economic marginalization and that of ethnic groups and communities. In the Special Rapporteur's view this overlap is a characteristic indicator of the depth of racism in some societies. The increasing concentration of black Africans in particularly deprived neighbourhoods and their prevalence in the main prison in Mauritania illustrate that situation.

76. On the legal level, the Special Rapporteur notes firstly that only the Labour Code contains a definition of discrimination resembling that contained in the International Convention on the Elimination of All Forms of Racial Discrimination and secondly that, despite the important new laws adopted recently there is a lack of practical supporting and implementing measures, in particular with regard to slavery. In that context, he stresses the need to take into account the profound effect slavery has had on attitudes and behaviours, and to implement practical and effective measures to help address and resolve the limits to legal liberation typically encountered by slaves who do not have the material or financial means to look after themselves and successfully integrate into society.

77. Lastly, the Special Rapporteur underscores the flaws in the intellectual and ethical strategy aimed at tackling root cultural causes of discrimination. Particularly important is the absence of collective memory work on the gravest violations of human rights; for example, the massacre of black Mauritanian officers and soldiers and the expulsion to Senegal and Mali of thousands of Mauritians, most of them from the black Mauritanian community, as a result of ethnic violence.

V. RECOMMENDATIONS

78. The Special Rapporteur recommends the adoption by the Mauritanian Government of a dual strategy - political, legal and institutional, on the one hand, and cultural and ethical, on the other - in order to combat the manifestations of ethnic or racial discrimination that have deeply marked Mauritanian society.

79. On the political front, the Special Rapporteur recommends that the executive, the legislature and the judiciary should restate, publicly and consistently, their political determination to combat all forms of racism and discrimination and, in the long term, to promote democratic, egalitarian and participatory multiculturalism based, on the one hand, on the recognition, respect and promotion of cultural diversity and, on the other, on the systematic encouragement of interaction and cross-fertilization between the

communities in order to encourage community partnership in the full acceptance of the historical truth of discrimination, and of the sensitive task of creating a feeling of belonging to one nation.

80. On the legislative front, the Special Rapporteur recommends the insertion of specific provisions on racial and ethnic discrimination in the Criminal Code. Notwithstanding the existence of provisions proclaiming the principles of equality in various items of legislation, including the Constitution, he strongly recommends the adoption of comprehensive legislation against all forms of discrimination, incorporating a definition of discrimination that is applicable in all areas of social life and that contains all the elements of article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

81. The Special Rapporteur recommends that, in order to focus on the central role of social multiculturalism and strengthen the ongoing drive towards democracy, the Constitution should be amended to include two additional elements: the affirmation that Mauritanian society is built on democratic, egalitarian and participatory multiculturalism, and the recognition of the main ethnic groups or communities in society and their languages and cultures. Given that language policies have in the past been used as a tool that has helped polarize the various communities, he recommends that, in addition to Arabic, Pular, Soninke and Wolof should be given constitutional status as official languages.

82. In parallel with the adoption of the new Act prohibiting slavery and slavery-like practices, the Special Rapporteur recommends the adoption of measures under the Act to make it possible, over and above the criminal liability of individual slave-owners, for victims to bring civil suits, notably for restitution or compensation. He further recommends that support measures should be put in place as a matter of priority, to publicize the contents of the Act and, in the longer term, mitigate the impact of slavery on people's attitudes and behaviour.

83. At the institutional level, the Special Rapporteur recommends that a national assessment should be made of the historical and cultural underpinnings of discrimination. He therefore recommends the establishment by the National Human Rights Commission of an independent commission based on the principle of the democratic participation of all political movements, affected communities, traditional religious and spiritual leaders and civil society actors.

84. The commission should tackle the main issues in Mauritanian society which give rise to discrimination, including the issue of slavery and caste and political practices which, in recent years, have made ethnicity a political tool and have widened the gap between the various communities. It should be mandated, on the one hand, to draft a white paper on the status, root causes, manifestations and consequences of the discrimination which has scarred Mauritanian history and, on the other hand, to develop on that basis a national programme of action against all forms of discrimination to help counteract the consequences of the injustices and discrimination experienced by Mauritanian society. It should pay particular attention to key State institutions such as the armed forces and the justice system and could, in the short term, apply the principle of positive discrimination based on detailed demographic indicators showing ancestry and ethnic origin.

85. In the context of the drive towards democracy noted by the Special Rapporteur during his visit, efforts to combat all forms of discrimination should be reflected in the adoption of a law establishing an independent standing national commission, in accordance with the Paris Principles, to uphold human rights, combat discrimination and promote democratic, egalitarian and participatory multiculturalism.

86. Alongside the political, legal and institutional strategy, the Special Rapporteur recommends the adoption of a cultural and ethical strategy aimed, in the long term, at the comprehensive and permanent eradication of the cultural and traditional root causes of discriminatory culture and attitudes, and the achievement of community partnership through education, culture and communication, for example. Particular attention should be paid to developing a national programme of education by, inter alia, recording and teaching history. This programme should aim to reunite society through shared memory and common values based on the promotion of society's rich cultural diversity and the reinforcement of national unity. Under this strategy, it is vital to work on collective memory in order to eliminate community grudges - particularly in respect of unresolved humanitarian issues - by full recognition of all those issues, including the systematic killing of black Mauritanian army officers. In pursuit of this national catharsis, the Special Rapporteur recommends linking the drive towards democracy with the achievement of multicultural community partnership on the basis of the following three elements: historical truth; justice and redress; and reconciliation.
