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PREVENTION OF DISCRIMINATION

The rights of non-citizens

**Final report of the Special Rapporteur, Mr. David Weissbrodt,
submitted in accordance with Sub-Commission decision 2000/103,
Commission resolution 2000/104 and Economic and Social
Council decision 2000/283**

Addendum

Examples of practices in regard to non-citizens*

* This document is circulated as received in the language of submission only.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1	3
II. DISCRIMINATION IN GENERAL.....	2 - 6	3
III. STATELESS PERSONS.....	7	5
IV. MARRIAGE AND DISCRIMINATION AGAINST NON-CITIZENS	8	6
V. DETENTION OF NON-CITIZENS.....	9	6
VI. CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	10	6
VII. EMPLOYMENT	11 - 12	7
VIII. TREATMENT OF REFUGEES AND ASYLUM-SEEKERS	13 - 16	7
IX. ARBITRARY EXPULSION AND DEPORTATION	17 - 19	8
X. PROPERTY.....	20 - 21	9
XI. PARTICIPATION IN THE POLITICAL PROCESS.....	22	9
XII. SOCIAL SECURITY	23	10
XIII. HOUSING	24	10
XIV. EDUCATION.....	25	10
XV. HEALTH CARE	26 - 28	10
XVI. PARTICIPATION IN THE CULTURAL LIFE OF THE COMMUNITY	29 - 30	11
XVII. ANTI-TERRORISM MEASURES	31 - 34	11
XVIII. CONCLUDING REMARKS	35	13

I. INTRODUCTION

1. This addendum (E/CN.4/Sub.2/2003/23/Add.3) to the final report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2003/23) contains a sample of the human rights problems faced by non-citizens in many parts of the world. This addendum derives from three principal sources of information: First, the addendum attempts to reflect some of the most important information revealed by the quite substantial number of responses received from 22 Governments,¹ 7 intergovernmental organizations,² and 4 nongovernmental organizations,³ plus the Committee on the Elimination of Racial Discrimination and the United Nations. Special Rapporteur on the human rights of migrants in answer to the questionnaire prepared by the Special Rapporteur on the rights of non-citizens and disseminated pursuant to Commission decision 2002/107 of 25 April 2002 and Sub-Commission decision 2001/108 of 15 August 2001 as well as Sub-Commission resolution 2002/18 of 14 August 2002. The Special Rapporteur is extremely grateful for those very helpful responses. Second, this addendum derives from the summary of media and NGO reports that were initially issued in E/CN.4/Sub.2/2002/25/Add. 3 (2002) as revised in the light of comments received at the Sub-Commission session in 2002 and since that time. Third, this addendum reflects some more recent information about the situation facing non-citizens. The methodological observations presented in paragraphs 2 and 5 of E/CN.4/Sub.2/2002/25/Add. 3 (2002) would, however, apply to much of what is contained in this addendum except that governments have largely had a significant opportunity to correct the material contained in this addendum. Because of those methodological difficulties, it is not possible to present in this addendum a comprehensive, representative, timely, or even fully reliable account of the problems facing non-citizens around the world. Nonetheless, members of the Sub-Commission asked the Special Rapporteur to present some examples of the situations facing non-citizens, so as to assess whether the principles of international human rights law set forth in the report are being respected in practice and to determine whether further norms and procedures are required. Once again, the Special Rapporteur welcomes comments, corrections, and suggestions for the improvement of the accuracy and pertinence of these materials.

II. DISCRIMINATION IN GENERAL

2. While the main report (E/CN.4/Sub.2/2003/23) summarizes the norms that protect the rights of non-citizens, in many countries non-citizens do not actually enjoy those rights. One of the most common problems human rights treaty bodies have encountered in reviewing States' reports is that some national constitutions guarantee rights to "citizens" whereas international human rights law would – with the exception of the rights of public participation, of movement,⁴ and of economic rights in developing countries⁵ – provide rights to all persons.⁶ Of the countries responding to the questionnaire, however, most countries extended constitutionally protected human rights to every person⁷ or specifically to non-citizens.⁸ Other countries protect the rights of non-citizens, including refugees, by statute⁹ or by incorporating treaties into national law.¹⁰ Constitutions in some countries, however, inappropriately distinguish between the rights granted to persons who obtained their citizenship by birth and other citizens.¹¹ Furthermore, the mere statement of the general principle of non-discrimination in a constitution is not a sufficient response to the requirements of human rights law.¹²

3. In many countries the most disadvantaged group is composed of non-citizens who are denied the full range of rights under international and national law. They frequently lack adequate housing,¹³ suffer unemployment, and lack financial means to return to their home countries.¹⁴ In most countries they are viewed as “aliens” or “foreigners” and are the subject of discrimination in many fields (including employment, health, and housing), and often cannot participate in the political process which decides how they will be treated.¹⁵ The Committee on the Elimination of Racial Discrimination has expressed concern about xenophobic attitudes toward non-citizens.¹⁶ The Committee has noted that discrimination is aggravated when combined with insufficient possibilities to bring complaints and obtain reparation.¹⁷ The Committee has also expressed concern about employment discrimination against non-citizens in regard to working conditions and language requirements,¹⁸ rules and practices that may be discriminatory in effect,¹⁹ disproportionately high unemployment rates,²⁰ difficulties in obtaining employment,²¹ and problems faced by domestic workers.²² Typically governments consider the rights of non-citizens to vary according to the nationality of the person, the nature of the permission to stay, and the length of time spent in the country.²³

4. While these views and often difficulties face many migrants, individuals who have arrived in countries without following national immigration and work permit procedures are even more at risk,²⁴ because the very existence of undocumented individuals may not be recognized by the State.²⁵ In many countries individuals must carry or at least possess identification cards, passports, residence records, or similar documentation in order to show their citizenship or immigration status and thus to obtain basic government and other services, including health care, housing, food assistance, and in some cases, education. Without such documentation, non-citizens may be homeless or live in irregular and/or often changeable locations under substandard conditions. Undocumented migrants may be subject to identification checks, raids to homes and workplaces, and interrogations in which they may suffer abuse, excessive use of force, inhumane or degrading treatment, physical and psychological abuse, and violation of the right to privacy.²⁶ Their encounters with the police may not be noticed because they have no relatives to raise questions about their detention or even death. Even when they suffer human rights violations, they may not seek judicial remedies because they fear deportation. If they can find work, they are often employed in the informal economy in which their employers exploit their fear of being reported to the authorities and may subject them to poor working conditions as to safety, health, and wages.²⁷ If the irregular migrants are employed as domestic servants, they may be subjected to sexual and other physical abuse. Indeed, “because of their subordinate position, women and girls are more likely to end up in the low-status, low-wage production and service jobs, and are particularly vulnerable to exploitation and abuse, including being trafficked for commercial sex.”²⁸

5. Employers often do not keep records of the wages or hours of undocumented workers. Few, if any, official records are kept and media reports do not reflect the realities they face. Accordingly, the problems of these undocumented individuals are generally not presented in this report. Indeed, although governments may find some of the reports unflattering, there is a sense in which the reported situations reflect attention to the problems facing non-citizens. At least in these situations the media and often the government is attending to the problems. Where there are no reports, there may be even worse problems and greater indifference.

6. The United Nations Special Rapporteur on the human rights of migrants has reported on the situation of irregular migrants as an extremely vulnerable group within her mandate.²⁹ When non-citizens leave their countries for migration they can either travel through irregular or regular channels. When using irregular channels migrants take enormous risks by putting their lives in the hands of smuggling and trafficking networks. For example, smugglers may use unsafe means of transportation that jeopardize the lives of the migrants. Migrants may die by suffocation in closed containers or by drowning when an overloaded ship sinks. In some cases State officials may be aware of or even involved in the smuggling efforts. When migrants travel in these conditions they are often intercepted by State agents who use their power to return or detain migrants or, in some cases, to extort bribes from them. There have been cases in which sexual favours have been demanded of undocumented women migrants in order to let them continue on their way; other cases of rape have been reported in some countries. Having been intercepted migrants are also vulnerable to excessive use of force by security forces as well as mental and physical abuse, particularly due to racist or xenophobic attitudes. Irregular migrants are subject to degrading body searches. Migrants also report confiscation and theft of documents, money, and belongings.³⁰ When interception leads to detention many countries lack appropriate facilities and migrants are often detained with convicted criminals. Detained migrants may lack access to the courts because their detention is considered administrative and thus means of judicial review are not available. Detention may also be indefinite because it may take several months or far longer to identify the individuals and ascertain their nationality. The country of origin may be unwilling to recognize the individuals as their nationals or to produce travel documents.³¹ Even if the country of origin acknowledges their nationals in detention, many migrants are imprisoned in places where there is no consular representation of their country of origin, therefore consular protection may not be available. Where there is a consular office effective protection may depend on the country of origin's policies and willingness to act on behalf of their nationals. In addition, many countries have penal codes that make it a serious criminal offence (for example, 1 to 5 years) to enter a country with or to possess false documents. Some migrants are accused of being traffickers or smugglers, although they may only be the victims of those offences. When migrants are involuntarily deported, they may be subjected to excessive use of force, use of drugs, and degrading treatment.

III. STATELESS PERSONS

7. Stateless persons are an extremely vulnerable group of non-citizens. As the UNCHR has observed, "The fate of many stateless persons has been to live without a legal identity: without the legal bond of citizenship, without lawful stay, and without effective mechanisms for normalizing their situation."³² Millions of people come to countries that determine citizenship by *jus sanguinis* rules and thus continue for generations without the protection of citizenship under national law. Indeed, as they remain in their host countries, they may also lose their connections with and their citizenship rights in their nations of origin.³³ Some nations require residents to have excellent language skills and several years of permanent residence in order to obtain citizenship; lacking citizenship there is discrimination in obtaining access to housing, health care, and employment; they must live in substandard housing, which often means that their children receive poor educations and/or children are segregated into separate and educationally inferior classes, which in turn lead to low-paying jobs, and generations of suffering.³⁴ The UNCHR has successfully encouraged ratification of the conventions on stateless persons, legislative measures to protect stateless persons, prevention of population

displacement, and conflict prevention.³⁵ During its 54th session the Sub-Commission decided to ask Mr. Vladimir Kartashkin to prepare a working paper on the regulation of citizenship by successor States that will likely provide more information on this topic.³⁶

IV. MARRIAGE AND DISCRIMINATION AGAINST NON-CITIZENS

8. The nationality and immigration laws of several countries discriminate between the capacity of male and female citizens to marry and live with their non-citizen spouses. For example, the Government of Mauritius adopted an immigration law which provided that if a Mauritian woman married a man from another country, the husband must apply for residence in Mauritius and that permission may be refused. If, however, a Mauritian man married a foreign woman, the foreign woman was entitled automatically to residence in Mauritius. The Human Rights Committee held that Mauritius had violated the Civil and Political Covenant by discriminating between men and women without adequate justification and by failing to respect the family's right to live together.³⁷ Similarly, the Committee on the Elimination of Racial Discrimination has expressed concern about a requirement by the Government of Qatar that marriages between nationals of Qatar and foreigners are subject to prior approval by the Minister of Interior.³⁸ The Sub-Commission at its 54th session asked Mr. Vladimir Kartashkin to prepare a working paper on the rights of women married to foreigners, so that more information on this topic should be available to the Sub-Commission at its 55th session.

V. DETENTION OF NON-CITIZENS

9. The Special Rapporteur on the human rights of migrants focussed in her 2003 report³⁹ particularly on the detention of migrants and conditions of confinement. The Special Rapporteur and others have expressed concern about the detention of asylum seekers; prolonged periods of detention; the arbitrary nature of arrests⁴⁰ and detention decisions;⁴¹ detention on the basis of unspecified allegations related to terrorism or national security;⁴² detention of trafficking victims; detention of migrant children and other vulnerable individuals; failure to inform detainees of the reasons for confinement; absence of legal assistance; unavailability in practice of appeal or judicial procedures for review of detention;⁴³ detention with ordinary criminals; reports of solitary confinement; shackled detainees; long-term confinement in former schools, airport terminals, and other places inadequate for such purposes; overcrowding and poor hygienic conditions; lack of medical care and facilities;⁴⁴ failure to provide education for young detainees; lack of grievance procedures for detainees; lack of impartial monitoring of detention conditions; and other problems.

VI. CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

10. The Committee on the Elimination of Racial Discrimination has encountered ill-treatment of non-citizens by law enforcement officials⁴⁵ and has expressed concern at the disproportionate number of non-citizens facing the death penalty in certain countries.⁴⁶ There are reliable reports of police brutality against undocumented migrants in some countries⁴⁷ and police violence, intimidation, and bullying of asylum seekers in others.⁴⁸ There have also been mob attacks and other racist incidents against asylum seekers⁴⁹ as well as sexual abuse,⁵⁰ other abuse,⁵¹ severe beatings,⁵² lack of medical care,⁵³ overcrowding,⁵⁴ and other substandard conditions⁵⁵ for undocumented migrants and asylum seekers who had been detained in various

countries. There have also been reports of undocumented migrants dying during arrest operations, with some being assaulted, robbed, and thrown off trains while being deported.⁵⁶

VII. EMPLOYMENT

11. While international law provides many fundamental protections for all people, including non-citizens, governments often ignore those safeguards. For example, ILO Convention No. 143 requires States Parties to abolish restrictions on the access of migrant workers to employment after they have resided in a country for two years, but those governments often ignore this provision.⁵⁷ In the Republic of Korea the Ministry of Labour estimated that there are 290,000 non-citizen workers of which 195,000 have not received official permission to work. A significant number of non-citizen workers reportedly encounter poor working conditions, including difficult, dangerous, and dirty jobs; verbal abuse; violence; racism; discriminatory attitudes; cramped living conditions; intimidating workplace environments; and low salaries (which are often withheld).⁵⁸ In New Zealand, there were reports of discrimination against non-citizens by employers and recruitment consultants.⁵⁹ In the Czech Republic many non-citizens were permitted to work for a maximum of three consecutive years and then cannot be issued a new work permit for 12 months.⁶⁰ In Italy nearly one third of the non-citizen foreign language lecturers complained about inferior contracts, racial discrimination, financial exploitation, psychological harassment, and general intimidation.⁶¹ In Saudi Arabia female non-citizen domestic workers suffer from discrimination by being excluded from the protections afforded to other workers by the labour code, overworked and rarely given time off, often being locked in the homes of their employers, and being vulnerable to assault.⁶² In the United Kingdom there were complaints about the fairness of the examination administered to non-citizen doctors to determine whether they would be permitted to practice medicine.⁶³ In Zimbabwe foreign journalists complained that the Government had banned non-citizen journalists from working in the country.⁶⁴

12. Some countries, such as Indonesia, have taken measures, such as training and computerized monitoring of travel, to protect their nationals (particularly women migrants) who work abroad and commonly encounter such problems as bad treatment by employers, including violent conduct and rape; lack of understanding of socio-cultural norms in the receiving countries; and lack of command of the language.⁶⁵

VIII. TREATMENT OF REFUGEES AND ASYLUM-SEEKERS

13. As Irene Khan, Secretary-General of Amnesty International has observed: “when we feel threatened (whether about our physical well-being or our social identity), that is precisely when we must make sure that the outsider among us, the foreigner does not suffer. It is all too easy to feed people’s fear that the threat comes from abroad, to create a climate of suspicion, mistrust, xenophobia, and racism. It is all too easy to confuse those fleeing terror with those who are suspected of causing terror - and, in that process, of curtailing the rights of refugees and asylum seekers.”⁶⁶

14. Asylum seekers, including children, pregnant women, and elderly people, have been held in detention centres without adequate health and mental health care, education, and recreation facilities.⁶⁷ Asylum seekers have been denied access to legal advice and to the courts to challenge their detention. Some detention facilities are run by private companies who charge

asylum seekers for the cost of their detention, although the bills are often not presented.⁶⁸ Asylum seekers in other countries are entitled to housing in accommodation centres, financial assistance to cover expenses for food and pocket money, education, and basic health care, but are not given access to the labour market.⁶⁹

15. The Committee on the Elimination of Racial Discrimination has encountered discrimination in the areas of education, housing, and ill-treatment by law enforcement officials⁷⁰ and has expressed concerns in regard to conditions in refugee camps and the use of detention of asylum seekers, undocumented immigrants, and refugees.⁷¹ The Committee has noted that asylum seekers and refugees are disadvantaged in relation to others; for example, some governments applied different standards of treatment to different categories of asylum seekers.⁷² The Committee has also observed that some asylum seekers experience discrimination in relation to refugee status determinations in some countries.⁷³ In addition, the Committee has found that some refugees face particular problems when attempting to return to their countries of origin⁷⁴ and are sometimes subject to forced repatriation.⁷⁵

16. In Turkey-asylum seekers who arrived from non-European nations have been denied appropriate protection and are required to register with the police for assessment of their asylum claims, but those assessments failed to fulfil the minimum safeguards required by international law and asylum applicants have been arrested and subjected to refoulement.⁷⁶ In March 2003 the United States announced a new detention policy for arriving asylum-seekers from 33 countries and two territories who arrive without any identity documents and who are detained for the duration of the asylum process.⁷⁷ In the same country during April 2003 the Attorney-General overruled an immigration court's decision to grant release on bond to an asylum-seeker from a nearby nation citing concerns about national security and about mass migration from the neighbouring nation.⁷⁸ In Scotland, there were complaints about asylum-seekers being held in a detention centre with inadequate food, lack of safety, and a "blatantly discriminatory" rule that banned the detainees from receiving guests.⁷⁹ In the United Kingdom 3,536 asylum seekers were eligible to work; half were no longer claiming social welfare payments; 646 were on supplementary welfare, which meant they are either not available or do not want to work. Only 953, about one in four, are still on unemployment assistance.⁸⁰ An organization for refugees in Azerbaijan estimated that about 7,000 refugees had not been granted refugee status, had thus not been given international humanitarian aid, and some of whom had been subjected to harassment by the police who demanded bribes.⁸¹ A non-governmental organization in Argentina identified a number of problems facing refugees and asylum seekers including difficulties in surviving given lack of job opportunities, delay in obtaining proper papers, a backlog in the processing of applications for asylum, problems in qualifying for asylum/refugee status, no resources available for persons whose applications have been refused, and a large number of refugees and applicants for refugee status living rough or in the streets.⁸²

IX. ARBITRARY EXPULSION AND DEPORTATION

17. The Interior Minister of the Czech Republic announced a plan to be implemented in 2000 for removal of unwanted non-citizens including shipping some foreigners in sealed trains under police escort back to their countries. Under a new law non-citizens may not enter the Czech Republic unless they provide photographs, proof of health insurance, proof of accommodation, and funds for their stay.⁸³

18. Under terms of the Anti-Terrorism Act and Effective Death Penalty Act and the Illegal Immigrant Reform Act and Immigrant Responsibility Act enacted by the United States Congress in 1996, any crime committed by a legal permanent resident that earns a sentence of one year or more has been classified as an aggravated felony, making the permanent resident eligible for deportation.⁸⁴

19. In November 1999, soldiers rounded up and trucked 240 Haitians out of the Dominican Republic in a deportation that Haitians called an illegal response to a report of the Organization of American States charging that the Dominican Republic had violated human rights by not granting citizenship to children born in the Dominican Republic if their parents are illegal Haitian immigrants.⁸⁵

X. PROPERTY

20. The Human Rights Committee has found that legislation that required continued citizenship for recovering of confiscated property violated equal protection of the law required by the Civil and Political Covenant.⁸⁶ Hungary also has a law, which bars foreign nationals or businesses from buying land.⁸⁷ Non-citizens within the ethnic Chinese population have been denied the right to run businesses in rural Indonesia.⁸⁸ A United States citizen, filed a damage suit against the Asahi Bank in Japan claiming that the bank's refusal to extend him a housing loan on grounds that he is a foreign national without permanent residence status in Japan is unconstitutional. He claimed that he was denied the loan due to his race and nationality.⁸⁹ Some estate agents, video arcades, and other businesses in Japan openly display signs saying "No foreigners."⁹⁰

21. A new law in Kazakhstan significantly restricts private land ownership. Private individuals may own plots for family farming, gardening, or building country homes, but this right does not apply to non-citizens.⁹¹ New Zealand's 1973 Overseas Investment Act has been amended so that future applications for foreign investment in farmland would only be approved where it would result in "substantial and identifiable benefits" to New Zealand. Amendments to the law also reduced the area of shore land requiring Overseas Investment Commission approval from 0.4 hectares to 0.2 hectares.⁹²

XI. PARTICIPATION IN THE POLITICAL PROCESS

22. In light of the October 2000 election, the Tanzanian Government, wary of infiltration by foreigners of top strategic positions in the army, government, and politics, has embarked on a discreet campaign to identify non-Tanzanians and weed them out.⁹³ The Korean Government, human rights groups, Korean residents' associations, and others have expressed concern that Korean permanent residents living in Japan are not accorded voting rights at least in local elections. Japan, however, has responded that the permanent residency that Japan offers is more stable than the permanent residency that Korea offers to certain Chinese citizens. Restrictions on business activities of Chinese permanent residents in the past, for example, forced many of them to leave Korea.⁹⁴

XII. SOCIAL SECURITY

23. The Center for Migration Studies in Canada released a paper noting how efforts to single out immigrant children for the restoration of benefits such as food stamps may fall short of the intended objectives because most children of immigrants are already citizens who never lost their eligibility for benefits in the first place. In addition, the citizen children may still suffer the effects of their parents' reduced eligibility.⁹⁵ Most non-citizens who entered the United States after 1996 are barred from Supplementary Security Income and are subject to a five-year bar on non-emergency health coverage, the Child Health Insurance Program, and Temporary Assistance for Needy Families.⁹⁶

XIII. HOUSING

24. Two media-related businesses have set up a housing service in Tokyo, Japan, to help foreign nationals overcome the "blatant discrimination" practised by some Japanese landlords. Organizers of the service said they hope to eradicate the racism that prevents foreigners, particularly non-Westerners, from renting apartments since there are currently no laws in Japan that ban discrimination.⁹⁷ In Singapore non-citizen visitors have found that hotel rates are higher for foreigners than for citizens and permanent residents.⁹⁸ In Côte d'Ivoire the Government forcibly evicted thousands of non-citizens and persons deemed to be non-citizens from squatter settlements and demolished their homes in Abidjan.⁹⁹ In 2002 the Government promised that the forced evictions would cease, but the Centre on Housing Rights and Evictions reported in October 2002 that the forced evictions were continuing.¹⁰⁰

XIV. EDUCATION

25. The Committee on the Elimination of Racial Discrimination has expressed concern about educational discrimination against non-citizens, for example, in segregated schooling¹⁰¹ and different standards of treatment in lower secondary schools and with regard to access to higher education.¹⁰² A teachers organization in Ireland has complained that teachers in that country are required to give more attention to the children of families who have been officially given refugee status than to the children of other ethnic minority and asylum seekers' children.¹⁰³

XV. HEALTH CARE

26. A Canadian-based NGO, the Inter-Church Committee for Refugees (ICCR), has reported that babies born to non-citizens in some parts of Canada have been denied health coverage, and there have been deportations and efforts to deport non-citizens in the face of requests by international human rights bodies not to do so. ICCR also reported that refugees have been threatened with deportation in circumstances that fall outside of international standards.¹⁰⁴

27. A study in the American Journal of Public Health indicates that 51% of full-time non-citizen workers lack health insurance. This study also shows that country origin makes a big difference in insurance coverage for immigrants. Immigrants are more likely to be insured if they are from countries like Canada, Cuba, Russia, and other European nations. Over 50% of all immigrants from Central America did not have health insurance. 43.6% of non-citizen immigrants are uninsured, compared with 18.5% of immigrants who have become U.S. citizens.¹⁰⁵ A district attorney in Houston, Texas, threatened to prosecute a county hospital for

providing preventive care to undocumented immigrants, because the Personal Responsibility and Work Opportunity Act of 1996 bars the use of public funds to provide free health care for illegal immigrants. About 25% of the hospital's patients are undocumented aliens.¹⁰⁶ The county hospital's attorneys stated that the Texas constitution required treatment of undocumented illegal immigrants.¹⁰⁷

28. The Sabah Health Department in Malaysia may hand over immigrants without valid personal identification documents to the police or Immigration Department for action as soon as they have received medical treatment at government hospitals. About 12 to 15 percent of the overall patients at governmental hospitals were illegal immigrants while the figures for outpatients showed that they formed 25 percent of the total.¹⁰⁸ Under Austrian federal law, the Austrian provinces can require people not living in the country to pay higher hospital charges than Austrian citizens.¹⁰⁹

XVI. PARTICIPATION IN THE CULTURAL LIFE OF THE COMMUNITY

29. The Human Rights Committee has interpreted Article 27 of the Civil and Political Covenant to protect the minority rights of non-citizens. The United Nations Declaration on Minorities elaborates the rights of national and ethnic minorities; some believe that the Declaration includes migrant communities¹¹⁰ and others do not.

30. In March 1999, 48 naturalization applications in a blue-collar suburb of the Swiss city of Lucerne were denied in a popular vote. All those rejected were Turks or people from the former Republic of Yugoslavia. Swiss law gives foreigners, who meet the residency requirements and have no criminal record, the right to apply for Swiss nationality as long as they are integrated into Swiss society. What it means to be integrated into Swiss society has been called into question. The lack of clear guidelines allows room for racist selections of naturalization requests. Swiss human rights groups have banded together to push for laws giving asylum seekers full social and economic rights, and to get the employment ban on them repealed.¹¹¹

XVII. ANTI-TERRORISM MEASURES

31. The terrorist attacks on New York and Washington, D.C. of 11 September 2001, and the bombing in Bali of 12 October 2002 have led to fears of terrorism, greater immigration scrutiny, and occasionally racist or xenophobic measures against Muslims and Arabs who seek to enter or remain in several nations.¹¹² Houses have been searched; migrants have lost their jobs. The U.N. Special Rapporteur on the human rights of migrants has "received several allegations of 'racial profiling', whereby persons are stopped and searched on the basis of their race or ethnic origin. Moreover, many persons have been unjustly placed in centres of detention or in jails for prolonged periods of time, and have [suffered] verbal and physical abuse on the part of authorities. These situations are particularly true after the attacks of the 11th of September ...". "The Special Rapporteur has notably underlined that 'Administrative deprivation of liberty should last only for the time necessary for the deportation/expulsion to become effective. Deprivation of liberty should never be indefinite' It has been brought to the attention of the Special Rapporteur that many migrants in detention have been beaten and insulted by officials on

the grounds of their ethnic origin. Many of these persons were furthermore threatened or attacked by other inmates, were subjected to verbal abuse in relation to their faith, or experienced difficulties in practising their religious faith.

32. “The Special Rapporteur wishes to encourage States to continue combating terrorism in all its forms. However, these efforts must be undertaken in an efficient, transparent and non-discriminatory manner. The legal instruments implemented in the battle against terrorism must be pointedly directed towards persons who have a serious claim against them in terms of their involvement with terrorist groups, as opposed to singling out persons on behalf of their ethnic origin. The latter method of fighting terrorism instead is counterproductive, as resources and time are employed in persecuting people on the basis of their ethnicity rather than securing claims against the actual persons involved. More importantly, human rights violations are committed in the process.”¹¹³

33. The United States Government has proposed to establish military tribunals to try foreigners accused of terrorism; to track down and question thousands of immigrants who have entered the U.S. in recent years, mostly from Middle Eastern countries; and to monitor conversations between people in federal custody and their lawyers. The United States State Department imposed more rigorous screening starting on 14 November 2001 for many Arab and Muslim men seeking visas, a step that has irritated foreign governments and U.S. immigrant advocacy groups. The additional background check meant that the applicants, from 25 countries, must wait as long as four extra weeks to obtain tourist, student, or business visas.¹¹⁴ On 15 November 2001, Attorney General John Ashcroft said interviews with the 5,000 men, ages 18 to 33, who have come to the United States since the beginning of 2000 on student, tourist or work visas, must be completed within a month.¹¹⁵ The questioning led to arrest and detention for as many as 1,200 non-citizens of which 752 were charged with immigration violations and most of those individuals have been deported from the United States.¹¹⁶ Several dozen detainees were held while the Government investigated their association with terrorist groups, although none have been charged.¹¹⁷ During late 2002 and the first half of 2003 the United States instituted a special registration program for many male non-citizens from 25 countries principally in Asia and the Middle East. Individuals who appeared for this special registration were photographed, fingerprinted, and questioned particularly as to their immigration status. If they were not in a proper immigration status, they were detained and/or removal proceedings were initiated. They were also told to inform the immigration authorities before they departed from the United States.¹¹⁸

34. A new attitude in Europe also seems to have taken hold as arrests across Belgium, France, the Netherlands, the United Kingdom, and other European countries in the months following the terrorist acts in the U.S. have netted terrorist suspects and far more people, mostly Muslims, whose activities merely seemed suspicious.¹¹⁹ Britain, criticized by its European neighbours for being too easy on asylum seekers and dissidents wanted for terror offences abroad, rushed ahead with emergency legislation allowing for their detention without trial for renewable six-month periods. The bill also empowered officials to jail uncooperative witnesses in terror investigations and to search and take into custody airline passengers who aroused suspicion.¹²⁰ In Paris, marines and police officers patrolling the subway were given the right to intercept travellers and search their baggage without offering a reason.

XVIII. CONCLUDING REMARKS

35. **While the human rights of non-citizens are set forth in the international law presented in the principal report for this study (E/CN.4/Sub.2/2003/23), there has been little progress in implementing these rights in many States.**¹²¹

Notes

¹ Argentina, Belize, Bulgaria, Cyprus, Denmark, Estonia, Germany, Greece, Guatemala, India, Ireland, Jamaica, Lebanon, Madagascar, Mexico, Morocco, Nicaragua, Oman, Russia, Spain, Thailand, Venezuela.

² International Labour Organization, International Organization for Movement, OSCE ODIHR, UNAIDS, UNHCR, UN DESA/Population Division, United Nations Population Fund.

³ Anti-Slavery International, Centre on Housing Rights and Evictions, Lutheran Immigration and Refugee Service, Save the Children.

⁴ Some governments go further in protecting the rights of non-citizens to freedom of movement. *See, e.g.*, Response of the Government of Guatemala to the questionnaire at 2. Other governments limit the movement of non-citizens particularly when they are temporary residents. *See, e.g.*, Response of the Government of the Russian Federation to the questionnaire at 2-4.

⁵ *See* Response of the Government of India to the questionnaire at 2. At least some developing countries, however, accord economic, social, and cultural rights to all persons within the jurisdiction. Response of the Government of Belize to the questionnaire at 4; Response of the Government of Jamaica to the questionnaire at 1-2.

⁶ Concluding observations of the Committee on the Elimination of Racial Discrimination: Croatia, 15/09/93, A/48/18, para. 496 (1993).

⁷ *See, e.g.*, Article 1 of the Mexican Constitution, "every person in the United Mexican States shall enjoy the individual guarantees granted by this Constitution . . ." *See also* Constitution of the Republic of Estonia, Art. 9; Response of the Government of Nicaragua to the questionnaire at 2-3; Response of the Government of Thailand to the questionnaire at 2; Response of the Government of Venezuela to the questionnaire at 1.

⁸ *See, e.g.*, Constitution of Spain, Title 1. The Spanish Constitution provides aliens with the rights and freedoms established in treaties. Spanish statutes also provide aliens the rights established in treaties ratified by Spain and the Universal Declaration of Human Rights, but distinguish between all aliens and aliens legally resident in Spain. All aliens, including asylum-seekers, are entitled to compulsory basic education (for alien children under the age of 18) and pre-school education, the right to health care for minors and emergency health care, the right to basic social services and benefits, the right to effective judicial protection, and legal aid. Response of the Government of Spain to the questionnaire at 3. Aliens legally resident in Spain, including refugees and stateless persons, enjoy the right to work, access to the social security system, trade union rights including the right to strike, the right to family reunification, housing

benefits., freedom of movement, freedom of assembly, and the right to vote in municipal elections subject to reciprocity with their country of origin. *Ibid.* at 3, 7, 8; *see also* Response of the Government of the Russian Federation to the questionnaire at 1.

⁹ *See, e.g.*, Response of the Government of Belize to the questionnaire at 3; Response of the Government of Madagascar to the questionnaire at 2; Response of the Government of Oman to the questionnaire at 2.

¹⁰ *See* Response of the Government of Bulgaria to the questionnaire at 1-2; Response of the Government of Cyprus to the questionnaire at 1 (both by constitution and by incorporating treaty provisions in national law); Response of the Government of Venezuela to the questionnaire at 3.

¹¹ Concluding observations of the Committee on the Elimination of Racial Discrimination: Nigeria, 15/09/93,A/48/18, para. 310 (1993).

¹² *See, e.g.*, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Qatar, 20/03/2002, para. 9 (2003).

¹³ The Committee on the Elimination of Racial Discrimination has observed discrimination against non-citizens in regard to the right to housing (CERD/C/60/CO/2 (Belgium)). Response of the Committee on the Elimination of Racial Discrimination to the questionnaire, CERD/C/62/Misc.17.rev.3, at 2; *see also The 40th Anniversary of Turkish Migration to Germany: Turkish migration and migrants in Germany*, Turkish Daily News, 31 October 2001.

¹⁴ *See, e.g.*, Response of the Government of Bulgaria to the questionnaire at 13.

¹⁵ In Estonia persons with undetermined citizenship may not vote in national elections or work in the civil service, but have the right to vote in local council elections and may work in the public sector. Response of the Government of Estonia to the questionnaire at 6. In Lebanon non-citizens do not have the right to vote in parliamentary or municipal elections; non-citizens are not allowed to pursue political activities that contravene the dictates of political public order in Lebanon. Response of the Government of Lebanon to the questionnaire at 5; *see also* Mexican Constitution Article 13; Response of the Government of Germany to the questionnaire at 1; Response of the Government of Nicaragua to the questionnaire at 4.

¹⁶ Response of the Committee on the Elimination of Racial Discrimination to the questionnaire, CERD/C/62/Misc.17.rev.3 (2003) at 2 (A/56/18, para. 53 (Argentina); CERD/C/62/CO/4, para. 21 (Ecuador)).

¹⁷ *Ibid.* at 2 (A/57/18, paras 344-66 (Estonia)).

¹⁸ *Ibid.* at 2 (CERD/C/60/3 (Costa Rica) and A/57/18, paras. 344-66 (Estonia)).

¹⁹ *Ibid.* at 2 (A/56/18, para. 248 (China)).

²⁰ *Ibid.* at 2 (CERD/C/60/5 (Denmark)).

- ²¹ *Ibid.* at 2 (CERD/C/304/Add.12, para. 14 (Republic of Korea)).
- ²² *Ibid.* at 2 (A/48/18, para. 376 (Kuwait); CERD/C/62/CO/12, para. 17 (Saudi Arabia)).
- ²³ *See, e.g.*, Response of the Government of Ireland to the questionnaire at 1.
- ²⁴ Christopher Lamb (International Federation of Red Cross), Presswire, 18 April 2003. As in many countries, undocumented persons in Morocco do not enjoy the right to work and face the penalty of deportation. Response of the Government of Morocco at 1.
- ²⁵ *See* Philip Anderson, *In a Twilight World - Undocumented Migrants in the United Kingdom* (available at <http://www.geocities.com/jrsuk/Twilight.html>); Matthew J. Gibney, *Outside the Protection of the Law, The Situation of Irregular Migrants in Europe*, Oxford University Refugee Studies Centre Working Paper No. 6 (2000); *see also* <http://www.gisti.org/doc/publications/2002/sans-papiers/>; <http://www.hfph.mwn.de/igppap/alt.htm>.
- ²⁶ Dave Chibesa, *Zambian Immigration Law Lax*, Times of Zambia, 22 December 1998.
- ²⁷ *See, e.g.*, Response of the Government of Belize to the questionnaire at 5.
- ²⁸ Response of the United Nations Population Fund to the questionnaire at 4-5. The Government of Thailand noted that “some of the non-citizens in Thailand fall prey to smuggling and trafficking networks and are therefore not protected by law. Nonetheless, Thai government agencies are aware of the problems and do our utmost to alleviate the situation”. Response of the Government of Thailand to the questionnaire at 6.
- ²⁹ *See generally* Ms. Gabriela Rodríguez Pizarro, Report of the Special Rapporteur on the human rights of migrants, E/CN.4/2003/85 (2003); E/CN.4/2002/94 (2002); E/CN.4/2001/83 (2001).
- ³⁰ *See, e.g.*, *Ivory Coast refugees flee as rebels vow to push on*, The Scotsman, 11 October 2002: “The police harass you, ask for your documents, and take your money. Sometimes they beat you.”
- ³¹ In *Zadvydas v. Davis*, 533 U.S. 653 (2001), the U.S. Supreme Court held that non-citizens who had been found removable from the United States could not be detained indefinitely while the Government sought to enforce the removal order, if their country of origin refused to accept them. In *Demore v. Kim*, 2003 U.S. Lexis 3428 (29 April 2003), however, the Supreme Court held that Congress may require non-citizens who are removable due to having been convicted of an aggravated felony to be detained during the removal proceedings. Justice Rehnquist reasoned that Congress may make rules as to aliens that would be unacceptable if applied to citizens. *But cf. Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (non-citizens are persons within the meaning of the United States Constitution); Response of the Lutheran Immigration and Refugee Service to the questionnaire at 3.

³² UNCHR, Contribution to the OSCE Implementation Meeting on Human Dimension Issues para. 11 (2002).

³³ Yesim Kebabcioglu, MC Presswire, 18 April 2003. Other nations permit migrants to become citizens after they have been resident for five, ten, or fifteen years.

³⁴ Human Rights Watch, Roma Denial of Citizenship (2003).

³⁵ UNCHR, Contribution to the OSCE Implementation Meeting on Human Dimension Issues paras. 5, 11-12 (2002).

³⁶ That working paper will also likely discuss problems of statelessness for former citizens of the Soviet Union and other nations with similar problems. *See* Response of the Government of the Russian Federation to the questionnaire at 7-9.

³⁷ Communication No. R.9/35, Supp. No. 40 (A/36/40) at 134 (1981). Changes of residency requirements and revocation of temporary residence permits of non-citizen women who experience domestic violence are, but should not be undertaken without a full assessment of the impact on these women. *See* Report of the Committee on the Elimination of Discrimination against Women, twenty-seventh session, A/57/38 (Part II), paras. 256-302 (8 October 2002), para. 348.

³⁸ Committee on the Elimination of Racial Discrimination, Concluding observations: Qatar, 20/03/2002, CERD/C/60/CO/11 (2002).

³⁹ E/CN.4/2003/85 (2003).

⁴⁰ Pearl Sebolao, *Human Rights Body Calls for Guidelines on Arrest of Aliens*, Business Day, 23 March 1999, at 2.

⁴¹ *See* Staff Writer, *News Item in Leading South African Newspapers*, Saturday Star, 20 March 1999.

⁴² Douglas Jehl, *A Nation Challenged: Islamic Militants*, New York Times, 9 March 2002.

⁴³ Susan Sachs, *Due Process, But How Much is Due?*, The New York Times, 5 December 1999, Section 4; Page 4; Column 1; Week in Review. On any given day U.S. immigration authorities detain about 20,000 individuals including newly arrived asylum-seekers, stateless persons, non-citizens who have been convicted of aggravated felonies, etc. Response of the Lutheran Immigration and Refugee Service to the questionnaire at 6.

⁴⁴ Some countries provide basic medical care and social services to non-citizens. *See, e.g.*, Response of the Government of Germany to the questionnaire at 4.

⁴⁵ Response of the Committee on the Elimination of Racial Discrimination to the questionnaire (CERD/C/62/Misc.17.rev.3) at 2 (A/57/18, paras. 267-90 (Hungary); CERD/C/60/CO/14, para. 12 (Switzerland); CERD/C/304/Add.30, para. 12 (Mexico)).

- ⁴⁶ *Ibid.* at 2 (CERD/C/62/CO/12, para. 18 (Saudi Arabia)).
- ⁴⁷ Margaret Bald, *The Dogs of Racism*, Bell and Howell Information and Learning Company, 1 February 2001.
- ⁴⁸ Keith Sinclair, *Champion Denounced Violence Against The Vulnerable*, The Herald, 18 June 2001.
- ⁴⁹ Liam McDougall, *This Country is Like Hell*, Scotland on Sunday, 29 April 2001; Aine Harrington, *Anti-Racism Campaign After Attack*, The Herald, 26 April 2001.
- ⁵⁰ Anil Netto, *Malaysia: Detention Camp Horror Recalled in Shocking Testimony*, Global Information Network, 16 May 2000; see also Human Rights Watch, *Migrants, Asylum-Seekers, and Internally Displaced Persons* (2003).
- ⁵¹ News Reporter, *Human Rights Under Scrutiny*, Asahi Shimbun Evening News, 19 October 1998.
- ⁵² Elizabeth Llorente, *Asylum-Seekers Live in Jail-like Conditions*, Bergen News Service, 11 April 1999.
- ⁵³ Megan Saunders, *Illegals Drugged Then Deported*, Australasian Business Intelligence, 14 March 2000.
- ⁵⁴ Staff Writer, *SAHRC Concerned About Police Search and Seizure Procedures*, South African Press Association, 20 March 2000.
- ⁵⁵ Jim Lobe, *Rights-U.S.: Detained Immigrants Suffer in Local Jails*, Inter Press Service, 9 September 1998.
- ⁵⁶ Gill Gifford, *RSA Police Said To Brutalize Mozambicans*, World News Connection, 7 September 1999.
- ⁵⁷ Minority Rights Group, *Public Participation and Minorities* (2001).
- ⁵⁸ Peter Rutherford, *Wrestling With Workers' Rights*, The Korea Herald, 30 March 2001; see also Staff Writer, *Harsh Working Conditions Persist for Foreign Workers*, Korea Times, 24 November 2000; Byun Tae-kyung, *Civic group asks panel to review industrial training system*, The Korea Herald, 2 April 2002.
- ⁵⁹ Cathie Bell, *Employers Treat Migrants "Unfairly"*, The Dominion, 17 November 1999.
- ⁶⁰ Staff Writer, *Restrictions for Foreign Workers Go Into Force 1 Oct.*, World News Connection, 2 October 1999.
- ⁶¹ Domenico Pacitti, *Italy's Treatment of Foreign Lettori*, The Guardian, 12 September 1998.

⁶² Staff Writer, *Time is Overdue to Address Women's Rights*, M2 Communications (Presswire), 28 September 2000.

⁶³ Annabel Ferriman, *Disputed Diagnosis – Annabel Ferriman Reports On The Threat To A Sad But Valuable Source of Medical Skills*, The Guardian, 20 May 1998.

⁶⁴ Sydney Masamvu, *Government Fights Back on Sanctions*, Financial Gazette, 21 August 2002.

⁶⁵ Staff Writer, *UN: Indonesia Taking Measures to Protect its Migrant Women Workers Abroad*, M2 Presswire, 3 February 1998.

⁶⁶ Irene Khan, *Human Rights and Australia – is this still the land of the “fair go”?*, 5 March 2002.

⁶⁷ Pax Christi, *Violation of rights of non-citizens and asylum seekers in Australia* (2002); see Human Rights Watch, *Inhumane Detention in Ukraine* (2003); see also Save the Children, *Cold Comfort. Young separated refugees in England* (2001).

⁶⁸ Staff Writer, *Detainees hit with huge bills*, Sunday Tasmanian (Australia), 31 March 2002.

⁶⁹ See Response of the Government of Denmark to the questionnaire at 2. Similarly, Ireland provides asylum applicants with health services, access to primary and post-primary education, language training, legal assistance, accommodation and other support services, but does not generally allow asylum applicants to pursue employment unless their applications had been pending for more than one year. Response of the Government of Ireland to the questionnaire at 3.

⁷⁰ Response of the Committee on the Elimination of Racial Discrimination to the questionnaire, CERD/C/62/Misc.17.rev.3 (2003) at 3 (CERD/C/60/CO/8 (Lithuania)).

⁷¹ *Ibid.* at 3 (A/57/18, paras. 412-34 (New Zealand); A/57/18, paras. 367-90 (Hungary); A/57/18, para. 74 (Bangladesh); CERD/C/62/CO/12, para. 21 (Saudi Arabia)).

⁷² *Ibid.* at 3 (A/56/18, para. 215 (Sudan); A/56/18, paras. 246 (China); A/56/18, para. 177 (Japan)).

⁷³ *Ibid.* at 3 (CERD/C/60/CO/3 (Costa Rica); CERD/C/60/CO/8 (Lithuania)).

⁷⁴ *Ibid.* at 3 (CERD/C/60/CO/4 (Croatia); CERD/C/304/Add.45 (Israel)).

⁷⁵ *Ibid.* at 3 (A/57/18, para. 308 (Botswana)).

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- ⁷⁹ Stephen Naysmith, *Refugees: YMCA Worse Than Detention*, The Herald, 18 June 2000.
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- ⁸¹ Staff Writer, *Committee for Chechen Refugees Set up in Azerbaijan*, World News Connection, 3 May 2001.
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- ⁸³ Jan Jonak and Jeffery Donovan, *Closely Watched Trains*, Prague Post, 26 January 2000.
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- ⁹² Staff Writer, *Rules On Land Sales To Be Tightened*, The Dominion, 16 October 1997.
- ⁹³ Staff Writer, *Tanzania Government to Vet Non-Citizens*, The East African, 2 June 2000.
- ⁹⁴ Staff Writer, *Rights of Resident Foreigners*, The Korea Herald, 27 September 2000.
- ⁹⁵ Michael Fix & Wendy Fix, *All Under One Roof: Mixed-Status Families in an Era of Reform*, 35 International Migration Review (2001).
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⁹⁷ Staff Writer, *Japan: Tokyo Service Battle Discrimination in Housing*, Asahi Shimbun, 21 December 1998; see Eric Johnston, *Foreigners find public housing off-limits*, The Japan Times, July 20, 2002.

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¹⁰¹ Response of the Committee on the Elimination of Racial Discrimination to the questionnaire, CERD/C/62/Misc.17.rev.3 (2003) at 2 (CERD/C/60/60/CO/14, Switzerland).

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