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الأمم المتحدة

Distr.  
GENERAL

E/CN.4/2004/18/Add.2  
1 March 2004

ARABIC  
Original: ENGLISH/FRENCH

المجلس الاقتصادي  
والاجتماعي



لجنة حقوق الإنسان

الدورة الستون

البند ٦ من جدول الأعمال المؤقت

العنصرية والتمييز العنصري وكره الأجانب وجميع أشكال التمييز

تقرير السيد دودو دين المقرر الخاص المعني بالأشكال المعاصرة للعنصرية  
والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب

إضافة \*\*

البعثة المضطلع بها إلى كندا

يعمّم هذا الموجز بجميع اللغات الرسمية. ويعمّم التقرير الكامل المرفق بالموجز باللغتين الفرنسية

\*

والإنكليزية.

تقدّم هذه الوثيقة بعد موعدها لكي تأخذ في الاعتبار أحدث المعلومات.

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## خلاصة

بناء على دعوة الحكومة الكندية وفي إطار الولاية المنوطة به قام المقرر الخاص المعني بالأشكال المعاصرة للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب بزيارة إلى كندا من ١٥ إلى ٢٦ أيلول/سبتمبر ٢٠٠٣. وكان الغرض من هذه الزيارة، في سياق تنفيذ برنامج عمل ديربان، هو تقييم الحالة الراهنة في كندا فيما يتعلق بمسألة العنصرية والتمييز العنصري وكره الأجانب وبالتالي حالة العلاقات القائمة بين مختلف الطوائف في الإطار متعدد الإثنيات ومتعدد الحضارات الذي يتميز به هذا البلد.

وتبين للمقرر الخاص أثناء زيارته أن كندا بلد يعتر بتنوعه الإثني والعرق والحضاري والديني وهذا التنوع يستند إلى سياسة متعددة الحضارات ومتعددة الجوانب وإلى مؤسسات ديمقراطية وحماية لحقوق الإنسان كما يستند إلى العديد من البرامج والمشاريع التي يضطلع بها العديد من الوزارات الاتحادية وفي المقاطعات. ولمس المقرر الخاص أيضاً الإرادة الكندية المبتكرة في هذا الشأن ولا سيما في مجال وضع وتفصيل معاهدات مع مجموعات السكان الأصلية. وترى حكومة كندا أن هذه الخطوات المبتكرة قد تمخضت عن نتائج لا يستهان بها.

ومهما يكن من أمر فإن اللقاءات التي عقدها المقرر الخاص مع ممثلي مختلف الجماعات الإثنية والعرقية والحضارية والدينية، لا سيما مع ممثلي الشعوب الأصلية، تشهد على أن المجتمع الكندي ليس خلوياً من التمييز العنصري. ويعتبر أعضاء هذه المجموعات الذين قابلهم المقرر الخاص أنهم ضحايا التمييز في مجالات التعليم والصحة والعمالة والسكن. وفي نظر ممثلي السكان الأصليين بصفة خاصة فإن المسألة التاريخية التي تتناول عدم احترام حقوقهم في الممتلكات، رغم المعاهدات العديدة التي وقّعوها مع الحكومة الكندية، شاهد على استمرار التمييز ضدهم.

وأعرب أعضاء الطوائف الكندية من أصل أفريقي ومن منطقة الكاريبي للمقرر الخاص عن نفس الشعور باستمرار التمييز ضدهم. والهوة التي تفصل بين المشاعر القوية والعميقة بالتمييز لدى هؤلاء السكان وبين الإرادة لدى السلطات السياسية سواء على المستوى الاتحادي أو على مستوى المقاطعات تشهد على قلة الاكتراث والمبالاة كما تشهد على عجز في التواصل بين الطوائف المعنية من جهة والمسؤولين السياسيين من جهة ثانية.

واستبان المقرر الخاص أيضاً ضرورة رسم استراتيجية فكرية وأخلاقية حريّ بها أن تستجيب للعمق العاطفي والنفسي لواقع التمييز وأن تستحث تطور العقلية نحو التعدد الحضاري الذي لا يقتصر على بسط المساواة والديمقراطية على الطوائف فحسب وإنما يشجع التفاعل والتعارف المتبادل بين الأشخاص وبين الطوائف وعلى احترام الاختلافات الحضارية بينها. ومع ذلك فقد أشارت الحكومة الكندية إلى ما أقيم خلال السنوات الأخيرة من برامج وتدابير سواء على صعيد الحكومة الاتحادية أو على صعيد حكومات المقاطعات فيما يتعلق بالمشاركة المدنية وممارسة المواطنة القائمين على علاقات من الوئام بين الطوائف في ظل احترام الاختلافات الحضارية.

ومن ثم عمد المقرر الخاص إلى صياغة بعض التوصيات لتنظر فيها الحكومة الكندية والتي من شأنها أن توفر المزيد من المصداقية والثقة والاعتراف بالتزام الحكومة السياسي الحقيقي بمكافحة العنصرية والتمييز وكره الأجانب. وتتناول هذه التوصيات على وجه الخصوص: الاعتراف علناً وعلى أعلى المستويات باستمرار وجود هذه الآفات، رغم الجهود المبذولة، وإقامة لجنة وطنية برلمانية متعددة الأحزاب ومتعددة الإثنيات بشأن العنصرية والتمييز؛ بصياغة برنامج وطني لمكافحة العنصرية مستلهم من إعلان وبرنامج عمل ديربان؛ والقيام على وجه الاستعجال لصياغة استراتيجية فكرية لدعم الاستراتيجية القانونية. وتنطلق هذه الاستراتيجية عبر ثلاثة محاور ألا وهي: تحسين فهم ومعرفة الجذور العميقة للتاريخ والحضارة والعقلية العنصرية والتمييزية، والنهوض بالمعارف المتبادلة للتاريخ والحضارة والبعد الروحي لمختلف الطوائف، وتسهيل الأضواء على أوجه التفاعل والتلاقح من منظور تعددية حضارية ديمقراطية ومتكافئة ومتفاعلة.

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY  
FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA  
AND RELATED INTOLERANCE, MR. DOUDOU DIÈNE, ON HIS  
MISSION TO CANADA FROM 15 TO 26 SEPTEMBER 2003**

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## **Introduction**

### **A. Purpose and programme of the visit**

1. At the invitation of the Canadian Government and in accordance with his mandate, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Canada from 15 to 26 September 2003. Pursuant to the implementation of the Programme of Action of the Durban Conference, the purpose of the visit was to assess the present situation in Canada, with regard to the question of racism, racial discrimination and xenophobia, and hence the state of relations between the various communities, against the country's characteristically multi-ethnic and multicultural background.

2. The Special Rapporteur's programme, which, based on this general objective, was prepared as a result of open, effective cooperation between the Office of the United Nations High Commissioner for Human Rights, the Government of Canada and the Canadian Race Relations Foundation, was aimed at understanding, as objectively as possible, the dynamic complexity of the multicultural situation prevailing in Canada in the light of its considerable diversity and vast territory. He visited 4 out of Canada's 10 provinces, namely Ontario (Ottawa and Toronto), Quebec (Montreal), Nova Scotia (Halifax) and Saskatchewan (Regina). Unfortunately he did not have enough time to visit the other provinces and territories, particularly British Columbia, where matters pertinent to his mandate require urgent attention. He nevertheless met representatives of civil society from the regions he did not visit, who were able to supply him with information and studies concerning the situation in those provinces.

3. In Ottawa and at various stages of his visit, he met federal and provincial authorities, including Ms. Jean Augustine, Minister of State (Multiculturalism and Status of Women). His exchanges of views with the Canadian authorities were frank and informative. His meetings with the representatives of Canadian civil society were very fruitful and often betrayed considerable emotion on the part of the representatives of the aboriginal peoples. The organizations, which had prepared the encounters with remarkable thoroughness, showed great keenness and awareness with regard to the issue of racism and racial discrimination. In order to contribute to the intellectual debate on the problem of racism and discrimination, the Special Rapporteur took advantage of his visit to deliver two public lectures, at the request of the organizers of his visit, one at the University of Quebec in Montreal on "Intercultural dialogue as a means of combating racism, racial discrimination, xenophobia and related intolerance", and the other at the University of Toronto on "Cultural resistance to slavery".

4. The Special Rapporteur welcomes the Canadian Government's open-minded approach and wishes to express his satisfaction at the efficient way his visit was organized and the readiness of the departments and administrations concerned to supply information and to reply to his questions.

5. The Special Rapporteur would like to thank the provincial governments and representatives of federal and provincial commissions who were prepared to meet him. He is also particularly grateful to the representatives of civil society, who, through their eloquent testimony and accurate information, often after long journeys, were willing to express their faith

in the United Nations and to recognize the importance of the Special Rapporteur's visit. He also wishes to express his gratitude to the Canadian Race Relations Foundation, which very efficiently coordinated all meetings with non-governmental organizations and which accompanied him in his meetings and visits.

## **B. General background**

### **1. Ethno-demographic data**

6. Canada is a country of immigration, characterized by the rich ethnic and cultural diversity of its population, which, consists of over 200 ethnic groups and is spread over a territory of 9,976,140 km<sup>2</sup>.

7. In the 2001 census, approximately 41 per cent of the Canadian population, estimated at 31,021,300 people, reported being from at least one background other than French, British or aboriginal. The concept of "visible minority" is important to comprehend the ethnic diversity of Canada. It is defined as "persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour"<sup>1</sup>. They account for 13.4 per cent of the total population (3,983,845 individuals). Of this number, 17.9 per cent reported being Black (or 662,200 persons), 23 per cent reported being South Asian (or 917,100 persons), 26 per cent reported being of Chinese origin (or 1,029,400). Canada's visible minority population was also comprised of Filipinos (8 per cent), Arabs and West Asians (8 per cent), Latin Americans (5 per cent), South-East Asians (5 per cent), Koreans (3 per cent), and Japanese (2 per cent). Combined, their population of about 1.2 million represented one-third of the total visible minority population in 2001.

8. An overview of the country's demography indicates that there were 612 First Nations in 2001 comprising approximately 52 cultural groups. Census data from 2001 also reveals that Canadian of aboriginal descent make up 4.4 per cent of the country's population, a total of just over 1.3 million individuals (in 1996 people with aboriginal ancestry represented 3.8 per cent of the total population) although 3.2 per cent of Canada's population actually identify themselves as aboriginal 62 per cent, or 608,850 reported they were North American Indian; about 30 per cent or 292,310 reported that they were Métis; and 5 per cent identified themselves as Inuit (45,070 people)<sup>2</sup>. Among those individuals who have reported being North American Indians (608,850), 47.3 per cent (287,584 individuals) live on reserves, while 52.7 per cent (320,863 individuals) live off reserves.

### **2. Political and institutional framework**

9. Canada is a federal State comprising 10 provinces (Alberta, British Columbia, Prince Edward Island, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec, Saskatchewan, New-Ffoundland and Labrador) and 3 territories (Northwest Territories, Yukon, Nunavut). Although the ratification of international treaties is the prerogative of the federal Government, their implementation requires the participation of provincial Governments, which are responsible for the matters covered by the treaties. In Canada, all issues arising under the International Convention on the Elimination of All Forms of Racial Discrimination are dealt with jointly by the Government of Canada, the provincial Governments and, under powers delegated by the Parliament of Canada, the territorial Governments.

10. Federalism, constitutional monarchy, a parliamentary system on the British model and representative democracy are essential characteristics of the Canadian political system. As far as human rights are concerned, the incorporation of the Canadian Charter of Rights and Freedoms into the Constitution Act in 1982 replaced the system of legislative supremacy in Canada, thereby subordinating the federal and provincial legislatures to the provisions of the Charter.

## **I. LEGAL AND POLITICAL STRATEGY**

### **A. From a policy of biculturalism to multiculturalism**

11. The authorities whom the Special Rapporteur met at federal and provincial levels reiterated Canada's commitment to its multiculturalism policy and to human rights. They underlined that Canada is among the very few countries that celebrate and encourage diversity through an official policy. It has also long held a firm commitment to human rights standards and the mechanisms needed to uphold and implement them, at the international, national and provincial levels.

12. Canada has long been a country with cultural and ethnic diversity. Certainly, it has had a strong European influence on its cultural and political development as a nation, namely through the influx of those of English and French descent during its colonial period. However, the European settlers were not the first, arriving in a country already inhabited by aboriginal peoples, who had arrived many thousand years before from Asia. Whilst most immigrants during the colonial period were of Western European origins, there was also immigration by other groups, such as people of African descent escaping slavery in the United States, often by way of a network known as the "Underground Railroad".

13. The pattern of immigration was later to change. During the twentieth century an increasing number of non-Europeans immigrated, causing a major demographic shift. Since 1901, Canada has welcomed a total of 13.4 million immigrants. Between 1991 and 2000 alone, 2.2 million immigrants were admitted to Canada, the highest number for any decade in the past century. Although there was some resistance by those of English and French descent to the subsequent effect this immigration had on the cultural make-up of Canada, the initial expectation that immigrants assimilate soon gave way to the recognition of pluralism and the development of the belief that diversity is actually an asset. It is a process of erosion of the "colonial mentality" of those of both British and French descent, who saw themselves as racially superior, a notion which has taken years to erode and that, to a lesser extent, still exists.

14. In 1971 Canada adopted a multiculturalism policy, the first of its kind in the world. In 1988, the policy became law when the Canadian Multiculturalism Act was passed. The policy encourages a vision of Canada based on the values of equality and mutual respect without regard to race, national or ethnic origin, colour and religion. The Canadian experience has shown that multiculturalism encourages racial and ethnic harmony and cross-cultural understanding, and discourages ghettoization, hatred, discrimination and violence. Through multiculturalism, Canada recognizes the potential of all Canadians, encouraging them to integrate into their society and take an active part in its social, cultural, economic and political affairs.

15. In its early years the multiculturalism policy concentrated on encouraging the preservation of the cultural heritage of the different groups comprising Canadian society. Later,

though, it became clear that these groups were less concerned about programmes designed to recognize and give space to cultural activities, rather they were concerned about eliminating barriers - such as racism and discrimination - to their successful development. The Multiculturalism Programme at the Department of Canadian Heritage pursues three overall policy goals. These are:

- Identity: fostering a society that recognizes, respects and reflects a diversity of cultures such that people of all backgrounds feel a sense of belonging and attachment to Canada;
- Social justice: building a society that ensures fair and equitable treatment and that respects the dignity of people of all origins;
- Civic participation: developing, among Canada's diverse people, active citizens with both the opportunity and the capacity to participate in shaping the future of their communities and their country.

16. Based on the Canadian Multiculturalism Act, these goals are aimed at helping all Canadians to participate fully in the economic, political, social, and cultural life of the country. The Department of Canadian Heritage is responsible for the implementation of the Multiculturalism Policy, which encourages and assists in the development of inclusive policies and programmes and practices within federal and provincial departments and agencies so that they may meet their obligations under the Canadian Multiculturalism Act.

### **B. Specific programmes for aboriginal peoples**

17. The federal and provincial governments administer many programmes that are intended to address aboriginal culture, education, employment, health and other matters. For example, two such programmes in the field of human resource development and economic development are described in the following paragraphs. In April 1999, Human Resources Development Canada (now called Human Resources and Skills Development) launched the Aboriginal Human Resources Development Strategy (AHRDS) with the objective of helping aboriginal communities to strengthen the ability of their members to compete in the Canadian job market. AHRDS currently has a five-year, \$1.6 billion budget and is set up as part of the Government of Canada response to the recommendations of the Royal Commission on Aboriginal Peoples.

18. The overall aim of the strategy is to help aboriginal communities and organizations to take on the responsibility of developing and implementing their own employment and human resource programmes. The largest share of the total funding goes towards the creation of employment programmes and services and the direct involvement of aboriginal organizations and the emerging network of partnerships are some of the strategy's strongest hallmarks.

19. The performance results of the programmes include helping more than 50,000 aboriginal people find employment and 5,000 return to school between April 1999 and January 2003. The Government considers that First Nations, Métis and Inuit organizations have become more efficient and effective through that strategy which improved administrative, human and technological resources. There has been continued steady improvement each year with progress at the strategy's mid-point poised to exceed previous performance results.

20. The Community Economic Development Program (CEDP), a Department of Indian Affairs and Northern Development initiative, provides long-term employment and business development opportunities to First Nations and Inuit communities by helping them manage skill development programmes, economic institutions and business enterprises. This is achieved through partnerships among aboriginal peoples, and with various levels of government and the private sector. CEDP provides funding for the establishment and operation of 500 Community Economic Development Organizations (CEDOs) utilized by Tribal councils, First Nations and Inuit communities. The objectives include developing community economic plans and providing contributions or loans to community members for training, business or resource development projects.

21. The Government also helps First Nations and Inuit communities with negotiations to access business and employment opportunities in major resource projects; to attract investment in on-reserve natural resources; to access off-reserve natural resources; and to manage off-reserve natural resources through the Resource Access Negotiations Program (RAN). The project is directed at First Nation and Inuit communities and settlements, tribal councils and institutions authorized by their band or community to carry out activities on their behalf. RAN pays for professional fees and expenses of technical experts as well as incremental direct costs to the communities.

22. Provincial governments also have their own programmes addressing the needs of aboriginal peoples. The Special Rapporteur was extensively briefed about such programmes in Nova Scotia, Ontario, Saskatchewan and Quebec.

### **C. Institutional and legal structure relating to human rights**

23. The federal Government has adopted an array of laws that aim to eliminate social inequalities while combating all forms of discrimination in the country. These include the Canadian Charter of Rights and Freedoms and other provisions of the Constitution Act, 1982, the Canadian Bill of Rights, the Canadian Human Rights Act, the Canadian Multiculturalism Act, the Employment Equity Act, the Canada Labour Code, the Public Service Staff Relations Act, the Public Service Employment Act and the Criminal Code of Canada. Apart from these acts, a wide range of policies and programmes are implemented by Canadian governments in order to combat exclusion and social marginalization resulting from all forms of discrimination; provincial and territorial governments have also adopted extensive legislation, programmes and policies which ensure the implementation of the Convention in their jurisdictions.

24. The federal and provincial human rights codes prohibit discrimination on the following grounds: race or colour; religion or creed; age; sex; sexual orientation; family or marital status; physical or mental handicap or disability; national or ethnic origin and ancestry or place of origin and other grounds.

25. With the exception of British Columbia, which has abolished its human rights commission,<sup>3</sup> there are also at both the federal and provincial levels a number of opportunities for redress in the case of violation, including courts and statutory bodies created to administer particular legislation (commissions, boards, committees, tribunals and ombudsmen). Individuals

who claim to be victims of discrimination may file complaints with the appropriate commission. These complaints are investigated, and there may be a conciliation process. If necessary, a board of inquiry or human rights tribunal determines the legal merits of the complaint.

26. The Canadian Criminal Code contains three provisions relating to hate propaganda: advocacy of genocide (sect. 318), public incitement of hatred (sect. 319, para. 1) and wilful promotion of hatred (sect. 319, para. 2). The provincial human rights statutes also contain provisions of dealing with discriminatory messages in various forms.

27. International human rights treaties are not self-executing in Canada. Furthermore, the different powers between federal and provincial authorities mean that “there may sometimes be differences in the manner of implementing rights in the various jurisdictions. These differences may reflect differences in local conditions (ibid, para. 140). Canada asserts that the legal system safeguards against discrepancies in the level of human rights protection between jurisdictions for two main reasons: first, that the Canadian Charter of Rights and Freedoms applies across all jurisdictions and takes precedence where there is any contradiction in federal or provincial legislation; and, second, that the Supreme Court’s interpretation of the Charter is valid across all jurisdictions. Section 15 (1) of the Canadian Charter of Rights and Freedoms reads: “Every individual is equal before the and under the law and has the right to the equal protection and equal benefit of the law, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”.

28. Nonetheless, the Special Rapporteur wishes to recall that the Committee on the Elimination of Racial Discrimination, has pointed out that the fact that the federal Government cannot compel the provincial and territorial governments to align their laws with the requirements of international instruments like the International Convention on the Elimination of All Forms of Racial Discrimination ratified by Canada a matter for concern,<sup>4</sup>

## **II. PRESENTATION OF THEIR SITUATION BY THE COMMUNITIES CONCERNED**

### **A. Aboriginal peoples**

29. Treaty rights, and especially the recognition of the land rights of aboriginal peoples, remain one of the central, symbolic issues for most members of the aboriginal communities. To date, 0.4 per cent of Canadian territory has been attributed to aboriginal peoples in the form of reserves. According to the Special Rapporteur’s interviews with aboriginal contacts and to the documentation supplied, between 1867 and 1923, several Indian Nations signed treaties with the Canadian authorities, according to which they were willing to share their land with non-aboriginals, but without giving up their independence<sup>5</sup>. Special provisions were added to the 1982 Constitution Act to deal with the land claims of aboriginal peoples and the need to reconcile their ancestral rights with the rights of the State and other Canadians. In section 35 (1), the Constitution Act states that “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”. These treaty rights include “rights that now exist by way of land claims agreements or may be so acquired” (paragraph 3 of the same section). The aboriginal peoples’ persistent claims led to significant advances from a judicial point of view, especially with the Supreme Court judgement in *Delgamuukw v. British Columbia* (1997), which recognized the uninterrupted existence of the land titles of aboriginal peoples in

British Columbia and the fact that such rights were protected by Canadian constitutional law. That judgement also provided a legal basis in support of other aboriginal land claims under Canadian law. The persons interviewed by the Special Rapporteur find it paradoxical that, despite the constitutional and judicial progress achieved, they continue to be subjected to cumbersome and complicated legal procedures, which place a heavy burden on their financial resources, while far superior means are available to the Canadian Government. One significant case brought to the attention of the Special Rapporteur was that of the Algonquins of Barriere Lake, near Ottawa, who were displaced from their land and relocated on a 59-acre (24-hectare) reserve in 1962, in order to make way for the construction of a hydroelectric dam. Nowadays their representatives consider that left without resources they are one of the poorest communities in Canada, living in sub-standard housing with a high rate of unemployment.

30. As shown by the report of the Royal Commission on Aboriginal Peoples, published in 1996, the persistent marginalization of aboriginal peoples is the result of the breakdown of a viable partnership between native peoples and the Europeans who settled in Canada, and later with the Canadian State. The content and scope of that partnership were determined in several treaties, which are still valid. The representatives of the aboriginal peoples maintain that the current management of aboriginal affairs by a federal ministry prevents their development. What they want is relations on an equal footing, free of any paternalism, between aboriginal peoples and non-aboriginals, based on signed treaties.

31. The treaty question remains a key issue in the claims of aboriginal peoples interviewed by the Special Rapporteur and in their view is crucial for their rights to equality and development. What they want is to restore the relations of independence and mutual respect which used to prevail between aboriginals and non-aboriginals, whereas the Indian Act tends to place them in the position of wards of the Canadian State (according to the Royal Commission on Aboriginal Peoples). The aboriginal representatives told the Special Rapporteur that they were very concerned at suspected schemes to do away with all the rights they had acquired under the treaties, especially through the gradual extinguishment of their land rights<sup>6</sup>.

32. The Canadian Government has explained however, that outside the historic treaties, recent arrangements between the Canadian State and aboriginal peoples have led to the allocation of other lands to the latter and to the recognition of the right of several Nations to independence. The Government considers that through its modern approach to treaties and agreements, it has been able to settle the land claims of aboriginal peoples over about 40 per cent of Canada's entire territory. Under these modern treaties, the aboriginal groups have acquired ownership of 600,000 km<sup>2</sup> of land. One significant example of the settlement of land claims mentioned by the Government is the creation of the territory of Nunavut and the establishment of a government controlled by an Inuit majority.

33. A further concern with regard to the situation of aboriginal peoples is the matter of their rights to education, housing and health. According to the 2001 survey of aboriginal peoples, 45 per cent aged over 15 living outside the reserves suffer from chronic health problems. The most frequently recurring chronic disorders are arthritis, rheumatism, asthma and high blood pressure. Among young persons aged between 20 and 24 living outside the reserves, 48 per cent have not completed secondary education, while 17 per cent of the aboriginal population live in overcrowded housing. Owing to the poor housing conditions in the reserves, combined with the lack of resources and jobs, many aboriginals become homeless city dwellers and are unable to

find a place in society. The situation of urban aboriginals is a matter of concern also to the extent that the resources allocated by the Government are chiefly intended for the reserves and are tied to the reserve-related resource-related Indian status. The resulting feeling of despair leads many aboriginals to resort to alcohol and drugs<sup>7</sup>.

34. The association Quebec Native Women Inc. complained to the Special Rapporteur about the discriminatory effects of the Indian Act, about the decision-making process in the bands and the bands' customary attitudes towards them. They mentioned several negative effects of the Act, such as: the fact that it restricts an aboriginal woman's chance of obtaining Indian status; that a child cannot be entered in the Indian register unless the identity of the father is known; that women experience difficulties transferring from one band to another owing to the need to obtain the consent of the band concerned; that it protects band councils that refuse to enrol members despite the right to membership stipulated in the Act; and that certain regulations prevent non-members from residing in a reserve, thus affecting non-aboriginal spouses and hence the children born of mixed marriages. On behalf of aboriginal women, the association rejects the Government's argument that it does not want to interfere in the internal affairs of the First Nations. The association considers that Canada is obliged by the international treaties to which it is a party to protect the rights of all persons living within its borders. They also believe that improving their living conditions is the responsibility of the Canadian Government, in view of the past and present factors that have led to the dismemberment of aboriginal Nations.

#### **B. Persons of African origin, particularly Loyalists' descendants in Nova Scotia**

35. The Special Rapporteur has received a plea from descendants of the African-Canadian community in Nova Scotia to tell the story of Africville, which they see as emblematic of the situation of discrimination against Afro-Canadians.<sup>8</sup> Africville was one of the settlements of Blacks who came to the shores of what is now known as Nova Scotia. It dates back to the 1700s and one of the first purchases of property deeds was recorded in 1848. Blacks who settled there came to Nova Scotia bound as slaves of the French, British, and Portuguese. They also came as Black British Loyalists, during the time of the American Revolutionary War in 1776; as Jamaican Maroons in 1796; and as American slaves who were promised freedom by the British during the War of 1812. These diverse groups would eventually settle the area that once stood overlooking the grand Bedford Basin that would grow to be Africville. Eighty families lived and worked in a self-reliant community, on their own property.

36. The period between 1913-1973 saw industrial growth at the expense of the residents of Africville. A bone-meal plant, a cotton factory, a rolling mill/nail factory, a slaughterhouse, and a port facility for handling coal were built within earshot of residential homes. In the 1950's, the city dump was moved to within 100 metres of the westernmost group of Africville homes.

37. Not only had the city leaders surrounded Africville with unwanted, dirty and dangerous facilities, by 1915 they had made explicit their intention to use land occupied and owned by the people of Africville for industrial expansion. By 1960, the city of Halifax embarked on an urban renewal campaign, which would forcibly displace the residents of Africville in order to make room for industrial expansion. After 150 years of collusion between the provincial Government

and the business community, including through abuse of power, neglect, encroachment and invasion of hazardous industrial materials, in 1970 all of the community was forcefully removed without proper compensation.

38. The case of Africville is emblematic of the past condition of people of African descent in Nova Scotia. The Black community in Nova Scotia faces numerous challenges, including, the overrepresentation in prisons, a dependence on the welfare system, and increase of representation in low-income housing and other problems in the criminal justice system.

39. The Special Rapporteur hopes that the recent nomination of a Minister of African Nova Scotian Affairs is a demonstration of the Government of Nova Scotia's will to address the issues raised above in close consultation with the people concerned.

### **C. Chinese head tax**

40. Representatives of the Chinese Canadian National Association have informed the Special Rapporteur that for years they have been seeking compensation from the federal Government for imposition of head taxes on Chinese migrants. As submitted by this association, Chinese immigration to Canada began around 1858 in response to the gold rush in British Columbia, the westernmost province of Canada. At first, these migrants came from the West Coast of the United States. When the Canadian Pacific Railway was constructed between 1881 and 1885, however, Chinese were recruited directly from China as labourers to help build the railway. While there is no accurate record of the number of Chinese recruited to Canada as indentured labourers, it was estimated that 15,710 Chinese entered Canada between 1881 and 1884. The representatives of the association argued that, as the Chinese were viewed as inferior to persons of European descent, they were not considered desirable citizens. As the economic situation in British Columbia began to deteriorate in the 1860s, however, agitation against the Chinese began to grow. Various attempts were made by politicians in British Columbia to curb Chinese immigration in response to the rising anti-Asian sentiment. Some of these measures include the infamous Chinese Immigration Acts (from 1885 to 1923) and Chinese Exclusion Act (1923).

41. The Chinese Immigration Acts took the form of a head tax imposed on every person of Chinese origin entering Canada. From 1885 to 1923, it varied from \$50 to \$500. The Government of Canada made a sizeable profit from the imposition of the head tax on Chinese people. Between 1886 and 1923, the total revenue collected from Chinese is estimated at Can\$ 23 million.

42. Members of the Chinese community alleged that the head tax and the Chinese Exclusion Act had a devastating impact on their community, contributing for a long time to their marginalization in the Canadian society. During the exclusion era, Chinese immigrants faced various forms of discrimination in their social, economic and political lives. Economically, they were often denied entry to various occupations and professions. The Chinese Canadian National Association as well as other Chinese organizations like the Metro Toronto Chinese and South Asian Legal Clinic are now asking for redress from the Government of Canada for those historical injustices. The Special Rapporteur notes in that context that in 1988 an agreement was reached between the federal Government and the National Association of Japanese Canadians to redress State treatment of Japanese Canadians during World War II. The Japanese-Canadian redress is seen as an important milestone for that community and for Canada and could,

eventually inspire future solutions for Chinese head tax case. The Canadian Race Relations Foundation (CRRF) was established as one part of the 1988 Japanese Canadian Redress Agreement to work at the forefront of efforts to combat racism and all forms of racial discrimination in Canada. The Redress Agreement was significant in that it not only acknowledged and compensated for the unjust treatment of Japanese Canadians during and after World War II, but it was also an expression of the Government of Canada's commitment to support a foundation that would foster racial harmony and cross-cultural understanding and help to eliminate racism.

#### **D. Administration of justice/policing**

43. A variety of interlocutors have pointed out to systemic racism in policing and in the administration of justice. Representatives of people of African descent communities have strongly voiced the opinion that they are systematically targeted by the police, especially in Halifax, Montreal and Toronto<sup>9</sup>. They alleged that the investigative process in the case of police shootings and police brutality is not effective, as the police investigate themselves. However, the Canadian Government has indicated that the Commission for Public Complaints against the Royal Canadian Mounted Police is an effective, independent civilian body which examines fairly and impartially complaints from the public against the Royal Canadian Mounted Police.

44. Several persons interviewed by the Special Rapporteur alleged that "racial profiling" also affects aboriginal peoples, particularly the younger generation, in the Province of Saskatchewan. They said that youngsters are often exposed to harassment by the police whenever they move about in groups "because the police see them as criminals, gangsters, dropouts or, in the case of girls, prostitutes".

45. During the National Forum on Policing in a Multicultural Society, held in February 2003 by the Ministry of Multiculturalism, it was acknowledged that "for several years there have been numerous reports indicating racial profiling against the African Canadian community, and ongoing cases involving the Saskatoon City Police and aboriginal communities". The Forum had recommended several measures that should contribute to improving the relationship of the police with communities concerned including the implementation and monitoring of an employment equity programme that ensures a proportionate reflection of society at levels of policing organizations, including upper management; facilitation of the understanding of diversity and inclusion issues, creation of partnerships between community leaders, police organizations, government, ethnic, racial and cultural communities; providing effective cultural and diversity awareness training to all front line law enforcement officers.

46. Regarding aboriginal people and the justice system, according to Correctional Service Canada, aboriginal people represent 4.4 per cent of the Canadian population, yet account for 18 per cent of the federally incarcerated population (in some provincial institutions, this latter figure reaches 50-60 per cent)<sup>10</sup>. In line with CERD's observations, the Special Rapporteur is extremely preoccupied with the high rate of incarceration of, violence against and deaths in custody of aboriginals and people of African and Asian descent.

### **E. Racism and socio-economic indicators**

47. Reports and testimonies received by the Special Rapporteur revealed that members of racialized groups tend to be discriminated on the employment market and are overrepresented in low-paying occupations, unemployment and other poverty indicators. Recent studies by the Canadian Race Relations Foundation<sup>11</sup> found that despite human rights legislation in various jurisdictions across Canada, and a variety of employment equity and equal opportunity policies that has been enacted over the last decades, racial discrimination and harassment in workplaces continue to exist in Canada today, “visible minorities” trail behind “non-racialized” groups in terms of employment and income. Not only are aboriginal people and foreign-born visible minorities overrepresented in the lowest 20 per cent of the income scale but, given a university education, non-racialized groups are three times as likely as aboriginal people and about twice as likely as foreign-born visible minorities to have incomes in the top 20 per cent of the income scale. Foreign-born visible minorities earned, on average, 78 cents for every Canadian dollar earned by the foreign-born non-racialized groups.<sup>12</sup>

48. The same study found that, after accounting for educational level, the unemployment rate is highest among aboriginal people followed by foreign-born visible minorities and Canadian-born visible minorities. For example, among those who are university educated, aboriginal people are four times as likely as the Canadian-born non-racialized group to be unemployed, and foreign-born visible minorities are at least twice as likely as the Canadian-born non-racialized group to be unemployed.

49. The Canadian Human Rights Commission, in its 2002 annual report, states that despite increasing representation of visible minorities in the public service (in 1987, visible minorities held 2.7 per cent of all positions in the federal public service, by 31 March 2002, their representation had increased to 6.8 per cent, the ambitious goals of the Government’s Embracing Change initiative are not being met and will require further action to achieve. The underrepresentation of visible minorities in the public service can also be found in provincial authorities. For example, a 2001 study by the British Columbia Human Rights Commission entitled “Not good enough” found that “visible minorities” make up 6.4 per cent of the British Columbia government workforce even though they make up for 20 per cent of the population. The underrepresentation of visible minorities is also evident in the Foreign Service. The 2001-2002 federal employment equity annual report to Parliament says the Department of Foreign Affairs has 3,689 employees of whom 6.2 per cent, or 230, are visible minorities. The department has recognized this problem and is planning to address it. Several public servants have complained to the Special Rapporteur about harassment and retaliation against members of visible minorities who complain about racial discrimination in the public service.

50. Several studies point to a higher incidence of poverty among racialized groups. For example, according to 1995 Statistics Canada data, 35.6 per cent of members of visible minority groups lived under the poverty line, compared to 17.6 per cent of the general population.

51. For example, the African communities from the most recent immigrant streams arriving in Quebec consider themselves to be marginalized, despite the high qualifications of many of their members. Most members of these communities experience unemployment, job instability, underemployment and poverty. Apart from the special case of the African communities, several

representatives of the Black communities believe they are the victims of discrimination in Canada. Young Blacks find it very difficult to obtain employment and members of the Black communities are virtually excluded from all decision-making processes.

52. In Saskatchewan, the groups met by the Special Rapporteur have alleged that Black families have been driven out of Regina because of racism, and are not integrated in the community. What they consider as social isolation is mainly reflected in the employment sector; where Blacks are kept in the entry-level positions and rarely get managerial positions. African Canadian women, especially, allegedly suffer multiple forms of discrimination which puts them at the bottom rank of the economic ladder. People who have foreign credentials have difficulty getting employment in their fields. Many variables are used to exclude Black people from the positions that they are disqualified for: accent, language, Canadian references and employers, misunderstanding of cultural differences, isolation and the absence of a network.

53. In specific regard to aboriginal people, in spite of various positive measures taken by the Canadian authorities on both the provincial and federal levels to ensure their adequate development and protection many have argued that their social condition mirrored by alcoholism, drug abuse, suicide and their high incarceration rate are appalling.

54. The Special Rapporteur is worried about the persistent disparity from generation to generation, between aboriginal people and the majority of Canadians with respect to the enjoyment of economic, social and cultural rights. He is of the view that more effort should be made by the Government of Canada to alleviate the social and economic deprivation among aboriginal people by fully implementing the recommendations of the Royal Commission on Aboriginal Peoples.

#### **F. Media and racial discrimination**

55. Many members of the visible minority communities, have argued that most Canadian media are not balanced when it comes to reporting on issues concerning, or of particular interest to, specific religious/cultural/ethnic groups. Furthermore, the media have often been accused of being a vehicle for the expression of prejudice against such groups, most notably in its focus on negative events and patterns concerning certain groups<sup>13</sup> with no corresponding focus on positive issues. People of African and Asian descent have drawn the Special Rapporteur's attention to frequent expressions of prejudice in the media against them, as well as against foreigners and refugees. The media plays a significant role in shaping the negative perceptions of aboriginal and African Canadians. Articles on the "jamaicanization of crime" or on immigration disparities contribute to that perception. Some media have dispensed cultural racism, creating the notion that Blacks are inferior, crime-prone and crime-ridden. It supports the dissemination of the ideology of Black criminalization and demonization. This kind of reporting impacts on the treatment of Blacks in the criminal justice system.

56. Representatives of the Jewish community have stated that satellite television and the Internet play a crucial role in promoting rumours and hate-mongering. Hateful rhetoric against Jews spread through those means is increasing dramatically.

57. In spite of the negative perception of the media by racial and ethnic minorities, it is worth mentioning that Canada has an institution, the Canadian Radio-Television and Telecommunications Commission that seeks to ensure that “the diversity of Canadian society is reflected fairly and consistently in the programming” and reporting of radio stations and television channels. There is also a Canadian Broadcast Standards Council, established by the broadcasting industry, which receives complaints about racial discrimination and other concerns set out in the Code of Ethics of the Canadian Association of Broadcasters.

58. The Special Rapporteur was also afforded the opportunity to visit the OMNI television headquarters in Toronto. This television network is committed, through its multilingual and multi-ethnic OMNI 1 and 2 channels, to promote and display Canadian diversity in the media. OMNI TV’s staff is as diverse as Canadian society and the TV network is a leading provider of ethnocultural television programming. It broadcasts 60 per cent of its programming in 15 languages to communities encompassing more than 18 cultures.

### **G. Anti-Semitism and Islamophobia**

59. Representatives of the Jewish community have testified that Jews are suffering from hatred and discrimination. The Special Rapporteur has been told that incidents of anti-Semitism, including Holocaust denial, incitement to genocide, hate-mongering, vandalism, arson, harassment, labelling as dispossessors and murderers, have increased recently in Canada. Representatives of the Jewish community have pointed out that the greatest danger is subtle racism against Jews, based on misconceptions (i.e. the stereotype of wealth - where Jews achieve success, their Jewishness causes concern). Yet, the same percentages of Jews live below the poverty line as the general population. There is currently a resurgent right wing; there is a permission to say things about Jews, to question them, because of their Jewishness. In Quebec, there have been a number of hateful incidents targeting Jews: the numbers of anti-Jewish graffiti (i.e. swastikas) found in Montreal has increased; recently, three synagogues have been bombed across Canada.

60. B’nai B’rith Canada, which runs an assistance programme to victims of anti-Semitism and publishes an annual audit of anti-Semitic incidents, has indicated that, in 2002, 459 incidents were reported, an increase of 60.48 per cent from 2001: 282 (61.44 per cent) were classified as harassment, 148 (32.24 per cent) as vandalism and 29 (6.32 per cent) as violence. It is worth noting that this was the highest number of incidents in the 20-year history of the audit, a figure that is likely to be much higher in reality due to underreporting.

61. Canada’s Muslims and Arabs have allegedly also been, as communities as well as individuals, victims of hate crimes, particularly, since the tragedy of 11 September 2001. This has been detailed in the Special Rapporteur’s 2003 report to the Commission (E/CN.4/2003/23 and 24). It appears from information received from representatives of these communities that there was an initial surge immediately after the 11 September attacks. Although this surge did not seem to mark a long-term increase in the level of attacks on Muslims and Arabs, members of these communities continue to feel victimized. They also alleged that they were often victims of racial profiling.<sup>14</sup> The Special Rapporteur learned that some media have been playing a negative role in fostering negative images of Arabs and Muslims.<sup>15</sup> Some of the major negative portrayals allegedly involve Arab/Muslims as “foreign elements/other, people who are unable to live in peace with others, sleeper terrorists”.

62. Members of the Arab and Muslim communities have reported that they are confronted with high unemployment issues whereby highly qualified professionals (i.e. doctors, nurses, engineers, pathologists, etc.) cannot find jobs in their fields and are forced to drive taxis and become corner-store owners. They consider that there is severe underrepresentation of Muslims and Arabs in Canadian politics as well as in senior and middle management levels of government. This also fosters a negative perception of Muslims and Arabs as non-contributors to Canadian society, the Special Rapporteur was told.

63. Muslim women face serious challenges post-September 11, such as bullying, negative attitudes, racial slurs, rejection from employers because they wear the hijab, or they are forced to give up wearing it. The impacts of such practices on Muslim women are depression, mistrust of the community at large, and violence. Status of Women Canada has provided technical and financial assistance to Muslim women to address their concerns about the media.

#### **H. Language-related discrimination**

64. The Special Rapporteur was informed of the perverse effects of the Official Languages Act, which would tend to discriminate against non-European French speakers in Canada. Problems arise in French-speaking areas outside Quebec with regard to the rights of francophone immigrants under federal and provincial laws, regulations and policies. It is stated in the preamble and in section 39 (1) of the Official Languages Act that “The Government of Canada is committed to ensuring that English-speaking Canadians and French-speaking Canadians, without regard to their ethnic origin or first language learned, have equal opportunities ...”. The law in itself is not discriminatory. In practice, however, the related regulations have defined criteria for determining who is considered French-speaking and who is not. Thus the term “mother tongue” is the main criterion used in the regulations prepared by the Treasury Board and applied by Statistics Canada in its census of the French-speaking population. This mother tongue criterion also appears in article 23 of the Canadian Charter of Rights and Freedoms. According to the official document of the Government of Canada entitled “Charter of Rights and Freedoms: A Guide for Canadians”, the mother tongue is defined as the first language learnt and still understood.

65. The effect of choosing the mother tongue as the criterion for belonging to a language group in the English-speaking provinces is in practice to exclude non-European communities, the francophone, racial or ethnocultural minorities, from legal entitlements, such as access to French-speaking services, access to francophone schools or access to benefits. Although they originate from French-speaking countries and officially use the French language, the mother tongues of the members of those communities are not French. In other words, as the law is implemented in practice, only the two communities of European origin, which were the founders of Canada, that is, those belonging to the white race and of British or French origin in particular, effectively enjoy the rights and privileges granted by the Official Languages Act.

66. The representatives of the French-speaking communities to whom the Special Rapporteur spoke explained that, according to regulations related to the Act, the provision of government services depends on significant demand in the official minority language, that is, French in the English-speaking provinces. Since the members of communities of African, Asian or Caribbean origin, referred to as “allophone francophones”, are not taken into account in the censuses of Statistics Canada, they are not entitled to the same benefits as, for instance, persons from Quebec

living in English-speaking provinces, who are considered to be genuine French speakers, owing to the exclusive mother tongue definition. For example, francophones in Ontario of European descent (500,000) receive about CAD 300 million each year through their institutions and organizations just from the official language support programme set up and run for this purpose by the Department of Canadian Heritage, whereas the 300,000 francophones of non-European descent receive only CAD 150,000 a year, through their organizations, merely because they are not considered to be “proper” francophones.<sup>16</sup> According to all the other persons interviewed by the Special Rapporteur, this means that race and ethnic origin are indirectly used as determining factors in the definition of who is French-speaking. Thus persons of non-French ethnic groups, such as the Creole, Swahili, Wolof, Arab, Fon, Goun, Bambara, Vietnamese, Lingala, Kirundi, Ewe or Mina, are not recognized as francophones in Canada even though French is their official language in accordance with the Official Languages Act. The communities concerned consider that they are economically, socially and culturally disadvantaged by the regulations that enforce the Act.

67. One group of the black francophone community has responded to the situation by lodging a complaint against the Canadian Government before the courts for discrimination in the implementation of the Official Languages Act and the Canadian Charter of Rights and Freedoms. The complaint requests that the Government, in conformity with the Official Languages Act, should grant French-speaking status to any person who speaks French, regardless of that person’s ethnic origin or first language spoken and still understood, and that the existing regulations should be repealed on the grounds that they contradict the spirit and letter of the Act under which they are issued.

### **III. ANALYSIS AND ASSESSMENT OF POLITICAL, LEGAL AND INTELLECTUAL STRATEGY**

68. The Special Rapporteur considers that owing to its background and its specific characteristics, Canadian society is still affected by racism and racial discrimination. Because of its history, Canadian society, as in all the countries of North and South America, carries a heavy legacy of racial discrimination, which was the ideological prop of trans-Atlantic slavery and of the colonial system. The ideological aspect of this legacy has given rise to an intellectual mindset which, through education, literature, art and the different channels of thought and creativity, has profoundly and lastingly permeated the system of values, feelings, mentalities, perceptions and behaviours, and hence the country’s culture. The sacrificial victims of this culture of discrimination since historical times have been the aboriginal peoples and the communities of African and Caribbean origin.

69. It is this legacy which has been feeding the submerged part of the iceberg of discrimination. The issue is dominated by two major geographical and ideological factors. The geographical factor arises from Canada’s proximity to a country, the United States, which has been profoundly and lastingly affected by racial discrimination. The ideological factor is partly an intellectual consequence of this geographical proximity, but is also derived from the general atmosphere of discrimination generated by the excesses of the fight against terrorism, following the tragedy of 11 September 2001. It is in the political and cultural field, thanks to Canada’s current focus on multiculturalism, that the Special Rapporteur has been able to observe some alleviation of the burden of the legacy of racial discrimination. Nevertheless, the fact that two communities, which were historically the victims of discrimination, both individually and

collectively, are still placed on the lowest rungs of the social, economic, political and cultural ladder, bears witness to the sustained force of discrimination as a major factor in the structure of Canadian society.

70. In this context, the Special Rapporteur has identified three major issues, which not only explain the persistence of discrimination and racism but also constitute a source of blockages, constraints and delays for the continued progress of multiculturalism: these are the recognition of the reality of racism and discrimination, the successes and failures of the legal and political strategy, and the lack of any intellectual and ethical strategy.

#### **A. The question of the recognition of racial discrimination**

71. A basic precondition for any credible effort to combat racial discrimination is the objective recognition that it really exists. For the Special Rapporteur, such recognition constitutes a decisive criterion in assessing a government's determination to succeed and in arriving at an objective evaluation of its policy. According to this yardstick, the results are mixed. At federal level, the representatives of the various departments showed a certain reluctance, if not actual hesitation, when it came to admitting the reality of racial discrimination in Canadian society. This hesitation is all the more paradoxical if one considers that the very same officials, very competently and sincerely, gave the Special Rapporteur a detailed account of all the policies and measures their departments were taking to combat racial discrimination and xenophobia. The recognition of the reality of discrimination appeared on the other hand more direct and spontaneous on the part of the political, administrative, judicial and law enforcement authorities in the provinces.

72. The representatives of ethnic and racial minorities whom the Special Rapporteur had occasion to meet, from all the communities, gave oral testimonies full of emotion and expressed their conviction, backed by studies and documents, that, despite the adoption of multiculturalism as official policy, racial discrimination in Canada is still a tangible, subtle and systemic reality. In their view, it expresses itself in a variety of ways: in the poverty afflicting members of their communities; in their overrepresentation in the prison population; in the widespread daily practice of racial profiling; in their underrepresentation in the middle and upper layers of political, administrative, economic, cultural and media institutions and mechanisms, and in the obstacles that impede their access to employment, housing and health care. Nowadays, the new, particularly vulnerable victims of discrimination are the immigrants, non-nationals and refugees.

#### **B. Progress and limitations of political and legal strategy against racial discrimination**

73. Compared with other countries in North America, particularly those bearing a heavy legacy of discrimination and possessing a similar demographic and cultural structure, Canada has undoubtedly achieved remarkable progress in its legal and political strategy for combating racial discrimination. The constitutional, legal and legislative framework established by successive governments provides a solid legal basis and the expression of a clear political will to fight racial discrimination and to offer remedies to its victims. This legal and political strategy, however, does reveal a number of shortcomings, to which the Special Rapporteur feels he should draw the Canadian Government's attention. One significant limitation of the strategy is the insufficiency or lack of resources available for any realistic implementation of the strategy.

74. The legal strategy is limited in several ways. In the first place, it suffers from a lack of vigilance, flexibility, adaptability and creativeness. Discrimination in fact presents a shifting landscape, whose colours, contours and textures are transformed and evolve, inconspicuously and ineffably, under the pressure of migratory movements or ideological and ethical factors, or as a result of the dilemmas and contradictions of multiculturalism and bilingualism. One example would be the failure to extend the rights of French speakers to non-Quebec communities. So the Canadian multicultural landscape is constantly changing under the demographic and cultural influence of successive waves of immigration and the ideological and political impact of the situation and climate in the region and in the world at large. In the Special Rapporteur's view, this environment is particularly exposed to xenophobic and racist political platforms, which emerge like poisonous plants whenever national identity safeguards are disrupted by the thrust of pluralism, arising either from historical events such as slavery, colonization and imperial expansion or from immigration or globalization. He considers also that this sort of environment is affected by technological progress, particularly in the area of communications, through which other factors are amplified.

75. The effectiveness of any political and legal strategy against racial discrimination is therefore necessarily dependent on political vigilance and legal inventiveness. Canada's legal strategy must not be allowed to suffer from complacency and immobilism, but must evolve and change in order to find appropriate responses to the new challenges and dangers of discrimination and xenophobia, such as the non-recognition of the qualifications and professional experience of immigrants.

76. Canada's judicial and quasi-judicial system is not very effective in the protection it offers victims of racial discrimination. The members of communities interviewed believe that the laws are not properly applied. For example, some representatives of aboriginal peoples consider that the failure to apply the treaties which those peoples signed constitutes a significant, lasting historic denial of rights in a country governed by the rule of law. Thus the excellent legal coverage provided by a network of national and provincial human rights commissions in the country is discredited in the eyes of the communities concerned owing to excessive delays in the processing of discrimination complaints. The rapid treatment required by such cases owing to their social, economic and emotional impact is impeded by the backlog due to inadequate resources. The Special Rapporteur's attention was also drawn to the fact that, owing to a lack of sufficient intercultural training, the commissions' investigators are limited in their deeper understanding of the emotions and feelings underlying the complaints and thus ill-equipped to elucidate the human dramas experienced by the victims. A purely legalistic or legal approach is not sufficient when it comes to appreciating the structural, cultural and psychological dimensions of racial discrimination. Inevitably the members of communities that are regularly exposed to racial discrimination are suspicious of the judicial system.

77. The legal strategy is also handicapped by poor coordination at national level in the struggle against racism and discrimination. The Special Rapporteur was struck by the lack of information exchanges between provinces concerning their policies and practices, often in areas as sensitive as "racial profiling". Even though the provinces are bound by national legislation, the political and judicial authorities in charge do not deal with racial discrimination with the same degree of motivation, the same sensitivity or the same keenness to find appropriate solutions. Thus the question of the observance of treaties, by which the aboriginal communities set such store, has been dealt with in Saskatchewan through an educational programme

introduced by the Treaty Commissioner, a judge driven by great educational and social zeal, who takes due account of the rights of aboriginals and of their sensitivities. The Office of the Treaty Commissioner (OTC) was initially created by the Federation of Saskatchewan Indian Nations (FSIN) in 1989 with a mandate to review treaty land entitlement arising from treaties with aboriginal peoples and to carry out educational projects. In 1997, the OTC's mandate was updated and extended to health matters, children's welfare, housing, justice, hunting, fishing, gathering and land use, in addition to treaty obligations and its educational goals. The Commissioner's mandate is implemented through an original approach, which reaches beyond mere application of the law and seeks to achieve understanding between aboriginal and non-aboriginal peoples by teaching the public about the significance of treaties. A teaching kit on treaties has been produced for the use of the province's teachers. No similar initiative, however, has ever been tried or even thought of in British Columbia or in Quebec. Another noteworthy example is the interesting action taken by the police in the Province of Ontario to combat racial profiling, a model which might well have been copied by other provinces.

### **C. The lack of intellectual strategy**

78. The lack of any intellectual strategy is a serious handicap in Canada's undoubted efforts to combat racism, racial discrimination and xenophobia.<sup>17</sup>

79. This silence or lack of visibility regarding Canada's cultural diversity shows what little emphasis is placed on the cultural factor in the fight against racism and discrimination. The ideological mainstay in the build-up of racism and discriminatory practice throughout North America, from slavery to colonization, was the cultural contempt in which the dominated communities, whether native or African, were held. It is due to this long-term build-up that racism has come to imbue the culture, mentalities, behaviours and even the deepest subconscious layers of the peoples of the region. Any attempt to eradicate the racist culture and mentality therefore requires, apart from the force of law, mobilizing intellectual tools to dismantle its deep-rooted causes, mechanisms, processes, expressions and language. The law forbids, condemns, redresses and remedies but does not necessarily bring about a change of heart.

80. The cultural depth of racism also colours the deepest layers of the emotions and sensitivities of discriminatory experience. Like most countries, Canada does not appear to have grasped the magnitude of this submerged part of the racist iceberg. And yet it is only by taking account of this intangible dimension of racism, through an appropriate intellectual and ethical strategy, that it will be possible in the longer term, with the help of legal strategy, to ensure the eradication of racism and discrimination. There is now an urgent need for this strategy in view of the resurgence of racist acts and behaviours, which resurface like natural reflexes in countries which are otherwise well equipped with sound and exhaustive political and legal strategies for combating their long-term racist experience. The main areas which this intellectual and ethical strategy must tackle include the building of identity, the writing of history, education programmes, value systems, images and perception. The interviews with the representatives of the communities show that, despite all the efforts made to turn Canada into an egalitarian State respectful of its ethnic and cultural diversity, the intellectual after-effects of the legacy of racial discrimination left behind by European colonization still persist through the denial of those communities' cultural specificity.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

81. (a) The Canadian Government should add credibility, trust and recognition to its undoubted political commitment to combating racism, discrimination and xenophobia, by recognizing, at the highest level, that such evils still persist, despite the efforts accomplished;

(b) It is particularly recommended that a national programme against racism be launched, in order to place the effort within a coordinated, coherent general framework. The milestones laid by the Canadian Foundation through its follow-up programme to the Durban Conference and the plans of action devised by the City of Toronto to combat racial discrimination should be taken into account in this respect;

(c) This national programme should be structured around a two-pronged legal and intellectual strategy, based on the Declaration and Programme of Action of the Durban Conference, in which Canada, through both its Government and its civil society, took an active part and to whose final consensus it contributed;

(d) The legal strategy should be based on the one hand on an in-depth assessment of the relevance and effectiveness of existing constitutional, legislative, judicial and administrative measures, and on the other hand on the principle of vigilance, flexibility and adaptability to the changing challenges and forms of discrimination, particularly in a country experiencing a major dynamic of migration;

(e) An intellectual strategy is urgently needed as a support for legal strategy and should be based on three objectives: a better understanding of the deep roots of the history, culture and mentality of racism and discrimination, the encouragement of mutual awareness of the history, cultural and spiritual background of the different communities, and a better understanding of their interactions and cross-fertilization;

(f) It is recommended that a national commission to combat discrimination and promote multiculturalism be created in order to develop this national programme. The commission, which could be placed under the authority of Parliament, should be composed of three elements, political, communal and scientific, with the participation of the private sector. In view of the considerable gap the Special Rapporteur observed between the Government's political will and achievements in combating racism and discrimination on the one hand and the negative perception of these policies and the feeling of deep-rooted persistence of racism and discrimination reported by the representatives of the communities concerned on the other, the commission should begin by drawing up an exhaustive assessment of policies and strategies for combating racism and discrimination, from the point of view of their impact on political, legislative, judicial, administrative, security, social, economic, cultural and educational systems;

(g) The situation of the aboriginal communities requires urgent, overall review, with the full and unreserved participation of their representatives, with particular emphasis on the fundamental issues that concern them, such as the application of treaties and their economic, social and cultural empowerment;

**(h) The Government should conduct an overall assessment of the situation of the Afro-Canadian community, in the areas of employment, habitat, health and education. The cultural and linguistic diversity of the community must be fully taken into account in the preparation of a specific programme of action;**

**(i) Law enforcement agencies should be subjected in particular to urgent review, with emphasis on their behaviour, composition and training systems, which should reflect Canada's multiculturalism. Special attention should be paid to providing training in interculturalism for those agencies' staff;**

**(j) The Government should reinforce its political, legal and judicial safeguards to ensure that anti-terrorist measures do not lead to an aggravation of racism, discrimination and xenophobia;**

**(k) The resurgence of anti-Semitism and Islamophobia requires not only vigilant attention and repression but also measures to promote dialogue between the communities concerned;**

**(l) The Special Rapporteur invites the federal Government and provincial governments to implement all outstanding recommendations by the Royal Commission on Aboriginal Peoples;**

**(m) Now that the Canadian Government has recognized the situation of Japanese-Canadians as a special case, which has led to the grant of financial compensation, it should in the same spirit restart consultations with members of the Chinese community in Canada in order to consider the possibility of compensating the descendants of persons who paid the head tax or members of their families who were affected by that measure;**

**(n) In consultation with communities of African origin or their descendants, the Government of Nova Scotia should re-examine the conditions of their relocation, particularly from Africville, taking particular account of their situation regarding human rights and economic and social conditions with a view to granting them reparation;**

**(o) The Canadian Government should make a greater effort to improve its communications with and to pay closer heed to the communities concerned and should set up appropriate mechanisms to that effect.**

#### Notes

<sup>1</sup> See Employment Equity Act 1995. However, people supposedly belonging to this category prefer to identify themselves as "members of racialized groups" or "equality seeking persons".

<sup>2</sup> According to Statistics Canada, the word "aboriginal" is defined as follows: "... those persons who reported identifying with at least one aboriginal group i.e. North American Indian, Métis or Inuit and/or those who reported being a Treaty Indian or a Registered Indian as defined by the *Indian Act of Canada* and/or who were members of an Indian Band or First Nation".

<sup>3</sup> While British Columbia has done away with its Human Rights Commission, there still exists a recourse procedure under human rights legislation. There is a form of direct access to British Columbia Human Rights Tribunal for persons who allege that their human rights have been violated.

<sup>4</sup> A/57/18, para. 326.

- <sup>5</sup> “People to People, Nation to Nation,” report of the Royal Commission on Aboriginal Peoples, p. 9.
- <sup>6</sup> “A focus on root causes: systemic discrimination faced by aboriginal peoples in Canada and the continuing Canadian federal policy of extinguishment of aboriginal and treaty rights,” submission to the Special Rapporteur by the Grand Council of the Crees, Ottawa, 16 September 2003; Communication du Conseil des Innus du Nitassinan au Rapporteur spécial, Montreal, 17 September 2003.
- <sup>7</sup> Written submission to the Special Rapporteur by the Native Canadian Centre of Toronto, 25 September 2003.
- <sup>8</sup> See also “Africville: the case for compensation. Exposing all aspects of racism in Nova Scotia, Canada”, written submission to the Special Rapporteur by people of Africville, Halifax, 20 September 2003; Africville Genealogy Society, *The Spirit of Africville*, Formac Publishing Company Limited, Halifax, 1992.
- <sup>9</sup> Oral statements and written submission to the Special Rapporteur in Halifax, Montreal and Toronto, for example, African Canadian Legal Clinic, “Summary of reports directly and indirectly related to the manifestations of anti-black racism in Canada”, Toronto 25 September 2003; Gabriella Pedicelli, “When police kill: police use a force in Montreal and Toronto”, the Black Coalition of Quebec, Véhicule Press, 1998; Canadian Race Relation Foundation, “Facts about ... racism and policing”, undated.
- <sup>10</sup> Canadian Race Relations Foundation, “Racism in the justice system” ([www.crr.ca](http://www.crr.ca)).
- <sup>11</sup> Canadian Race Relations Foundation, “Unequal Access: a Canadian profile of racial differences in education, employment and income”; Systemic racism in employment in Canada: diagnosing systemic racism in organizational culture” ([www.crr.ca](http://www.crr.ca)).
- <sup>12</sup> “Unequal Access”, p. 3.
- <sup>13</sup> An example of such a focus is to include a suspect/convict’s ethnicity when it is not relevant and, at the same time, not doing so in similar situations when the suspect/convict is white.
- <sup>14</sup> “Life for Canadian Muslims the morning after a 9/11 wake-up call”, submission to the Special Rapporteur by the Council on American-Islamic Relations, Ottawa, 16 September 2003.
- <sup>15</sup> Submission by Dr. Nuri Jazairi of York University, Toronto with regard to hate propaganda in the press against arabs and muslims, Toronto, 25 September 2003. “Anti-Islam in the media”, submission by the Canadian Islamic Congress, Ottawa, 16 September 2003.
- <sup>16</sup> See the site [www.pch.gc.ca](http://www.pch.gc.ca).
- <sup>17</sup> The Special Rapporteur was struck by this fact as soon as he set foot in Canada, when, at his own request, he was taken to visit the Canadian Museum of Civilization in Ottawa. National museums are supposed to be a showcase of the national identity a country is intent on exhibiting. A national museum is therefore not only an aesthetic but also a political statement concerning the construction of a country’s multiple or ethno-centric identity, and provides an ideal setting for multiculturalism. The Special Rapporteur was surprised and curious to note, however, that while the Canadian Museum of Civilization reserves a very visible part of its exhibition to American Indian and European history and culture, by the end of the visit, the history and culture of other communities, such as the African, Asian or Arab, remain entirely in the dark.

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