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增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

移徙者人权问题特别报告员豪尔赫·布斯塔曼特的报告

增编

对塞内加尔的访问\*

概要

在本报告里，移徙者人权问题特别报告员讨论了塞内加尔政府根据国际人权标准对移徙者给予的保护情况。根据在访问前和访问期间所收集的资料，他介绍了该国移徙现象的主要趋势以及在保护移徙者人权方面的主要挑战。在相关的地方，他还重点介绍了利益相关者针对该国移徙现象在促进和保护移徙者人权方面的合作做法。最后特别报告员提出了若干建议，以有助于加强目前为落实塞内加尔移徙者和塞内加尔在国外的移徙者的人权而作出的努力。

\* 本报告概要以所有正式语文印发。报告正文作为本概要的附件以英文和法文印发。

## Annex

### Report of the Special Rapporteur on the human rights of migrants on his mission to Senegal (17-24 August 2009)

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## I. Introduction

1. Pursuant to his mandate, the Special Rapporteur on the human rights of migrants visited Senegal from 17 to 24 August 2009 at the invitation of the Government. He is grateful to the Government, in particular the Ministry of Foreign Affairs and the Permanent Mission of Senegal in Geneva, for the support provided in the organization and conduct of his visit. The Special Rapporteur was able to experience *teranga*, the traditional hospitality for which Senegal is known.

2. During his visit, the Special Rapporteur met with the Ministers of: Justice; Interior; Local Communities and Decentralization; Defense; and Senegalese Abroad and senior officials from these Ministries, as well as with senior officials from the Ministries of: Foreign Affairs; Economy and Finance; Public Function, Labour, Employment and Professional Organizations; and Family, Food Security, Women Entrepreneurs, Micro-Finance and Children. He also met officials from the National Agency for Statistics and Demography, and spoke with representatives of the National Assembly. The Special Rapporteur would like to express his sincere thanks to the Ministers and other officials for the frank and constructive discussions that were held.

3. The Special Rapporteur also held a number of consultations with the United Nations Resident Coordinator and the United Nations country team as well as with representatives of a wide range of civil society organizations. The Special Rapporteur wishes to express his gratitude to the Resident Coordinator, the United Nations agencies and, in particular, the West Africa Regional Office of the United Nations High Commissioner for Human Rights for their cooperation and assistance prior to, during and after the visit. He is also grateful for the time that representatives of the civil society dedicated to him during this visit and for the information they provided.

4. The Special Rapporteur conducted field trips to Saint-Louis and Mbour, where he held discussions with representatives of local authorities and civil society organizations. During these trips the Special Rapporteur had the opportunity to gather information directly from migrants, including returnees. He is most grateful for their willingness to share with him their stories of suffering and despair.

5. The focus of this visit was out-migration, as the request of the Special Rapporteur to visit Senegal emanated from the unprecedented arrival, throughout 2006, of over 30,000 migrants to the Canary Islands aboard small boats. This peak coincided with the emergence of a new, remarkably long route from West African shores, including Senegalese ones. The characteristic vessel used by the migrants was the traditional West African pirogue, a long, colourful wooden fishing boat adapted to the needs and difficulties of the new route.

6. The Special Rapporteur wishes to pay tribute to those migrants who have perished at sea while attempting to reach far-off destinations and whose number is and will remain unknown. He notes that the harrowing journey evokes that of individuals who were forced to embark from the island of Goré during the period of slavery.

## II. General background: the migration phenomenon

### A. Movement of persons in and out of Senegal

7. The geostrategic position of Senegal, where sea, land and air routes towards the European and American continents converge, has made it a country of origin, transit and destination with regard to migratory flows from the West African region and beyond.

8. Many immigrants to Senegal have come from neighbouring countries such as Cape Verde, the Gambia, Guinea, Guinea-Bissau, Mali and Mauritania. There are also a number of immigrants from other countries within the subregion, including Benin, Côte d'Ivoire, Ghana, Nigeria and Togo. Fewer groups come from Burkina Faso, Chad, Niger, Gabon and Morocco. Non-African residents to Senegal mainly include long-settled French and Lebanese immigrants, and those newly arrived from China. In the Second Senegalese Household Survey of 2002, the number of immigrants in Senegal was estimated at 126,054, representing 1.5 per cent of the total population. Among the 86,688 immigrants of working age, an estimated 55.9 per cent were employed professionally and 11.2 per cent were looking for jobs.

9. The country also hosts a number of children who have migrated alone or with family members or other adults, mostly from neighbouring countries. Some of these children are forced to beg, either by the religious teachers entrusted with their care or out of necessity. A 2007 study undertaken by the United Nations Children's Fund (UNICEF), the International Labour Organization (ILO) and the World Bank<sup>1</sup> found that the phenomenon of children begging in the streets had acquired alarming dimensions in the region of Dakar in particular, where it is estimated that 6,840 *talibé* (defined in the study as those children who reported having spent the night preceding the survey in a religious school (*daara*) and who reported receiving religious education) are begging. According to the study, child beggars are overwhelmingly boys, and 90 per cent are *talibés*. Almost half of these children come from abroad, usually from neighbouring countries such as the Gambia, Guinea, Guinea-Bissau and Mali. *Talibés* are often children from Guinea-Bissau (30 per cent) whereas many non-*talibés* come from Mali (30 per cent). Most of these children have left their families and communities because they have been entrusted by their parents to religious teachers to receive a religious education.

10. A total of 98 per cent of the *talibé* children report that their religious teachers send them begging, whereas 62 per cent of non-*talibé* children are compelled to beg as a means to satisfy their needs and those of their families. The income that *talibé* children obtain from begging is in part utilized to satisfy their needs but most is handed over to their religious teachers. Law enforcement officials informed the Special Rapporteur that detecting these children as they cross the border into Senegal is difficult as such children usually travel with their parents or authorized adults who, as ECOWAS nationals, do not require a visa to circulate within the region.

11. Senegal is one of the major transit countries of the migration stream from West Africa to Europe. Points of departure include coastal cities throughout the country, including not only the northern city of Saint-Louis, but also Dakar and Mbour. The islands of Djogué and Karabane appear also to be major departure areas according to the Senegalese gendarmerie. The main aim of most of the African migrants is to reach European soil, be it mainland Europe, the Spanish enclaves of Ceuta and Melilla or islands in the Atlantic Ocean or the Mediterranean Sea.

12. The land route is believed to be used by the poorest migrants who cannot afford the fees for the journey to Europe by pirogue. The land route goes to Mali and through the Maghreb (Gao in Mali and Agadez in Niger are believed to be the main migrant hubs along this route). Many migrants never leave Africa and end up working, usually irregularly, in the Maghreb region where they may continue to be at risk of human rights violations.

<sup>1</sup> Understanding Children's Work (UCW), "Enfants mendiants dans la région de Dakar", Working Paper, November 2007.

13. Senegal hosts a number of stranded migrants, including rejected asylum-seekers and refugees for whom refugee status has ceased to apply, mostly from West Africa. Such migrants may face particular vulnerabilities as a result of being caught in transit without any means to travel to their destination or back to their country of origin.

14. The first Senegalese reaching Europe through organized migration frameworks joined the French colonial army. After leaving the army, many ex-soldiers found employment at Marseille harbour, which became a centre for the Senegalese community in Europe. Given its position as the former colonial power of Senegal, France long remained the most important country of destination in Europe for Senegalese migrants, who were involved in particular in trade between Europe and Africa. Now Senegalese migrants are found in a number of European countries, including Italy and Spain, as well as in other regions.

15. In 2004 the Ministry of Senegalese Abroad estimated that there were 648,600 Senegalese emigrants (stock) representing 4.48 per cent of the population. According to the Second Senegalese Household Survey, 54 per cent of the Senegalese who emigrated between 1999 and 2004 went either to Europe (46 per cent) or to the United States of America (8 per cent), whereas 44 per cent went to other countries in Africa, either within the ECOWAS area or elsewhere. The preference of European Union countries as a migration destination was first observed in the 1990s, and there seems to have been no change in the trend. It was estimated that neighbouring countries, such as the Gambia, Mali and Mauritania, hosted approximately 40 per cent of Senegalese migrants. According to the same survey, women accounted for 16 per cent of the migrant population from Senegal between 1992 and 1997. Upon departure they were on average younger than men.<sup>2</sup> In addition 45.9 per cent of the emigrants who left between 1997 and 2002 were working before their departure and 29 per cent were looking for jobs.

16. One of the elements of the European Union strategy to secure external borders was the creation of a body - the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) - that aims to coordinate and enhance border security by ensuring the coordination of Member States' operational cooperation. In 2008 Frontex collated and analysed information from European Union States related to the detection of irregular border crossings at the external sea and land borders of the European Union. Frontex indicated that Spain reported the detection of 16,200 irregular border crossings at its sea borders. Compared with 2007, the number of irregular arrivals in the Canary Islands had decreased to 9,200 (down 26 per cent).<sup>3</sup> The Government of Spain reported that in 2008 irregular border crossing at the Canary Islands had decreased by 25 per cent compared to the 2007 figures. During the first six months of 2008, 1,600 migrants arrived, compared to 4,114 during the same period the previous year.<sup>4</sup> In April and May of 2009 no irregular border crossings were reported in the Canary Islands.

## B. Remittances

17. A comprehensive evaluation of the amount of remittances from migrants is still difficult, given that the vast majority of such remittances reach Senegal through unofficial

<sup>2</sup> Joint UNDP-UN-INSTRAW Project: Gender and Remittances: Building Gender-Responsive Local Development, "Genre, transfert de fonds de la migration et développement: le cas de la Moyenne vallée du fleuve au Sénégal", March 2009, p. 14.

<sup>3</sup> Frontex, "General report 2008" (2009), p. 8.

<sup>4</sup> Spain, "Encuentro con la prensa", press release, 30 July 2009, p. 3.

channels. However, the Government has estimated that remittances amounted to approximately 242 billion FCFA (7 per cent of the gross domestic product), representing an important source of income for the country and providing people with a strong incentive to migrate.<sup>5</sup>

18. It is estimated that remittances transferred through official channels represent between 40 and 50 per cent of the overall Senegalese remittances. Wire transfers of money represent the most commonly used means of transfer. In 2006 it was reported that Senegal had more than 500 wire-transfer points (banks, post offices and others).

19. An estimated 75 per cent of the remittances transferred to Senegal contributes to the satisfaction of daily consumption needs of families left behind, which is an essential element for the protection of their right to an adequate standard of living. About 10 per cent of remittances is deposited in local banks as part of savings. The rest is reportedly devoted to two types of investment: housing and trade. Concerning housing, remittances may be put towards purchasing land, family houses or houses to prepare the migrant's return or to rent out (particularly in the capital). Investments in the trade sector are reportedly rare and concentrated in the transport sector (taxis, coaches), the import of second-hand vehicles or parts, and in agriculture.

20. One of the main conclusions of a national study on remittances conducted in 2007/08 indicated that remittances from migrants contribute to reducing by approximately 31 per cent the prevalence of households living below the poverty line.<sup>6</sup> Senegalese migrants in many countries of destination have been able to establish community groups through which they maintain contacts with their villages and communities of origin. Some of these groups have also been able to invest in community projects such as schools, health centres and mosques in their villages of origin. In order to facilitate this type of investment and to overcome obstacles linked to administrative hurdles and a generally deficient institutional environment for business, the Government adopted a law on decentralization and economic policies to provide local authorities with the necessary flexibility to establish direct partnerships with the countries of destination within the framework of the international obligations assumed centrally by the State.

### C. Refugees and asylum-seekers

21. The number of refugees and asylum-seekers in Senegal has been constant since 2001. In 1999 there were 21,539 refugees; in 2007, 20,421 according to 2008 estimates by the Office of the United Nations High Commissioner for Refugees.<sup>7</sup> About 95 per cent of the refugees/asylum-seekers are from Mauritania. Between 2000 and 2007 there were approximately 4,042 asylum applications, mainly from nationals of Sierra Leone, Côte d'Ivoire, Liberia and Mauritania.

22. An estimated 20,000 Mauritanian refugees continue to live in northern Senegal, spread among 283 sites, 16 years after being expelled from their home country. The exact number of Mauritanian refugees is still not known, as the registration exercise, which began in December 1999, was abandoned in 2000. This has left the majority of these refugees in a precarious situation as they do not have proper identification papers, except for the "Green Card" which was issued upon their arrival in 1989 and which expired three months

<sup>5</sup> Senegal, initial reports of States parties (CMW/C/SEN/1), para. 55.

<sup>6</sup> UNDP, "Migration au Sénégal. Dynamique et Orientations Stratégiques" par Ousmane Ndoeye et Luc Joel Gregoire, October 2008, p. 15.

<sup>7</sup> As cited in International Organization for Migration (IOM), Migration en Sénégal : Profil National pour le Développement de Politiques Stratégiques 2009 (Geneva, 2009), p. 6.

afterwards. This state of affairs has had a negative impact on the enjoyment of the refugees' human rights, including the right of refugee children to education, as well as on access to benefits and freedom of movement.

23. Many of the Mauritanian refugees managed to integrate with the local population, but the quality and security of their lives remain precarious. Although the Government of Senegal has provided these refugees with certain services, such as medical facilities, as well as with teachers and books, unemployment among them remains high and the income generating projects, inadequate.<sup>8</sup>

24. A number of Mauritanian refugees are believed to have returned spontaneously, whereas the last organized voluntary repatriation ended in December 2009.

#### **D. Smuggling of migrants**

25. The smuggling of migrants through Senegal seems to be organized mainly by nationals from English-speaking countries in Western Africa, such as Ghana, Liberia and Nigeria, many of whom have lived in Senegal for a long time. Senegalese nationals, referred to as *sergents-recruteurs*, support them. In a smuggling network, everybody has his or her own separate tasks.<sup>9</sup>

26. In a typical case of smuggling via maritime routes, an old trawler is bought. Migrants are not only from Senegal - many West Africans arrive in Dakar by plane, after which they try to board a boat to Europe. After the payment of a fee, the candidate migrants are escorted to beaches in and around Dakar. From the beach fishermen take them by pirogues to the trawler at sea. In the process of trying to reach their destinations, migrants spend the equivalent of hundreds of United States dollars on bribes, smugglers, transportation, and daily necessities. The United Nations Office on Drugs and Crime quoted prices of US\$ 480 to US\$ 1,930 for a Senegal-Canary Island crossing.<sup>10</sup> Migrant smuggling routes in Africa are also being used by international criminal networks involved in the smuggling of undocumented migrants from other regions, particularly East, South, and Southwest Asia. Undocumented migrants from Bangladesh, China, India, and Pakistan have been found stranded in West or North Africa. Taking advantage of the relative ease of securing visas to West African countries, migrants normally enter such countries legally by air.

#### **E. Trafficking in persons**

27. According to ILO, every year between approximately 200,000 and 300,000 children fall victim to trafficking for sexual or labour exploitation in West Africa. The organization also estimates that 41 per cent of children in West Africa work.

28. Senegal is a source, transit, and destination country for children and women trafficked for the purpose of forced labour and commercial sexual exploitation. Women and girls are reportedly trafficked for domestic servitude and sexual exploitation, including for

<sup>8</sup> Report of the African Commission on Human and Peoples' Rights Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, Mission to the Republic of Senegal, 29 August to 3 September 2005 (ACHPR/38/OS/496).

<sup>9</sup> United Nations Office on Drugs and Crime, "Organized crime and irregular migration from Africa to Europe" (July 2006), p. 19.

<sup>10</sup> IOM, *Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends* (Geneva, 2008), p. 18.

sex tourism, within Senegal. Senegalese women and girls are trafficked to neighboring countries, the Middle East, and Europe for domestic servitude and possibly for sexual exploitation. Women and girls from other West African countries, particularly Ghana, Liberia, Nigeria and Sierra Leone may be trafficked to Senegal for sexual exploitation, including for sex tourism. Children are trafficked to Senegal from neighbouring countries for forced begging, whereas Senegalese children are trafficked mainly to other African countries for forced labour in gold mines.

### **III. Normative and institutional framework for the protection of the rights of migrants in Senegal**

#### **A. The international and regional legal framework**

##### **1. International level**

29. Senegal has ratified all core human rights instruments, except the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. At the time of writing, it had signed, but not yet ratified, the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

30. Senegal has also ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Special Rapporteur was encouraged to learn during his visit that the governmental report to the Committee on Migrant Workers, which had been long overdue, was being finalized in accordance with, inter alia, the recommendation addressed to and supported by Senegal within the universal periodic review the State underwent in 2008.<sup>11</sup> The Special Rapporteur is pleased to note that the report was submitted to the Committee in December 2009.

31. In addition Senegal has ratified the main ILO instruments on labour rights, including the Convention concerning Forced or Compulsory Labour, 1930 (No. 29), the Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), the Convention concerning the Application of the Right to Organize and to Bargain Collectively, 1949 (No. 98), and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182). Senegal has yet to ratify the Convention concerning Migration for Employment, 1949 (No. 97) and the Convention concerning Migrant Workers in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143), but discussions have started towards their ratification.

32. By virtue of Act No. 17 (2003), Senegal ratified the United Nations Convention against Transnational Organized Crime and its Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

33. Senegal is party to the Convention relating to the Status of Refugees (1951) and its 1967 Protocol.

##### **2. Regional level**

34. At the regional level, Senegal is party to the African human rights instruments, including the African Charter on Human and Peoples' Rights and its Protocol on the Rights

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<sup>11</sup> Report of the Working Group on the Universal Periodic Review: Senegal (A/HRC/11/24), para. 72.



of Women, as well as the African Charter on the Rights and Welfare of the Child. Senegal is also a member of the Conférence Interafricaine de la Prévoyance Sociale (Inter-African Conference on Social Security), established in 1993. In the light of the subregional integration processes on free circulation of persons, the Conference aims to, inter alia, create a supranational framework to collectively address issues related to harmonizing social security legislations and systems and strengthening specialized training in this field. Senegal is party to the OUA Convention Governing the Specific Aspects of Refugee Problems in Africa.

35. At the subregional level, Senegal is party to the Treaty of the Economic Community of West African States (ECOWAS) which was adopted on 28 May 1975. Article 1 of this Treaty states that “subject to the provisions governing police regulations and public safety, as well as prescriptions of the sanitary rules, nationals of Member States are free to enter the territory of any of the Members, to travel, to stay and to leave by simply showing a valid national passport with no other formality, such as obtaining an entry or exit visa”. In January 1993 the member States adopted a revised version of this Treaty, stipulating that the establishment of a common market implies, inter alia, “the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital and to the right of residence and establishment”. In order to guarantee the implementation of the relevant articles on migration, a number of protocols, decisions, directives and resolutions have also been adopted by ECOWAS member States. Of relevance are, for example, the protocol relating to the free movement of persons and goods, the right of residence and establishment, and a protocol which includes a code of conduct for citizenship in the Community.

36. Senegal is also member of the West African Economic and Monetary Union, which was established by virtue of a treaty (1994). Article 91 of the treaty stipulates that “subject to limitations justified by reasons pertaining to public order or public safety, nationals of Member States are entitled to freedom of movement and residence throughout the territory of the Union”. Article 92 of the treaty provides for the right to establishment throughout the Union, which includes the right to exercise non-salaried activities and to establish and manage companies under the conditions defined by domestic legislation.

## **B. The national legal and institutional framework**

### **1. Legislation**

37. Human rights are central to the Constitution and legal system of Senegal. Article 7 of the Constitution stipulates that: “the human person is a sacred and inviolable legal entity, and the State has an obligation to defend and protect this inviolability”.<sup>12</sup> Moreover, article 98 stipulates that the international treaties ratified by the State acquire an authority superior to that of ordinary laws.

38. Article 14 of the Constitution of Senegal recognizes the right to freedom of movement and residence within the country and allows any citizen to move about freely, both within and outside the national territory and to reside in Senegal or abroad, according to the conditions established by law. In this regard, emigration legislation imposes no restrictions on Senegalese citizens entering or leaving the country.

39. The right to asylum is governed by Law 68-27 (1968) whereby “no individual who enjoys the status of refugee in Senegal shall be deported, except for reasons of national security, if she/he carries out activities contrary to the public order or is condemned to a

<sup>12</sup> Unofficial translation.

custodial sentence for a crime or a serious offence” (art. 4). Refugee status is granted by the National Eligibility Commission. Refugees have the same entitlements as nationals, including the right to work and education.

40. The main texts dealing with migration issues are: Law No. 61-10 (1961) related to Senegalese nationality (amended by Law No. 89-42 (1989)), and Law No. 71-10 (1971) and Decree No. 71-860 (1971) concerning the conditions of admission, stay and settlement of aliens. This legislation defines as foreign any person who does not hold Senegalese nationality, whether or not they have some other nationality. Article 4 of Law 71-10 also defines immigration as foreigners travelling to Senegal with the intent of establishing their residence there or of engaging in gainful activity or professional employment on a permanent basis.

41. A foreigner must obtain an establishment permit prior to entering the country; exceptionally such a permit may be granted to foreigners holding temporary residence permits. Establishment permits may also be issued to the immigrant’s spouse, ascendants, and minor and unmarried descendants living as dependants under the same roof. Withdrawal of the permit implies automatic cancellation of the employment contract. Public authorities may grant Senegalese nationality to those foreigners who apply for it and who fulfil the requirements set by law, including continuous residence of 10 years (5 years for foreigners married to Senegalese nationals). However, children born in Senegal to parents who are foreign nationals seem to have difficulty gaining access to Senegalese nationality, mainly due to the cumbersome and lengthy administrative procedure.

42. Foreigners who fail to comply with Senegalese legislation concerning entry, temporary residence and exit may be sanctioned by the withdrawal of the temporary residence or establishment permit, for example, if the conditions under which the permit was granted no longer exist, if essential facts were omitted or concealed or if changes of residence or employment were not reported. Foreigners may also be expelled if condemned for crimes or offences, if they engage in conduct or actions that lead to the conclusion that they will not adapt to the established order, if they are involved in serious and patent cases of interference in the internal affairs of Senegal or if they can no longer maintain themselves or their families. The Ministry of Interior rules on the expulsion of foreigners, who can appeal the decision on the grounds of a perceived abuse of power to the State Council. The Working Group on Arbitrary Detention during its visit to Senegal (5-15 September 2009) found that administrative detention in police stations of foreigners who had served their criminal sentence in full and are awaiting deportation may be prolonged indefinitely due to administrative and logistical problems associated with their deportation (A/HRC/13/30/Add.3, para. 68).

43. Law No. 2005-02 (2005) deals with combating trafficking in persons and related practices and the protection of victims. It prohibits trafficking in persons and other forms of exploitation of vulnerable groups, prescribing penalties of 5 to 10 years’ imprisonment for all forms of trafficking. This law also criminalizes organized clandestine migration via land, air and sea, whether the territory is used as a zone of origin, transit or destination. Article 3 of Law No. 2005-02 also makes it a crime to compel a person to beg, an act which may be punished with imprisonment of between two and five years and a fine of between 500,000 and 2 million CFA.<sup>13</sup>

<sup>13</sup> Article 245 of the Penal Code (recalling Law No. 75-77 of 9 July 1975) already stipulated that anyone who allows begging by minors (under the age of 21) in their custody shall be punished with three to six months’ imprisonment. In addition, Decree No. 3749 prohibits the worst forms of child labour, including children begging on behalf of a third party.

44. Article 25 of the Constitution guarantees the right to work and the Labour Code derived from Law No. 97-17 (1997), which revised the previous Code (Law 61-34 (1961)), accords the status of worker to any individual regardless of nationality as long as (a) he/she engages in a professional activity in exchange for remuneration and (b) he/she is placed under the direction and authority of another person considered the employer. The Labour Code also introduces an approval visa in relation to labour contracts for any migrant worker. If foreigners lose their jobs they do not automatically lose their residence permits; rather, upon renewal they must submit proof of their means of subsistence.

45. Although the current Labour Code includes more provisions relating to expatriates, the particular conditions pertaining to this category of workers are established by the will of the parties and are therefore of contractual nature. The Code allows companies to proceed to direct hiring of workers and the creation of placement offices acting as correspondents of the employment service, thus eliminating the former *de facto* monopoly of the Labour Service. According to the Code, a limit may be imposed on the number of foreign workers in a given company and only a certain percentage of foreign workers may be hired, depending on the professional category or industrial sector. Foreigners may be excluded from certain professions such as in the civil service or the judiciary, as well as from certain gainful activities such as working as a notary, among others. In addition, article L.105 of the Code provides that under equal working conditions, professional qualifications and productivity, pay shall be equal for all workers regardless of origin, gender, age or legal status. Migrant workers are entitled to family reunification, housing, paid annual leave and exceptional home leave. They also enjoy the same union rights and union protection as nationals (outlined in art. L.5). Foreign workers may obtain access to management positions in a union after five years of residence in the country and if their country of origin extends the same rights to Senegalese workers.

## 2. Institutional structure

46. The Senegalese Committee for Human Rights was established on 22 April 1970 by Decree No. 70-453. In 1997, the legal foundation was strengthened through the adoption of Law 97-04 (1997), enabling the Committee to become an “independent institution of consultation, observation, evaluation, dialogue and submission of proposals, focused on respect for human rights” (art. 1).

47. The Committee may issue opinions or recommendations on all matters related to human rights, in particular on the amending of laws, regulations and administrative practices in force concerning human rights. It can also bring to the attention of the public authorities cases of human rights violations and propose, if necessary, measures which could put an end to such violations. The Committee is made up of 29 members drawn from civil society, the National Assembly, the supreme jurisdictions, the bar association, academic institutions, and trade unions. In 2000, the Committee was accredited with “A” status (signifying that it is in conformity with the Paris Principles) by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. At the regional level the Senegalese Committee for Human Rights is affiliated with the African Commission on Human and Peoples’ Rights. On the governmental side, in June 2004 a High Commissioner for Human Rights and Peace-building with the rank of Minister was appointed.

48. In 2003 the Government created a Ministry for Senegalese Abroad, with a view to coordinating all actions aimed at promoting and protecting Senegalese settled abroad as well as their families who are left behind in Senegal. In 2006 this Ministry adopted a policy with four main objectives, namely: (a) to ensure good management of the migratory fluxes; (b) to guarantee health, social and legal protection to Senegalese abroad; (c) to promote the economic role of Senegalese abroad; and (d) to strengthen the institutional structure of

support for Senegalese abroad. The Office of the President also established a committee to assist Senegalese refugees/asylum-seekers who are repatriated.

49. Originally, all migration-related matters were managed by the Ministry of Labour. Now the focal point for migration issues is the Ministry of Youth and Youth Employment. Representatives of this Ministry chair the Commission Nationale de Gestion et de Suivi des Offres d'Emploi (National Commission of Management and Follow-up to Employment Offers), which was created in 2008 within a framework of agreements signed by Senegal and some of its partners, such as Spain, aimed at promoting regular migration. The Commission is composed of representatives of the various Ministries concerned, such as the Ministries of Foreign Affairs; Interior; Senegalese Abroad; Public Service, Employment, Labour and Professional Organizations; and of Technical Education and Vocational Training. The Commission is tasked, *inter alia*, (a) to centralize and disseminate employment offers abroad, monitor and ensure the protection of the rights of migrant workers, (b) to supervise the management of the preselection and selection procedures, (c) to put in place measures to train, inform and sensitize migrant workers prior to their departures, (d) to monitor the execution of labour contracts and follow up on the migrant workers' return to Senegal, (e) to adopt measures to fight brain drain and (f) to ensure coordination among the different Ministries involved in aspects of migration.

50. The Caisse de Sécurité Sociale (Social Security Fund) was created in 1956. The Fund is tasked with managing and disbursing family benefits and benefits concerning work-related accidents and illnesses.

51. With regard to human trafficking, since December 2009 the Government has been examining the proposal of the Prime Minister to establish a committee to fight the trafficking and exploitation of women and children that would become the main governmental body in charge of coordinating all actions in this field.

### C. Bilateral agreements

52. The 2006 France-Senegal agreement related to the concerted management of migration flows (amended on 25 February 2008) was the first bilateral agreement signed by France on this subject. The agreement covers the circulation of persons (visas, transit, exchange of information), stay permits (for students, as well as for workers and members of their families), the patrolling of borders and the return of migrants in irregular situations, the participation of migrants in the development of their country of origin, and development cooperation in, for example, the health and agricultural/fisheries sectors.

53. Senegal and France are also linked by an agreement on social security that was made in 1960, renegotiated in 1974 and incorporated in Law 75-33 (1975). A fiscal agreement is also in force between the two countries, aimed at avoiding double taxation on revenues.

54. In 2000 Senegal and France also entered into an agreement on co-development, with a view to supporting Senegalese settled in France who wish to reintegrate upon their return. The agreement includes four main dimensions, namely, support for the economic initiatives of migrants in Senegal, mobilization of the highly qualified diaspora, decentralized development in the areas of origin and the establishment of a Priority Solidarity Fund. The related initiatives are implemented through the Programme d'Appui aux Initiatives de Solidarité pour le Développement (2009-2011) (Programme to Support Solidarity for Development Initiatives), which has a budget of 9 million euros (see chapter IV, section D below).

55. Bilateral relations between Spain and Senegal in the field of migration are regulated by the Framework Agreement on Development Cooperation, which was signed on 10 October 2006 and which entered into force on 24 June 2008. This Framework Agreement

includes a number of joint declarations on the management of migratory flux between these two countries. The Spanish Ministry of Labour cooperates with the Senegalese Ministry of Labour on recruiting labour migrants, in exchange for help in preventing unauthorized departures.<sup>14</sup> An agreement signed in November 2007 in the context of the Framework Agreement provided for, among other things, the recruitment of 2,000 Senegalese fishers over a period of two years and included pre-departure recruitment and training. It is reported that since 2007, more than 1,500 Senegalese went to Spain to work in the fishery, agriculture and cleaning sectors under the auspices of this Agreement. Successful applicants, generally women, were given temporary contracts - most were for seasonal work in the agriculture sector, lasting four months. The workers were also required to return to Senegal upon expiry of the contract.<sup>15</sup> In addition, 2,000 Senegalese fishermen would be trained and recruited by Spanish fishing enterprises. By April 2009 more than 4,000 applications for these openings had been received, out of which 660 candidates were selected for training.<sup>16</sup>

56. An agreement on the repatriation of unaccompanied Senegalese minors arriving in Spain irregularly, signed by the Governments of Spain and Senegal on 5 December 2006, came into force on 18 July 2008. The agreement is aimed at (a) strengthening cooperation through a framework to prevent the emigration of, as well as to protect and repatriate, unaccompanied minors, (b) establishing a permanent dialogue and exchanging data and information to tackle these issues efficiently, and (c) promoting the re-insertion of the children.<sup>17</sup> The Special Rapporteur was informed that, at the time of his visit to Senegal, there were around 500 unaccompanied minors in Spain, of which 11 had been verified as Senegalese.

57. Senegal also signed an agreement with Gabon on the mobility of Senegalese teachers, as well as a technical cooperation agreement with Djibouti concerning the recruitment of 40 Senegalese managers to strengthen the education and training system in the context of South-South cooperation. Senegal has social security agreements with Mali and Mauritania, as well as agreements with Mali and Guinea-Bissau on the return of child victims of trafficking.

58. In terms of bilateral cooperation among non-governmental organizations, the National Confederation of Senegalese Workers entered into a partnership for the management of migratory fluxes with one of the main trade union federations in Italy, the Italian Confederation of Workers' Trade Unions (CISL).

<sup>14</sup> Organization for Economic Cooperation and Development, *International Migration Outlook 2008* (2008), p. 278.

<sup>15</sup> Ibrahima Dia, "Evaluation nationale des politiques, législations et pratiques en migration de travail au Sénégal" (Geneva, IOM, 2009), pp. 58-59.

<sup>16</sup> IOM and International Labour Organization, "Rapport de l'atelier sur les politiques et la gestion de la migration de main d'œuvre au Sénégal" (2009), p. 19.

<sup>17</sup> Statewatch, "Repatriation agreement for minors comes into force", August 2008. Available from [www.sanna-ord.se/asylnytt/arkiv/10337-i.html](http://www.sanna-ord.se/asylnytt/arkiv/10337-i.html).

## IV. Major challenges in the protection of the human rights of migrants in Senegal

### A. Socio-economic challenges

59. One of the major challenges is to provide urban and rural youth, who represent the majority of those attempting the perilous voyage across the ocean, with employment opportunities and just and favourable conditions of work.<sup>18</sup> In 2002 the permanent unemployment rate (measuring the population aged between 15 and 64 who had not worked continuously during the preceding 12 months and who were looking or waiting for jobs) was estimated at 13 per cent, whereas the rate of the active population without a job was estimated at between 40 and 50 per cent. Permanent unemployment affected those below the age of 35 in particular, among whom the rate reaches 30 per cent according to 2007 estimates of the World Bank.<sup>19</sup> According to the organization, every year in Senegal about 16,000 direct or indirect jobs are created through various programmes and initiatives. This, however, manages to engage only 5 per cent of those who are unemployed or who declare themselves as underemployed.

60. The Second Senegalese Household Survey showed that in 2001/02 approximately 57.1 per cent of the population lived below the poverty line. The prevalence of poverty was reportedly higher in rural areas, where 65.2 per cent of the population and 57.5 per cent of households lived below the poverty line.

61. The Committee on Economic, Social and Cultural Rights in its concluding observations on Senegal in 2001 expressed concern that 30 per cent of the Senegalese were living in absolute poverty, that 70 per cent of the poor came from the countryside and were women, and that poverty was on the increase (E/C.12/1/Add.62, para. 29). It also expressed concern about the high unemployment rate especially among the young people living in Dakar (para. 18) and that the minimum wage was not sufficient to provide a decent standard of living for workers and their families (para. 19).

62. The socio-economic stagnation, the perception of emigration as the only realistic strategy to move out of poverty, and the limited available options to emigrate legally have influenced attitudes to the risks of migrating by boat, namely, death and return.<sup>20</sup> In one study, the greatest commonality among those who attempted to migrate through pirogues from Senegal seemed to be their determination to break out of protracted economic and social stagnation. Second to this was the shared conviction that they could not accomplish this wish by staying within the country.<sup>21</sup> Even though pirogue migrants may not have been found to be the poorest in their society (considering that a sea crossing may cost on average 620 euros<sup>22</sup>), their possibilities for socio-economic advancement at home appear severely limited.<sup>23</sup>

63. With regard to social protection for migrants, all salaried workers, whether Senegalese or foreign, employed in the private, public or semi-public sectors are entitled to

<sup>18</sup> In 2006 the total population of Senegal was estimated at 11,077,484, of which an estimated 54.4 per cent were young persons (below the age of 20).

<sup>19</sup> As cited in IOM, *Migration en Sénégal*, p. 17.

<sup>20</sup> Maria Hernández Carretero, "Risk-taking in unauthorised migration", Master thesis, University of Tromsø, Norway, 2008, p. 33.

<sup>21</sup> *Ibid.*, p. 34.

<sup>22</sup> Focus Migration, "Senegal", Country Profile No. 10, November 2007, p. 6.

<sup>23</sup> Carretero, "Risk-taking", p. 34.

family and other social security benefits. However, those working in the informal sectors, many of whom are African migrants, are excluded from the enjoyment of such benefits. An additional concern brought to the attention of the Special Rapporteur during this visit is the absence of mechanisms whereby families left behind by Senegalese working abroad are able to enjoy such social security benefits.

64. Pirogue migration seems to have become “a social phenomenon through which young Senegalese men could seek to restore a tarnished sense of dignity and manhood”.<sup>24</sup> Since the 1980s, when emigration began to grow significantly, the figure of the emigrant has come to be seen as embodying economic success and social prestige and has become a social role model.<sup>25</sup> There are Senegalese pop songs which celebrate the migrant as a modern hero. In this regard, during his visit the Special Rapporteur learned of many sensitization and information initiatives carried out by governmental and non-governmental actors in cooperation with international agencies such as the International Organization for Migration (IOM). For example in 2007 an awareness campaign in Senegal included television spots and messages from celebrities, such as the Senegalese singer Youssou N’Dour, warning of the dangers of irregular migration. In 2006, in Thiaroye-sur-Mer, 550 Senegalese women whose sons or husbands died at sea while trying to reach Europe joined together; through the Women’s Association against Irregular Migration they have conducted regular awareness-raising and information campaigns on the dangers of irregular migration through workshops, television shows and other media.

## **B. Legislative challenges**

65. Legislation and regulations governing the various aspects of migration and the human rights of migrants appear scattered, and are often not in conformity with international instruments and standards.

66. For instance, the Special Rapporteur was informed that in 2006, Law No. 02 (2005) on trafficking in persons and organized clandestine migration was applied by law enforcement officials and judges not only to arrest, prosecute and condemn traffickers but also to prosecute migrants who attempted the sea crossing towards Europe. Although this law - one of the first specific laws on these issues in West Africa - may represent a positive step in the fight against trafficking in persons and smuggling of migrants, it poses challenges to the protection of the human rights of migrants. In fact the clauses, contrary to article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, do not provide for criminal immunity of migrants. Rather, they provide for the possibility to prosecute and condemn all persons over the age of 18 who knowingly contribute to the realization of the offence of clandestine migration. During this visit, the Special Rapporteur was informed that a new draft law has been elaborated but not yet adopted. It seems the Government aims at moving this legislation forward together with the reform of the Penal Code.

67. The provisions of the ECOWAS Treaty and its Protocols are not sufficiently integrated in the national law of the member States of the Community and are not effectively implemented. The Special Rapporteur, for example, learned during his visit that nationals of other States in the Community staying in Senegal more than 90 days should register with the relevant authorities. However, the authorities seem to accept that most of

<sup>24</sup> Ibid., p. 37.

<sup>25</sup> Ibid.

these migrants do not register, and enforce the requirement only when migrants come into conflict with the law.

### **C. Challenges in strategies, policies and measures in the field of migration**

68. Senegalese management and policy frameworks related to migration reveal a number of deficiencies, including a lack of resources and a lack of coordination among entities, committees and other bodies aimed at coping with the variety of aspects related to the human rights of migrants

69. The Special Rapporteur notes that coordination among entities involved in the various areas of migration management and human rights of migrants could be further improved. For example, the National Commission of Management and Follow-up to Employment Offers is not yet fully operational, as it has been unable to take stock of the activities carried out, the progress made and the remaining difficulties.<sup>26</sup> Furthermore, the multiplication of entities dealing with migration matters, the duplication of efforts, inefficient communication and inadequate internal and inter-ministerial coordination contribute to fragmentation and a suboptimal impact of the various initiatives. A lack of coordinating mechanisms also seems to characterize the scenario in the ECOWAS region despite the existence of legally binding instruments.

70. The Special Rapporteur noted that the approach to migration issues has tended to be ad hoc, thus impeding the development of a holistic vision of policies and programmes related to migration and the protection of the human rights of migrants. Civil society organizations, including trade unions, reported that they are not allowed to contribute meaningfully in the elaboration of migration-related policies and programmes and their management. They claim to be consulted during the final stages of any process in order to seek the “endorsement” of policies and measures already elaborated by governmental and other actors.

71. The Special Rapporteur noted that there exist difficulties in the collection and analysis of data and statistics related to migration. On many occasions existing administrative data are not efficiently used and made public, due to constraints related to human and financial resources. Data from consulates, or data on the entry and exit of foreigners and residence permits, among other types of information, are often not available. Data that are available may not have been collected systematically or comprehensively such as, for example, data extrapolated from general population surveys and censuses. At times data are considered confidential and thus not released. The civil registry has not yet been computerized, thus hindering the rapid exploitation of the data collected.

72. In this regard, the Government adopted a programme to put in place a guiding framework for statistics in Senegal (2008-2013) aimed at, inter alia, contributing to a better visibility of migration-related data at the national level. The Special Rapporteur was informed that migration is considered integral to national population and development policies. He was also informed, however, that the collection of data on migration remains a neglected area and thus migration is the least-examined demographic component. For example the 2002 census included only one question related to migration, namely, whether anyone within the household had left the country in the preceding five years.

73. Within the plan entitled “Retour vers l’Agriculture”, a project to promote youth employment by offering sufficiently remunerated employment in the agricultural sector,

<sup>26</sup> Ibrahima Dia, “Evaluation nationale des politiques, législations et pratiques en migration de travail au Sénégal” (International Organization for Migration, March 2009).



including fishing, and indirectly aimed at deterring outmigration, the Government established the Grande Offensive Agricole pour la Nourriture et l'Abondance, which offers land and agricultural equipment to migrants who wish to invest in agriculture. During the course of his visit, the Special Rapporteur learned that these projects, while important, do not seem to attract much interest among young people, as they do not perceive a return to agriculture as an alternative to the perceived benefits of outmigration.

74. Concerning measures to combat the exploitation of children, including migrant children, the Government adopted a strategic plan concerning the education and protection of children who are begging or who are not in school (2008–2013) which provides for different phases of interventions, including (a) mapping the religious schools, the children who are begging and the actors involved; (b) establishing a platform for the exchange of information and the elaboration of consistent strategies and policies related to the protection of children; (c) regulating the opening of religious schools and their functioning through an official decree and ensuring the implementation and monitoring of this decree; (d) elaborating a media plan and a communication strategy; and (e) consolidating and documenting the research and experiences gained through the different interventions, including good practices, and ensuring their dissemination. As part of its efforts to modernize the *daaras*, and to enhance the quality of lives of children, including migrant children, in the care of religious teachers and prevent their abuse, in 2004 the Government began setting up projects to introduce trilingualism (mother tongue, French and Arabic) and vocational training into these schools.

#### **D. Challenges and measures under the auspices of bilateral and multilateral cooperation**

75. With regard to the Framework Agreement between Senegal and Spain, the Special Rapporteur noted with interest the promotion of “hiring at the origin” to facilitate the regular migration of Senegalese workers to Spain. He acknowledges however that such a programme may lead to disproportionately high expectations about the possibilities of regular migration to Spain, as the number of contracts available is still limited. The Special Rapporteur learned that, for example, in the Mbour Department approximately 30,000 young people applied to the regular migration programme. Furthermore, the scheme seems to be perceived as excluding certain groups. There is also discontent about the management of the contracts, partly as a result of misinformation and inconsistency in the information disseminated and partly as a result of alleged corruption and nepotism. There is also lack of clarity on certain elements of the procedure for applying to the job openings available through the Framework Agreement. It appears, for example, that candidates are not systematically informed on/notified of the status of their applications and in cases of rejection there does not seem to be any mechanism for seeking a review of the decision.

76. As mentioned in paragraph 56 above, Senegal and Spain concluded a readmission agreement for unaccompanied children. This agreement requires the two countries to exchange information about unaccompanied children and to trace the child’s family within a short time frame. The Spanish authorities must inform the Senegalese authorities of the presence of an unaccompanied child within 10 days; the Senegalese authorities then have 20 days to trace the child’s family and to issue documents confirming the child’s identity. The Special Rapporteur concurs with a report published by Human Rights Watch that such deadlines may “raise questions as to what extent authorities on both sides will be able to assess sufficiently the circumstances behind the child’s departure and the situation awaiting

the child upon return”.<sup>27</sup> These deadlines may also increase the risk that information will be shared with the relevant authorities before an assessment is made as to whether a child or his or her family are subject to persecution and thus have a claim for protection under the Convention relating to the Status of Refugees (1951).<sup>28</sup>

77. In 2006 the irregular migration affecting the southern external maritime borders of the European Union became an issue of increasing concern to all European Union member States. In particular the Canary Islands had, in the spring of that year, become the prime destination point for irregular migrants leaving from Mauritania and Senegal, whereas the previous years the flows of irregular migrants had originated from the coast of Morocco. This new route to the Canary Islands had become more utilized by the smuggling networks, possibly as a result of strengthened efforts by the Government of Spain to curb irregular crossing at other border points.

78. As a result, the joint operation HERA I was conducted in the Canary Islands from 19 July to 31 October 2006, aimed at (a) increasing the capacity of border checks and the identification of persons attempting to enter the Schengen area in an irregular manner and (b) repatriating undocumented migrants. HERA II was conducted in parallel, also in the Canary Islands, from 11 August to 15 December 2006 and was aimed at increasing the surveillance of the Atlantic maritime borders of the European Union and preventing the loss of lives by controlling the vessels departing from Mauritania, Senegal and Cape Verde and contiguous zones.

79. It was reported that 18,987 irregular migrants arrived to the Canary Islands during HERA I; all were reportedly identified and 6,076 of them - from the Gambia, Guinea, Mali, Morocco, Senegal and other countries - were repatriated by the Spanish authorities. It was also reported that during HERA II a total of 14,572 irregular migrants arrived to the Canary Islands in 246 *cayucos* or *pateras* (pirogues) whereas 3,887 migrants in 57 *cayucos* or *pateras* were sent back to their points of departure on the African coast. According to Frontex, information collected during these operations led to the detention of several facilitators, mainly in Senegal.<sup>29</sup>

80. During his visit, the Special Rapporteur observed that the Governments of both Senegal and Spain were marking a major achievement - no deaths of Senegalese migrants had been reported during the first six months of 2009. This was a particularly significant accomplishment, considering that the numerous deaths of migrants had been a constant feature in the national and international media for several years. Bilateral cooperation between the two Governments, including cooperation in patrolling Senegalese territorial waters, seems to have significantly contributed to this success and more generally to the decrease in the number of irregular arrivals to the Canary Islands. The comprehensive approach of this cooperation seems to indicate that the decrease cannot be attributed only to stricter border control and sea patrolling, but also to the simultaneous provision of (a) regular avenues for migration to meet demand of domestic labour markets and (b) development cooperation in the country of origin. In addition the global economic recession of the past two years has led to an increase in unemployment rates in many destination countries where economic sectors traditionally employing migrants have experienced a significant reduction in labour demand.

81. In relation to returned migrants, the Special Rapporteur would like to recognize the success of Senegal's Programme to Support Solidarity for Development Initiatives

<sup>27</sup> Human Rights Watch, “Returns at any cost: Spain’s push to repatriate unaccompanied children in the absence of safeguards” (October 2008), pp. 5-6.

<sup>28</sup> Ibid.

<sup>29</sup> Frontex, “HERA I 2006 and HERA II 2006”, Frontex Evaluation Report (FER), public excerpt.

implemented in cooperation with the Government of France. The actions and initiatives of this programme aim at, inter alia, supporting the economic integration of returned migrants and promoting decentralized development through strengthened cooperation with the Senegalese diaspora. The programme has also been designed in line with national policies and programmes to eradicate poverty and achieve the Millennium Development Goals. During his visit the Special Rapporteur was told of Kedougou, one of the programme's success stories. Kedougou is located 750 kilometers from Dakar – a journey of between 8 and 10 hours over land. Public transport to Kedougou was, however, nonexistent. More than a thousand Senegalese abroad originally from the Kedougou area decided, therefore, to invest in a company whose coaches nowadays constitute the only available public transport to this area.

82. Over the past few years, the link between migration and development has gained broad recognition from national Governments and the international community. Against this backdrop, IOM launched in 2001 the Migration for Development in Africa strategy aimed at promoting and supporting international cooperation which enhances the participation of migrants in the social and economic development of countries of origin. Since 2003 IOM has been supporting, in partnership with the Government of Italy and under the strategy, a programme targeting the sub-Saharan diaspora in Italy. Currently this programme includes migrants from Senegal residing in Italy and supports productive investments in Senegal so as to produce income and generate job opportunities. This support is provided either through the promotion of migrants' entrepreneurial initiatives in the country of origin, not dependent on their actual return, or through the promotion of co-development projects where migrant associations partner with Italian local authorities in alignment with the principle of decentralized cooperation.

83. Following the strong feminization of migration flows registered both at the Italian and international levels, and given that women are the primary receivers of remittances all over the world, IOM has designed the Migrant Women for Development in Africa programme with the objective of promoting the direct engagement of West African women residing in Italy, including Senegalese women, in the socio-economic development of their areas of origin.

## **E. Measures to combat trafficking in persons**

84. Weaknesses in legislation, policies and practices governing migration contribute to the emergence and development of trafficking in persons and smuggling of migrants.

85. The Government of Senegal has been making significant efforts towards the elimination of trafficking, engaging in activities such as rescuing and caring for victims. In December 2007, nine individuals, two of whom were truck drivers from Guinea-Bissau and one of whom was Senegalese, were arrested at the Southern border for attempting to traffic 34 boys. The suspects are in jail awaiting trial. In 2007, a religious leader was prosecuted and sentenced to four years' imprisonment for beating a *talibé* to death.

86. The Government also adopted the Plan National d'Action de Lutte contre la Traite des Personnes, en Particulier des Femmes et des Enfants au Sénégal (2008-2013) which sets the overarching goal to ensure that all persons in Senegal benefit from legal and social protection against trafficking. The goal is expected to be achieved through various types of intervention, which include efforts to strengthen law enforcement and prosecution actions, to increase the adequacy of protection of victims and witnesses and to build the capacity of all actors involved in the fight against trafficking.

## V. Conclusions and recommendations

87. The Special Rapporteur believes that the commitment of Senegal to the human rights of migrant workers, including its efforts to promote awareness regarding the importance of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is noteworthy.<sup>30</sup>

88. He is equally convinced that challenges remain in legislation, policies and practices and that further efforts are needed to strengthen the protection and promotion of the human rights of migrants in Senegal and of Senegalese migrants residing abroad. In this regard, the Special Rapporteur would like to offer the following recommendations.

89. The Government of Senegal and Governments of European Union member States concerned should ensure that multilateral and bilateral agreements, including operations of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), incorporate international standards on human rights and refugee rights.

90. The Government of Senegal should strengthen efforts to ensure the harmonization and comprehensive implementation of the Treaty of the Economic Community of West African States protocol relating to the free movement of persons, residence and establishment within the domestic legislation. It should also train border officials and inform the public at large on the provisions of the protocol and the Treaty itself.

91. The Government should consider elaborating a holistic and strategic migration policy. Further, it should either establish an independent entity responsible for the management and follow-up of all questions related to labour migration, or revive the National Commission of Management and Follow-up of Employment Offers. The new entity or the revived National Commission should be equipped with adequate human and financial resources. Strategies, policies and mechanisms in the field of migration should be devised and implemented with the full involvement of all stakeholders, including civil society, returning migrants and young people.

92. The Government, in cooperation with the relevant international organizations and United Nations agencies, should improve data collection and statistical analysis in relation to aspects of immigration and out-migration.

93. In addition to the social security agreement with France and steps already taken to negotiate a similar agreement with Spain, the Government should systematically negotiate the inclusion of social security provisions in bilateral and multilateral agreements on labour migration in order to, inter alia, facilitate the transfer (upon migrants' return to Senegal) of the social contributions paid by Senegalese living abroad in the countries of migration. It should also devise a mechanism to extend the coverage of social security to the families of Senegalese working abroad.

94. Pursuant to the recommendation of the Committee on Economic, Social and Cultural Rights on reducing the unemployment rate, the Government should build the capacity, including business capacity, of young people and potential migrants and conduct regular reviews of the minimum wage levels.

<sup>30</sup> The commitment and efforts of Senegal in this field have also been praised by certain Governments during its universal periodic review in 2009.

95. Concerning remittances, the Government should promote among the households receiving remittances the necessary capacity to invest in sustainable income-generating activities. It should also promote and strengthen the involvement of the Senegalese diaspora in the development of the country, including by improving the support given to returnees and by enhancing the institutional environment for economic development.

96. Concerning unaccompanied minors, the Government of Senegal and Spain should make the implementation of the bilateral readmission agreement transparent and allow for independent monitoring. These Governments should also cooperate in the return of unaccompanied children when the decision to return has been taken in conformity with the children's best interest, including with regard to aspects requiring international protection, and whether adequate care and integration arrangements can be guaranteed upon return.

97. The Government should ensure that migration strategies and policies take into account the special protection needs of asylum-seekers and refugees. For instance, it should put in place systems of referrals between the immigration services and the National Eligibility Commission, which deals with refugee status determination. Concerning Mauritanian refugees, the Government should resume the registration exercise so that they can be provided with proper identification documents and have full access to health, educational and other services.

98. Concerning trafficking and smuggling, the Government should ensure that the new draft law on trafficking and smuggling of migrants is in conformity with international human rights standards and that, upon adoption, it is swiftly implemented. The Government should also step up efforts to prosecute traffickers and to identify and protect all victims of trafficking.

99. Concerning particularly vulnerable children, including those forced to beg, the Government should ensure the swift implementation of the strategic plan concerning the education and protection of children who are begging or who are not in school. It should also adopt immediately the decree regulating the opening and functioning of religious schools and establish mechanisms to monitor its implementation. The Government should also implement the recommendations of the Committee on the Rights of the Child (CRC/C/SEN/CO/2) in order to stop the practice of using *talibés* (children sent to live and study at a religious school) for private economic gain and to bring to justice the perpetrators of that practice.

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