



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/Sub.2/2003/23/Add.4  
26 May 2003

ENGLISH ONLY

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COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion and  
Protection of Human Rights  
Fifty-fifth session  
Item 5 of the provisional agenda

**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**

**Summary of Comments Received from U.N. Member States to  
Special Rapporteur's Questionnaire\***

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

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## **SUMMARY OF COMMENTS RECEIVED FROM MEMBER STATES DURING THE PERIOD FROM JUNE 2002 TO APRIL 2003**

### **I. INTRODUCTION**

1. This Addendum IV summarizes<sup>1</sup> the comments received from 22 Member States in response to the questionnaire prepared by the Special Rapporteur and disseminated pursuant to Commission decision 2002/107 of 25 April 2002. For reasons of expense and length it was not possible to reproduce the full text of the responses received from all Member States. Hence, this summary was prepared to express particular appreciation for the quite substantial number of responses received and to give others a sense of the substance contained in the replies. The Special Rapporteur also received responses from 7 intergovernmental organizations and 4 nongovernmental organizations, plus the Committee on the Elimination of Racial Discrimination and the United Nations Special Rapporteur on the rights of migrants.<sup>2</sup> The Special Rapporteur on the human rights of non-citizens took into account all of the responses in preparing the final report and other addenda and is extremely grateful for all the assistance afforded in those responses.

### **II. SUMMARY OF THE INTERNATIONAL HUMAN RIGHTS OF NON-CITIZENS**

#### **Argentina**

2. The Government of Argentina stated that the rights of foreign migrant workers are linked to the concept of equality of treatment and opportunity. According to national legislation, citizens of other countries formally enjoy equal labour rights and safeguards. A distinction must be drawn, however, between such statements and the actual possibility of exercising those rights. In this context, the Government made, inter alia, references to the preamble and articles 20 and 25 of the Constitution; Act 20 744 on labour contracts; Act 22 439, the Migration and Encouragement of Immigration Act of 1981, articles 15 and 18; Decree 1023/94, article 29 (e); Act 22 439, articles 31, 32 and 53; Act 250/81, the Construction Work Statute; Act 22 248/81, the Agrarian Labour Statute, article 8; and Act 25 191/100. It also noted various bilateral agreements on migrant labour.

3. The Government noted that with regard to employment, an applicant for refugee status has the same rights and obligations as any Argentine worker. Following the formalities at the Inter-ministerial Commission in Charge of Granting Refugee Status, the migration authorities will issue an individual with an "impermanent residence permit", which is subject to periodical renewal. With a certificate of application for refugee status, an individual can engage in paid employment and apply for a Single Worker Identification Code. Once the case is settled, the authorities will issue the National Identity Document, which both Argentines and foreigners require to obtain certain benefits. This matter needs, however, to be addressed as the State allows foreigners with legal migrant residence in the country to work but will not issue them a National Identity Document on legal and administrative grounds.

4. The Government identified, inter alia, the following problems faced by refugees, asylum seekers, stateless persons, undocumented persons, or other non-citizens: delays in obtaining requisite documents; lack of employment, housing, health care and education; discrimination against undocumented immigrants; and ill-treatment by the police and border authorities.

## **Belize**

5. The Government of Belize stated that the Special Rapporteur's preliminary report provides a comprehensive analysis of the rights given to non-citizens. There has been, however, little progress in enforcing these rights as many States fail to make recommendations and investigations into the situation of their non-citizens. The Aliens (Registration) Act, Cap. 160 defines an alien as "a person who is neither a citizen of Belize nor a Commonwealth citizen." The Substantive Laws of Belize provide for the rights of non-citizens. Section 16 of the Constitution provides that no law should be discriminatory of itself or in its effect. Section 3, part III of the Constitution confers the fundamental rights and freedoms on every person in Belize. Additionally, section 22 of the Aliens Act states that real and personal property may be taken, acquired, held and disposed of by an alien in the same manner as by a natural born citizen of Belize. According to section 46 of the Families and Children's Act, children are entitled to the same measure of protection regardless of their citizenship status. On 10 June 1996, Belize acceded to the International Covenant on Civil and Political Rights and is thus bound to protect and respect the rights provided without distinction of any kind based on citizenship. The Government made several reservations to the Civil and Political Covenant, including the right not to apply paragraph 2 of article 12 in view of statutory provisions requiring persons intending to travel abroad to furnish tax clearance certificates. It also made reservations in respect to free legal assistance under article 14, paragraph 3 (d) and to application of the principle of compensation for wrongful imprisonment contained in article 14, paragraph 6 of the Covenant. While Belize has signed Covenant on Economic, Social and Cultural Rights in 2000, it has not ratified it yet. Its legal system does not require any reservations to the Economic Covenant.

6. The Government stated it acceded to the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) and the 1967 Protocol relating to the Status of Refugees (1967 Protocol) on 27 June 1990, which have the force of law in Belize, pursuant to the Refugee Act, Cap.165. All rights defined, inclusive of social and political rights, are accorded to refugees as they are to be afforded a reasonable opportunity to work and contribute to the development of Belize. Asylum-seekers are accorded the same rights as other non-citizens, as Belize has an exceptional record in providing assistance, proper treatment and protection to those fleeing prosecution. Belize has not signed the 1954 Convention relating to the Status of Stateless Persons (Convention on Statelessness) and is thus not bound by its provisions. The most significant problems faced by migrants include: no right to vote, difficult access to employment or other means of economic stability, vulnerability to exploitation by employers, the fact that they may not be able to own or lease land, inability to function in the language, and ignorance of the cultural cues of the host society. Furthermore, information was provided about the UNHCR project aimed to support the Government of Belize in achieving the legal integration of undocumented and recognized refugees in Belize.

## **Bulgaria**

7. The Government of Bulgaria stated that the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms is an integral part of its judicial system and its spirit is reflected in numerous laws and regulations. Article 27 (1) of the Constitution stipulates that "foreigners residing legally in the country may not be expelled or extradited to another country against their will, except in accordance with the provisions and procedures established by law." Article 27 (2) provides for the possibility of special legal protection for foreigners in the right of asylum. The new Right of Asylum and Refugees Act, entering into force on 1 December 2002, establishes legislative rules related to the constitutional right of the President of the Republic to grant asylum. Foreigners, in general, have certain administrative, civil and criminal responsibilities. The non-citizens whose status comes closest to that of citizens in terms of overall rights and duties, are those who enjoy the right to asylum, those granted refugee status and those with permanent residence in Bulgaria.

8. The Government stated that Bulgaria is a state party to the Civil and Political Covenant and Economic Covenant, which were published in the Official Gazette No. 43/1976. Regulations designed to guarantee the civil, political, economic, social and cultural rights of refugees have been brought in line with the international standards and European Union legislation. They accord equal rights to non-citizens with refugee status and to Bulgarian citizens. The Bulgarian legal system does not permit any exceptions to these rights. In 1993, Bulgaria ratified the 1951 Refugee Convention and its 1967 Protocol, thus undertaking to guarantee non-citizens seeking protection in its territory an impartial procedure in connection with the granting of refugee status, the right of asylum, the right to assistance, social security, medical care, free access to education, as well as conditions that help such persons to find suitable work and promote retraining to improve their integration into the society. Bulgaria respects the principle of non-refoulement with regard to individuals seeking protection in its territory and makes the necessary efforts to respect and guarantee their rights and freedoms. Both the 1999 Refugee Act and the forthcoming Right of Asylum and Refugees Act, which amends and improves the 1999 Refugee Act, respect the constitutional principle of equality of natural persons and the inadmissibility of restrictions on the rights and privileges of non-citizens seeking and enjoying protection in the Republic of Bulgaria. Under the Right to Asylum and Refugees Act, non-citizens seeking protection are accorded asylum, refugee status, humanitarian status (as a subsidiary form of protection), and temporary protection. The Government also provided detailed information regarding the rights to: assert the principle of non-refoulement; family reunification for refugees; freedom of religion; education; guardianship or statutory representation of unaccompanied minors or minor non-citizens; equal rights for refugees and Bulgarian citizens, with few specific exceptions; identify papers; suitable work and retraining; access to the courts; and acquisition of Bulgarian nationality.

9. The Government reported on the rights accorded to asylum-seekers in the Rights to Asylum and Refugees Act and the Constitution, including rights to: access to procedures; an interpreter or translator; identity papers; help and assistance from the UNHCR, government and non-government organizations; accommodation, food and material and financial assistance; social welfare, psychological assistance and free medical care on the same terms as Bulgarian citizens; education; occupational training and suitable work; freedom of conscience and religion; legal assistance; preferential treatment for certain categories of non-citizen asylum seekers; and appeal against rejection of an application for refugee status. Non-citizens applying for protection

and those with refugee status face problems concerning housing, employment, and lack of resources to pay the repatriation costs. The Government also provided statistics regarding foreigners applying for refugee protection in Bulgaria.

## **Cyprus**

10. The Government of Cyprus stated that its legal order guarantees all civil, political, economic, social and cultural rights that are embodied in international legal instruments and in the European Convention on Human Rights. Most of those instruments and the European Convention were ratified by Cyprus, thus forming a part of the domestic law with superior force to municipal legislation. The Constitution itself incorporates the human rights and fundamental liberties safeguarded by the European Convention. The Fundamental Rights and Liberties in Part II of the Constitution are expressly guaranteed to everyone, without making any distinction between citizens and non-citizens or without any distinction on the basis of community, religion, nationality, or any other grounds. (See article 28.2 of the Constitution.) Therefore, the right to access to a court, which is guaranteed by Article 30 of Part II of the Constitution is also afforded to everyone, including all citizens of the republic including Greek Cypriots, Turkish Cypriots, Maronites, Armenians and Latins. Article 28.1 of the Constitution affords to all persons the right of equality before the law, administration of justice, and equal protection and treatment. Cyprus ratified (Ratification Law No. 14 of 1969) both the Economic Covenant and the Civil and Political Covenant. All the rights provided therein are accorded to all persons (citizens and non-citizens) residing in the Republic. Any restrictions or limitations on human rights guaranteed under the Constitution have to be provided by law and be absolutely necessary in the interest of the Republic, constitutional order, public safety or order, public health, or for the protection of the rights guaranteed by the Constitution to any person. Provisions relating to such limitations or restrictions are interpreted strictly by the courts.

11. The Government reported that asylum seekers enjoy a wide array of social rights provided by relevant law. For example, they have access to health, welfare and educational services, and employment opportunities. Republic of Cyprus laws do not specifically provide for stateless persons. Cyprus, however, signed and ratified relevant international instruments on human rights, including the United Nations Protocol relating to a certain case of statelessness (Ratification Law 64/1977) and therefore stateless persons can be treated within their context. The most serious problems faced non-citizens concern their social integration, as they experience difficulties due to cultural barriers in terms of language skills and social mannerism. Cyprus maintains data on aliens residing on the island that might be accessed upon formal request by an agency or competent authority. The data on asylum seekers and refugees are available in the Asylum Unit, Civil Registry and Migration Department.

## **Denmark**

12. The Government of Denmark stated that, with few exceptions, such as the right to vote and to obtain certain administrative positions, persons granted refugee status in accordance with the 1951 Refugee Convention and the 1967 Protocol have, following the completion of an integration programme, the same rights and obligations as Danish citizens. As the stay of asylum seekers is assumed to be of a temporary nature, they are not granted the same rights as non-citizens with a permanent residence permit in Denmark. During the asylum procedure,

asylum seekers are entitled to have the expenses for sustenance paid by the Danish authorities, provided that they do not possess their own means of payment. Asylum seekers are generally granted accommodation, financial assistance for food, pocket money and basic health care. While they have access to education at the accommodation centres, they are not provided with access to the labour market. Non-citizens with a permanent residence permit are, apart from a few exceptions, granted the same rights as Danish citizens. Any problems faced by those non-citizens are therefore due to the language barriers and difficulties in accessing the labour market.

## **Estonia**

13. The Government of Estonia stated that according to article 9 of the Constitution, the rights, freedoms and duties of each person as set out in the Constitution, shall be equal to Estonian citizens and citizens of foreign states and stateless persons in Estonia. The law of Estonia grants the majority of the rights of all persons as provided in the Civil and Political Covenant to non-citizens in its territory. There are, however, certain exceptions for non-citizens with regard to the following rights provided by the Civil and Political Covenant: freedom of association; right to participate in public affairs; and rights of ethnic, religious or linguistic minorities. The law of Estonia also grants the majority of the rights provided by the Economic Covenant to non-citizens legally in its territory. There are exceptions for non-citizens with regard to the following rights provided by the Economic Covenant: the right to work and right to social security. The Government provided information regarding domestic legislation governing those exceptions.

14. The Government reported that, based on the 1951 Refugee Convention, the Refugees Act regulates the legal status and grounds for asylum and refugees in Estonia. The rights and freedoms arising from the Constitution and other legislation of Estonia, the 1951 Refugee Convention and the 1967 Protocol, and generally recognized norms of international law and customs shall be guaranteed to applicants for asylum and refugees. Applicants for asylum are required to stay in the initial reception centre while the initial interview and expedited processing are conducted, unless they have a legal basis for staying in Estonia and wish to reside somewhere else. They are also required to reside in the reception centre during the review of the application and the ascertainment of refugee status, unless they have a legal basis for staying in Estonia and wish to reside somewhere else or certain additional exceptions apply. The Government also listed reasons for which certain applicants are prohibited from residing outside the reception centre. Applicants residing outside the reception centre during the review of the application are required to notify a government agency of their residence and appear on the specified dates to perform acts necessary for the ascertainment of refugee status. Applicants do not have the right to work during the review of their application and ascertainment of refugee status, except if they have a legal basis for working in Estonia.

15. The Government stated that Estonia is not a state party to the Convention on Statelessness but, in general, its legislation accords to stateless persons the rights defined in the convention. The Government also noted that there are slight differences between Estonian citizens and persons with undetermined citizenship. Persons with undetermined citizenship: may not vote in the national elections but have a right to vote in local councils' elections; may not work in civil service but are allowed to work in the public sector; and face differences when travelling due to visa requirements. Conclusions about significant problems faced by refugees

cannot be made as there are relatively few of them in Estonia. The Government provided further information and references to the reports and studies concerning persons with undetermined citizenship in Estonia.

## **Germany**

16. The Government stated that the Civil and Political Covenant is valid law in Germany. Nonetheless, Germany made reservations when ratifying both the Covenant and the Optional Protocol. While the reservations generally relate to all persons residing in Germany, one reservation refers expressly to non-citizens. It affects the rights to hold opinions, of peaceful assembly, and to freedom of association, including the right to join and form trade unions (Articles 19, 21 and 22 of the Civil and Political Covenant respectively). According to the Basic Law of the Federal Republic of Germany, however, freedom of expression is guaranteed to everyone as a human right, so that even non-citizens are not subject to any limits to their freedom of expression except those imposed by general laws. The right to form associations is likewise guaranteed to everyone under the Constitution. Freedom of assembly and the right to form corporations are so-called “German rights”. In these areas, however, non-citizens may plead the general right to free development of one’s personality, so that their human rights are not unprotected.

17. The Government stated that the rights contained in the Economic Covenant are in principle applicable to all persons who are legally within the territory of Germany, subject to restrictions resulting from national legislation on foreign workers. Refugees are guaranteed the rights defined in the Refugee Convention. German legislation is in full compliance with the Convention’s prohibition of refoulement. Foreigners formally recognized as entitled to asylum and refugees enjoy unrestricted access to education, occupation and work. They are accorded the same treatment as nationals with respect to elementary education. Refugees who fulfil the same qualifying conditions have the same claim to social allowance and child benefits as nationals. Refugees are entitled to integration allowances that are not available to other foreigners. Foreigners who appeal to the German authorities on grounds of political persecution in their country of origin may reside legally in Germany while applying for asylum. As a rule, asylum seekers are not permitted by law to take up employment. Asylum seekers and refugees, however, whose deportation has temporarily been suspended may take up employment after a one-year waiting period, if no German nationals or foreigners of equal status are available. Foreigners traumatized by events in their country of origin, who are receiving specialized medical treatment, may also be allowed immediate access to the labour market. Asylum seekers are accorded social and health assistance needed while applying for asylum in Germany. The Act on Benefits for Asylum Seekers guarantees to foreigners who qualify food, shelter, heating, clothing, personal hygiene and household goods and appliances. In case of serious illness or injury, the necessary medical care is guaranteed. Asylum-seekers’ daily needs are met as a rule with benefits in kind and are strictly based on need. They are obliged to live in refugee reception facilities for up to six weeks and not more than three months, typically followed by accommodation in a community facility for asylum seekers.

18. The Government reported that the Convention on Statelessness has been part of German law since 1977. Germany protects stateless persons from deportation to their country of origin or usual residence if threatened with political persecution. De facto stateless persons and persons of unknown nationality are treated as stateless persons. Stateless persons must be lawful



residents in order to claim the most important rights to which they are entitled. Various problems of non-citizens are related to their status according to the legislation on foreigners and to their personal situation. In general, however, the human rights of foreigners in Germany as well as additional rights depending on their residence status, are guaranteed. The length of the asylum process is often criticized but it depends on the authorities' ability to establish the identity of the asylum applicant. Asylum seekers are distributed evenly among the different states in Germany pursuant to a quota system set by law. Asylum seekers often express the desire to be sent to a particular German state, but such desires are not taken into account. Asylum seekers regard the legal obligation to reside in refugee reception facilities and community facilities as an unjustified restriction of their right to self-determination. In the interest of due process, however, Germany cannot fulfil the wishes of asylum seekers to live with distant relatives, acquaintances or compatriots. Accommodating asylum seekers in such facilities and restricting their residence to certain designated areas ensures that they are available to the responsible authorities during the asylum application process. The Government also provided relevant publications including "Policy and Law Concerning Foreigners in Germany" published by the Federal Ministry of Interior in August 2002 and "Structuring Immigration/Fostering Integration", a report by the Independent Commission on Migration to Germany from July 2001.

### **Greece**

19. The Government of Greece provided comments on paragraph 49 of the Special Rapporteur's preliminary report E/CN.4/Sub.2/2002/25/Add.3 and requested revisions accordingly. It stated that the Muslim minority in Greek Thrace is composed of three ethnic groups: 50% of minority people are of Turkic origin, 35% are Pomaks, and 15% are Roma. Each of these groups has its own spoken language and traditions. Due to this reason, the drafters of the Lausanne Treaty of 1923 defined minority in religious terms. Nothing prevents individual members of the minority, however, from identifying themselves as they wish. Every member is free to declare his/her origin, to speak his/her language and follow his/her customs and traditions. As a result of the information provided by the Government of Greece the material in paragraph 49 was not reflected in any further report by the Special Rapporteur.

### **Guatemala**

20. The Government of Guatemala stated that discrimination against non-citizens found in many countries needs to be addressed immediately, as all individuals should be treated equally regardless of their national origins. This reason is sufficient to promote international instruments to raise States' awareness of the need to eliminate racism and racial discrimination and to bring existing domestic legislation into line with international standards. Its Constitution establishes that "all human beings are free and equal in dignity and in rights", and that international instruments shall prevail over domestic law in the area of human rights. De facto discrimination, however, persists within the society because current legislation has been unable to address issues relating to social practices. The Government wishes to promote the idea of human solidarity, at the international level, with those persons who suffer from marginalization, lack of labour protection and other forms of exclusion that prevent their access to basic services due to their status as undocumented aliens.

21. The Government agreed that given the current situation of non-citizens, protective measures must be put in place to strengthen the rights of those who leave their native countries to settle elsewhere where they are, as foreigners, treated differently. States parties must therefore ensure that the rights covered by the various instruments are fully safeguarded. As there are a large number of Guatemalans living without documents in the United States and other countries, the discriminatory treatment to which they are subject in those countries is therefore of direct relevance to Guatemala. Guatemala supports, promotes and implements international human rights conventions and treaties, with the fundamental aim of safeguarding the most basic rights of human beings.

22. The Government reported that non-citizens are accorded the rights established in the Constitution under title I, articles 1 and 2 entitled “Protection of the Individual” and “Duties of the State”, respectively. Furthermore, non-citizens are accorded the rights to which they are entitled in accordance with the Civil and Political Covenant. Such protection is granted under international instruments and domestic legislation such as the Migration Act (decree No. 95-98), the Nationality Act (decree-law No. 2-91), and the Election (Political Parties) Act (decree-law No. 1-85). The only exception under the Migration Act (decree No. 95-98) is that foreigners must request authorization to leave the country. Otherwise, they lose their status as refugees or asylum seekers. The Government accords to non-citizens the rights of all persons as provided in the Economic Covenant, insofar as it accords to non-citizens access to education, health, housing, social security, etc. The legal system provides no exceptions to those rights but for the exception of the suspension of guarantees in accordance with chapter IV, article 138 of the Constitution on the limitation of constitutional rights that applies to all individuals in Guatemala in situations where it is deemed necessary under the law. There are no restrictions on non-citizens provided they abide by law.

23. The Government accords to refugees the rights defined in the Refugee Convention and is committed to ensuring equality of treatment with citizens with regard to labour law, social security, welfare, education, housing, religion, access to the courts, paid employment, etc. The signing of the Peace Accords has encouraged controlled legal migration. From the time of submission of the application for asylum, asylum seekers are accorded the same rights as other non-citizens. The Government grants to stateless persons the rights defined in the Convention on Statelessness. They are accorded most favourable treatment in respect of their needs and the services they require. Non-citizens face problems in complying with various legal requirements for engaging in economic, financial, social, cultural or political activities. To help refugees, Congress adopted legislation granting all refugees the opportunity to register as citizens or obtain papers from municipalities. The Government indicated that reports related to the situation of non-citizens can be obtained from the Peace Secretariat and the Consultative Assembly of Displaced Persons located in Guatemala City.

## **India**

24. The Government of India stated that, according to its Constitution, the following fundamental rights are available to non-citizens: right to equality; right of protection against punishment for retroactive laws, double jeopardy and self-incrimination; right of protection of life and liberty; right of protection against arrest and detention in certain cases; prohibition of employment of children in factories, mines and hazardous employment; and right to freedom of

religion (articles 14, 20, 21, 22 (1) and (2), 24 and 25, respectively). The above rights are accorded to non-citizens without exceptions. The Government, however, made a declaration with regard to article 13 of the Civil and Political Covenant, which deals with expulsion of an alien in accordance with the established law, whereby it reserves its right to apply its own law relating to foreigners. The Government does not accord to non-citizens the rights of all persons provided in the Economic Covenant. The Constitution, however, prohibits employment of children in factories, mines, hazardous employment as well as guarantees the right to freedom of religion. The Government further noted that article 2 of the Economic Covenant provides that the States Parties undertake to take steps, individually and through international assistance and co-operation, with a view to progressive realization of the rights recognized in the Covenant. According to the Government, this would thus mean that no binding obligations have been created under the Covenant.

## **Ireland**

25. The Government of Ireland welcomed the contribution that the Special Rapporteur's reports made towards the consideration of this important topic. It stated that the rights and entitlements of non-citizens vary according to their nationality, the nature of permission to stay and the length of time spent in the country. All persons in the State are entitled, however, to equal protection under the law, access to the courts, to have their rights vindicated by the courts, and to the benefits of legislation such as the Equal Status Act 2000. All persons are also entitled to the rights and protections provided by various treaties signed by Ireland. Ireland ratified the Civil and Political Covenant and Economic Covenant in December 1989 and the rights provided are accorded to all persons regardless of their legal status. Ireland reported about its reservations to articles 10(2), 14, 19(2) and 20(1) of the Civil and Political Covenant and to articles 2(2) and 13 (2) (a) of the Economic Covenant. The Government accords to refugees the rights defined in the Refugee Convention. The 1996 Refugee Act provides the following rights to refugees to the same extent as to an Irish citizen: entitlements to seek and enter employment, to carry on any business, trade or profession; to have access to education and training; to receive medical care and social welfare benefits; to reside in the state; to travel in, to or from the State; to have freedom to practice his or her religion and the freedom regarding religious education; to have access to the courts; and to form and be a member of associations and trade unions. In addition, a recognized refugee is entitled to acquire, hold, dispose or otherwise deal with real and personal property in a manner like an Irish citizen.

26. The Government noted that the rights enjoyed by non-citizens depend on the basis of their residency in the country. An asylum-seeker has the right to remain in the State while his/her application for refugee status is being determined. During the determination process, an asylum-seeker has the following rights to: access to health services on the same basis as the indigenous population; access to primary and post-primary education (for children on the same basis as Irish children); state-funded training courses (for adults); legal assistance by the Refugee Legal Service; seek work (an exceptional measure for those in the country for more than 12 months and still awaiting a determination of their application for refugee status); and the basic Supplementary Welfare Allowance payment, which is means-tested. Asylum-seekers are also entitled to Child Benefit, One Parent Family Payment, Disability Allowance, Non-contributory Old Age Pension, and may once be paid "exceptional needs payments" under the Supplementary Welfare Allowance Scheme. The 2000 Equal Status Act generally prohibits discrimination in the disposal of goods and property, the provision of services and accommodation and access to

education, on the grounds, inter alia, of race. The differential treatment of certain categories of non-citizens by the State in the provision of accommodation is understood not to be discrimination on the grounds of race within the meaning of the Act. Irrespective of one's citizenship or nationality, a person who claims discrimination on any grounds covered by the Act may seek redress by referring the case to the Director of Equality Investigations.

27. The Government stated that Ireland acceded to the Convention on Statelessness in December 1962. The Government noted that the Reception and Integration Agency commissioned research, inter alia, into the needs of persons who move into local communities, having obtained refugee status. The Government also provided the following publications: "Refugee Law Comparative Study 1999", a report commissioned by the Department of Justice, Equality and Law Reform and "Integration - A Two Way Process" (1999), a report to the Minister for Justice, Equality and Law reform by the interdepartmental working group on integration of refugees in Ireland.

### **Jamaica**

28. The Government of Jamaica stated that the minimum core rights accorded to all refer to the fundamental rights and freedoms enshrined in sections 13 to 26 of the Constitution and include protections of the right to life; from arbitrary arrest and detention; of freedom of movement; from inhumane treatment; against compulsory acquisition of property without compensation; for privacy of home and other property; to secure the protection of the law; of freedom of conscience, expression, assembly and association; from discrimination on the grounds of race, etc. Except the rights and duties imposed on Jamaican citizens exclusively, such as the right to vote, issue of passports, etc, all persons having rights and interests within the jurisdiction may avail themselves of the laws of Jamaica, to the extent a particular law is relevant. The provisions of the Civil and Political Covenant exist in the laws of Jamaica as constitutional provisions and in legislation such as the Corrections Act, Aliens Act, Immigration Restriction Act, and Registration Act. The provisions, however, relating to the right to vote, or participation in representational politics have citizenship and residency requirements. The provisions of the Economic Covenant are accorded to all persons within the jurisdiction. Non-citizens are required to obtain work permits to be legally employed. The failure to do so, however, while attracting penalties, would not preclude the enforcement of contract, employment rights and safety conditions. There are no exceptions to the rights provided by the Economic Covenant in relation to non-citizens. Jamaica is a party to the Refugee Convention, the 1967 Protocol, and the Convention on Statelessness. Jamaica is in the process of implementing the relevant enabling legislation with regard to the Refugee Convention and the 1967 Protocol.

### **Lebanon**

29. The Government of Lebanon stated that its law draws distinction between non-citizens, who are legally resident in Lebanon, and those living there illegally. The former benefit from all the rights and freedoms recognized in the Constitution, subject to certain conditions, and from all the rights established by various laws. Lebanon granted Palestinian refugees present in its territory certain legal guarantees and privileges, specified in series of laws enacted since 1960, aimed at facilitating their freedom of movement. Lebanon acceded, without making any

exception, to the Civil and Political Covenant and Economic Covenant under the implementing Act to Decree No. 3855 of 1 September 1972. The rights accorded to non-citizens are not absolute, however, but are subject to certain restrictions aimed at protecting the Lebanese society. Accordingly, non-citizens do not have the right to vote in parliamentary or municipal elections; are not allowed to occupy certain public positions unless they acquired Lebanese nationality more than 10 years prior to their appointment; and are not allowed to pursue political activities that contravene the dictates of public order and the fundamental rules laid down in the Constitution. Conditions for the employment of non-citizens are governed by special decrees that are issued in response to changing circumstances.

30. Lebanon did not accede to the 1951 Refugee Convention and the Convention on Statelessness and does not recognize the rights and duties set forth therein. It does not accord asylum-seekers whose applications are pending, the same rights as those accorded to non-citizens residing legally in its territory. The most significant problems faced by refugees, asylum-seekers and undocumented non-citizens are economic difficulties and, in some cases, problems of morale, as non-citizens are not acclimatized to Lebanese society. Lebanon acceded to numerous multilateral conventions and bilateral agreements concerning the extradition of criminals and persons wanted by law. Accordingly, the authorities concerned are not prevented from handing over documents pertaining to refugees, undocumented non-citizens and criminals, consistent with the higher interest of the nation and the dictates of national security.

### **Madagascar**

31. The Government of Madagascar stated that with regard to the basic rights granted to non-nationals, it complies with the rules of international law. The term “undocumented” non-citizens does not appear in its legislation. The status of aliens and stateless persons is governed by Act No. 62-006 of 6 June 1962, establishing immigration control services in accordance with international conventions and special laws and regulations containing derogations. The Act No. 70-001 of 23 June 1970 approves its accession to the Civil and Political Covenant and the Optional Protocol. In Act No. 70-005 of 23 June 1970, Madagascar ratified the Economic Covenant. Refugees are classified as aliens and are governed by Decree 66-101 of 2 March 1966. As stateless persons, refugees residing in Madagascar are subject to the same provisions as immigrant aliens, to the specific provisions of the above decree and conventions, to the agreements and international arrangements concerning stateless persons and refugees to which Madagascar has acceded or will accede and general provisions of domestic and private international law. The Office of Refugees and Stateless Persons within the Ministry of Interior is responsible for formalities relating to refugees.

### **Mexico**

32. The Government of Mexico considered the collection of international norms in the Special Rapporteur’s preliminary report as sufficiently complete. The Government stated that the minimum core rights accorded to non-citizens, including those who are undocumented and irrespective of their legal status in the country, are all the rights that apply to any individual (article 1 of the Constitution). Regarding the powers of the Immigration Authority of Mexico, freedom of transit is guaranteed by article 11 of the Constitution. According to article 33 of the Constitution, aliens are entitled to the individual guarantees granted by the Constitution. The Population Act and its regulations set out the requirements for nationals and aliens entering and

leaving Mexican territory. The Government accords to non-citizens the rights of all persons as provided by the Civil and Political Covenant, with reservations entered on various items. The Government accords to non-citizens the rights in articles 11 and 13 of the Civil and Political Covenant, with the reservations entered concerning article 33 of the Constitution, according to which the Federal Executive shall have the exclusive power to expel from national territory, without notice and without the need for prior legal action, any alien whose stay is deemed inexpedient, and aliens may in no way interfere in the political affairs of the country. According to articles 34 and 60 of the Population Act and article 139 of its regulations, aliens require residence and work permits issued by the Ministry of Interior. The Government accords to non-citizens the rights of all persons provided in the Economic Covenant, with a reservation entered with regard to employment matters.

33. The Government stated that the Constitution defines aliens as persons who do not have Mexican nationality and recognizes that they have the same rights as everyone else, without discrimination based on ethnic or national origin. The Population Act and its regulations define a refugee as a migrant classified as a “non-immigrant with the characteristics of a refugee”, thereby allowing refugees to stay legally in the country and enjoy full protection of their constitutional rights. The Government offers refugees greater opportunities to become naturalized and assimilated than it does to foreigners in general. The Government entered reservations with regard to articles 17(2), 26, 31(2) of the 1951 Refugee Convention. It also entered a reservation to article 32 of the Convention, without prejudice to respect for the principle of non-refoulement contained in article 33 of the Convention.

34. The Government reported that the right to seek asylum is independent of the foreigner’s migrant status or nationality. The rights of non-citizens seeking asylum are guaranteed in the Constitution, subject to the reservations on the rights to guaranteed paid employment, and to transit and the expulsion of foreigners (without violating the principle of non-refoulement). In the case of asylum-seekers who are undocumented or do not have permission to remain in the national territory, the migration authority shall take the necessary steps to ensure the asylum-seeker is at its disposition until the asylum application has been decided upon, and must send this document to the relevant authority within 24 hours. Stateless persons enjoy the same treatment as Mexican nationals with regard to freedom to practise their religion, access to the courts and to elementary education and public assistance. They receive the same treatment as foreigners with regard to the purchase of personal property and real estate, freedom of association, the right to paid employment, housing, and freedom of movement. Identity and travel documents are issued to both stateless persons and stateless refugees residing in the national territory.

35. The Government noted that asylum-seekers encounter problems in accessing the procedure for determination of refugee status and also face language difficulties. Refugees face problems during the waiting period for migration documents, as temporary assistance provided to them sometimes runs out before they receive the document. Integration into society is hampered by prejudice on account of nationality, skin colour and refugee status, which is reflected in difficulty in finding employment and in an uncertain future. The Government reported that its asylum and refugee policy is implemented by the Mexican Refugee Aid Commission. It provided additional information about two kinds of refugees: the Guatemalan refugees and urban refugees.

## **Morocco**

36. The Government of Morocco replied that the State guarantees to non-citizens internationally-recognized fundamental rights, such as the right to life and security of persons, recourse to the courts, and a fair hearing in order to seek redress against acts violating the fundamental rights granted by the law. Non-citizens who are undocumented also enjoy these rights with certain exceptions. For example, in order to enjoy the right to work, a person must be in a regular position vis-à-vis the State's legal system or face the penalty of deportation. Non-citizens in Morocco enjoy all the rights afforded under the Civil and Political Covenant. The exceptions recognized under the Moroccan legal system as placing limitations on the exercise of these rights can be attributed to the necessity of satisfying specific conditions. For example, foreigners are prohibited from participating in political life either as voters or candidates for elections, since a person must be a citizen in order to exercise this right. The rights set forth in the Economic Covenant are accorded to non-citizens. Some of the exceptions to certain rights in the Economic Covenant are dictated by the terms of special laws and the need to safeguard security. For example, according to section III of the Decree of 16 July 1957, any person wishing to establish or join a trade union must be a Moroccan national. Morocco ratified the Refugee Convention pursuant to a Decree of 26 August 1957 and its implementing regulation of 29 August 1957. It is therefore bound to guarantee all the legally-recognized rights accorded to refugees. Morocco accords to stateless persons the economic and social rights defined in the Convention on Statelessness.

37. The Government further stated that no problems are encountered by refugees, asylum-seekers and stateless persons who are legally resident on Moroccan soil. Persons who enter or reside in the country illegally will be expelled from the country after their case has been heard by competent courts. Within the framework of the partnership between the European Union and Morocco, several meetings of the Working Group on Immigration and Social Affairs have been held at Brussels and Rabat. In June 2000, a seminar on the rights of refugees was organized in Casablanca by the Office of the Honorary Representative of the UNHCR.

## **Nicaragua**

38. The Government of Nicaragua stated that taking as its starting point the State's duty to protect the rights recognized in the Civil and Political Covenant (while bearing in mind that some political rights are reserved for Nicaraguan citizens only), it protects and observes the economic, social and cultural rights of foreign migrants legally present in its territory. According to article 73 of the Aliens Act (Act No. 154), "the director of the Migrants and Aliens Division may, in certain circumstances, waive some of the requirements of this Act in the case of persons with no nationality or without the necessary documents to be admitted to the country ...". Nicaragua applies the principle of *jus soli* in the case of minors whose parents are stateless and who are born in Nicaraguan territory, whereby the individual has the right to acquire the nationality of the country in which he or she is born.

39. The Government noted that, on the basis of the Universal Declaration of Human Rights, the Civil and Political Covenant and Economic Covenant, it guarantees the fundamental rights of all aliens regardless of their legal status. These rights include: the right to freedom of movement and choice of residence once their migrant status is official; due process of law, shelter, asylum,

security, recognition of their legal personality and capacity, equality before the law and respect for their physical, psychological and moral integrity. These rights are recognized in the Nicaraguan Constitution and in specific laws such as the Migration Act (Act No. 153), the Aliens Act (Act No. 154) and the Control of Trafficking in Illegal Migrants Act (Act No. 240). Taking a “non-citizen” to mean an alien of no determinate nationality and basing its approach on the principle of equality before the law, the Government complies with the Civil and Political Covenant through articles 25, 27, 33, 34, 36 and 40 of the Constitution (articles 16, 26, 9, 14 and 15, 7 and 8 of the Covenant). The Constitution (title IV, chapter I, article 27) stipulates that “Aliens have the same rights and duties as Nicaraguans, with the exception of political rights and those stipulated by law; they may not become involved in political matters in the country”. (See also Constitution, chapter II, article 48). Apart from political rights, the State respects and guarantees the rights inherent in the human person that are recognized in the Constitution, that is, the rights of every person in its territory and subject to its jurisdiction.

40. The Migration and Aliens Department regulates and oversees the entry, stay and exit of migrants while respecting and guaranteeing the rights of aliens from the moment they enter Nicaraguan territory. Once their migratory status is officially established, the Department assists them to integrate into society and the workforce. This transition is done with the help of the UNHCR in the case of those seeking asylum and legalization of their stay through the UNHCR liaison office in Nicaragua. In this way, their rights to work, education, social security, housing and family protection are recognized. Once it has been established that a foreign citizen has no State protection and his/her status as a migrant has been officially established, the rights of all persons as provided in the Economic Covenant are observed without exception.

41. Nicaragua has signed the Refugee Convention and its 1967 Protocol. The Migration and Aliens Department tries to provide refugees and stateless persons with necessary assistance such as food, medicine and lodging, pending the decision on asylum. Once asylum has been granted, the UNHCR provides financial support and shelter until the refugees become integrated into society. Once their status is determined, refugees are entitled to the privileges in the domestic legislation and the international covenants. The Government protects and guarantees the fundamental rights of non-citizens from the moment they arrive in its territory, regardless of their status. It protects migrants and helps them meet their basic needs, respecting their rights while they are waiting for the UNHCR to find a solution. Sometimes, the UNHCR takes care of them both during and after their application for asylum. Nicaragua is not a signatory to the Convention on Statelessness but observes the rights and guarantees provided thereto, given the universal nature of the Convention. The Government thus accords the civil, economic and social rights set out in the legislation that derives from the Convention and other treaties. The Government stated that only undocumented persons encounter problems in Nicaragua, as anyone illegally entering the national territory is considered an illegal immigrant and may be sentenced by a court to three months’ imprisonment and deportation. The Migration and Aliens Department is responsible for providing information relating to the situation of non-citizens.

## **Oman**

42. The Government of Oman stated that the Basic Law of the State promulgated by Royal Decree No. 101/96 guarantees in article 34 that “Every foreigner who is legally resident in the Sultanate shall have the right to protections of his person and property in accordance with the law. Foreigners shall have regard for society’s values and respect its traditions and customs.”



This article represents a general rule that must be observed under the terms of any law regulating the right of foreigners. The principle was followed by the Legislature in the Alien Residence Act promulgated by Royal Decree No. 95/16. The question of public rights and obligations and the measures required for the protection and promotion thereof are addressed in section III of the Basic Law of the State. Most of the articles concerned with this question are of a general nature and apply to any person in the territory of the Sultanate, without distinction between citizens and foreigners. To the extent that the provisions of the Basic Law of the State represent the Constitution, from which legal regulations are derived, no law regulating the rights of foreigners may depart from the same principles.

## **Russia**

43. The Government of the Russian Federation stated that, according to article 62 of the Constitution, “foreign citizens and stateless persons in the Russian Federation shall have the same rights and duties as citizens of the Federation except in the instances provided for by federal law or an international treaty to which the Russian Federation is a party”. Human and citizens’ rights and freedoms are guaranteed by the Constitution and are not subject to any restrictions. The situation of non-citizens is governed by the Federal Act on the Legal Status of Foreign Citizens in the Russian Federation of 25 July 2002 and the Federal Act on Procedures for Leaving and Entering the Russian Federation of 15 August 1996. The concept of “foreign citizen” includes stateless persons, with the exception of cases in which federal law sets out special rules for such persons differing from those established for foreign citizens.

44. Overall control of the presence of foreign citizens is carried out by regulating the number of entry visas, entry invitations and authorizations issued for extensions of stays, for temporary or long-term residence, for the recruitment and employment of foreign workers, as well as the number of work permits and accreditation documents issued for foreign diplomatic and consular staff and the staff of international organizations. With the exception of visits to territories, organizations or sites to which entry requires special authorization under federal law, foreign citizens have the right to move freely within the Russian Federation for personal or business reasons if they have the requisite documents. The right of foreign citizens and stateless persons to work is regulated. Generally, foreign citizens and stateless persons with permanent residence are entitled to the same labour pensions as citizens. The Russian Federation may, under a treaty or on the basis of reciprocity, extradite, for criminal prosecution or to serve a sentence, foreign citizens or stateless persons who have committed acts punishable under both Russian criminal law and the laws of the State requesting extradition. Article 1196 of the Civil Code of 26 November 2001 provides that foreign citizens and stateless persons have the same legal capacity as Russian citizens, except in cases specified by law.

45. The Government also noted the following legal restrictions: foreign citizens with temporary residence are not entitled to change their place of residence freely; foreign citizens are not entitled to vote or to be elected to government bodies at the federal level or in the constituent elements of the Russian Federation, nor can they take part in referendums organized by the Federation or its constituent elements. Foreign citizens, who are permanent residents, however, have the right to vote and to be elected to local government bodies, and to take part in local referendums. Furthermore, foreign citizens do not have the right: to work in State or municipal

service; to occupy a post in the crew of a vessel flying the State flag; to serve as a crew member of a Russian military vessel or other vessel not used for commercial purposes, or of a State-owned or experimental aircraft; to be the captain of a civil aircraft; to be recruited at facilities or in organizations whose activities are related to the security of the Russian Federation; to engage in any other activity or perform any other function to which access for foreign citizens is restricted by federal law. The number of entry invitations issued to foreign citizens for work is subject to a quota. Foreign citizens may not be called up for or voluntarily enrol in the military or be employed in the armed forces or other forces of the Russian Federation.

46. The Economic Covenant was ratified by the Union of Soviet Socialist Republics in 1973 and the rights and freedoms contained thereto are included in the Constitution. For example, everyone has the right of association, including the right to form trade unions for the protection of his or her interests, the right freely to make use of his or her skills and property for entrepreneurial activities and other economic activities not prohibited by law, the right to own private property and to possess, use and dispose of it alone or jointly with others, and the right freely to make use of his or her capacity to work and to choose a type of activity and occupation. Social security is guaranteed. Everyone also has the right to health care and medical assistance, and the right to education. The Constitution guarantees freedom of literary, artistic, scientific, technical and other forms of creativity, freedom of education, and the right to take part in cultural life, to make use of cultural institutions and to have access to cultural treasures.

47. The Russian Federation acceded to the Refugee Convention and the 1967 Protocol in 1992. According to article 8 of the Federal Refugees Act, refugees have the same rights as citizens to medical assistance and social protection and to engage in hired employment or to take part in entrepreneurial activities. Additionally, refugees have other rights ensured by the legislation of the Russian Federation and treaties to which it is a party as well as the legislation of the Federation's constituent elements. Article 12 of the Act provides for the granting of temporary asylum to foreign citizens or stateless persons. Additionally, according to article 63, part 1, of the Constitution, political asylum is granted to foreign citizens and stateless persons in accordance with the generally-recognized standards of international law. People benefiting from political asylum in the Russian Federation have the same rights, freedoms and responsibilities as citizens, except in the instances provided by federal law or treaty. The Russian Federation is not a party to the Convention on Statelessness but stateless persons have certain rights guaranteed by the Constitution and the treaties to which Russia is a party. The Government further provided information about the statelessness in the Baltic States.

## **Spain**

48. The Government of Spain stated that it ratified the Civil and Political Covenant and Economic Covenant on 13 April 1977. All the rights provided in the Civil and Political Covenant are guaranteed by its Constitution, Title 1. On the one hand, the Constitution confers on all aliens the rights to which individuals are entitled, such as the right to life, physical and moral integrity, privacy, and ideological freedom. On the other hand, the entitlements to other "legal" rights are governed by the Organizational Act No. 4/2000, amended by the Organizational Act No. 8/2000, on the rights and freedoms of aliens and their social integration.

Hence, all aliens are entitled to effective judicial protection and legal aid (articles 20 and 22). Aliens with a permit either to stay or to reside in Spain are entitled to the rights to freedom of assembly, association, and to join or form trade unions (articles 7, 8 and 11 respectively). Aliens with the authorization to remain in Spain are entitled to freedom of movement and to choose their place of residence (article 5) and the right to vote in municipal elections subject to reciprocity (article 6). In addition to the Constitution, Title 1 of the Organizational Act No. 4/2000, amended by the Organizational Act No. 8/2000, accords to aliens some of the rights contained in the Economic Covenant. In particular, the Act defines the content of the following economic, social and cultural rights: right to education; right to work and social security; freedom to join or form trade unions and the right to strike; right to health care; right to housing benefits; right to social security and social services; and family reunification (articles 9-14, 16 and 19 respectively).

49. The Government stated that the Refugee Convention and the 1967 Protocol have been part of its legislation since its accession on 22 June 1978. The Convention is completed by Act No. 5/1984, amended by Act No. 9/1994 on the Rights of Asylum and Refugee Status, and by regulations for the application of the Act, adopted by Royal Decree No. 203/1995. According to article 18.1 of the Act, all rights recognized in the case of legally-resident aliens are applicable to refugees. The regulations for the application of the Asylum Act provide for the residence and documentation of asylum-seekers once their applications have been admitted and are being processed. An asylum-seeker has the right to stay on Spanish territory and cannot be expelled until the application has been rejected or accepted. Pending the processing of their applications, asylum-seekers with no financial means may benefit from social, educational and health services provided by the relevant public authorities, as far as the latter's means permit. Depending on the situation of the applicant, the asylum-seeker may be authorized to work in accordance with the regulations in force concerning aliens. Asylum-seekers are also allowed the rights of all minors under 18 years of age to education at all levels, to compulsory basic education and pre-school education; the right to health care for minors and emergency health care for all aliens; the right to basic social services and benefits; and the right to effective judicial protection and legal assistance.

50. The Government reported that it acceded to the Convention on Statelessness on 24 April 1997 and adopted regulations recognizing the status of stateless persons in Royal Decree No. 865/2001. Stateless persons are recognized to have a similar status as refugees and the same rights as granted to aliens legally resident in Spain. Where the right to work is concerned, they are granted benefits similar to those of refugees and the national employment situation will not be taken into account in granting work permits to aliens recognized as stateless who have lost that status. In general, aliens in Spain can be said to be under the protection of law, regardless of their administrative situation. The Government also provided information about the Global Programme to Regulate and Coordinate Aliens' Affairs and Immigration in Spain as well as a Statistical Yearbook of Alien Affairs published by the Government Department for Aliens and Immigration of the Ministry of Interior in 2000; and a report of the Asylum and Refugee Office for the year 2000.

**Thailand**

51. The Government of Thailand stated that it is a party to Civil and Political Covenant, Economic Covenant, Convention on the Elimination of Discrimination Against Women, and the Convention on the Rights of the Child, and is in the process of considering accession to the Convention on the Elimination of Racial Discrimination and the Convention Against Torture. In practice, Thailand recognizes the protection of basic rights of all persons, including non-citizens. Section 4 of the Thai Constitution B.E.2540 (1997) confirms Thailand's belief in the principles of equality of every individual before the law and legal protection against all kinds of discrimination. According to the Office of the National Security Council, non-citizens are persons who are in Thailand but do not have any legal document to prove their citizenship or legal connection with any state, or that they have had their citizenship revoked by their former states. Hence, Thailand's policy towards non-citizens is to recognize their basic rights as individuals in spite of the absence of any documentation or identification to prove their citizenship.

52. The Government noted that having ratified the Civil and Political Covenant and Economic Covenant, Thailand recognizes the importance of the rights enshrined therein. Under chapter 1 of the Constitution, which stipulates that "the human dignity, right and liberty of people shall be protected", Thailand extends the legal protection of the non-derogable rights under the Civil and Political Covenant such as right to life, right to humane treatment, and the right to freedom from slavery, to all people. Regarding the Economic Covenant, the Government is supportive of non-citizens who wish to work while staying in Thailand. Nonetheless, non-citizens must not have violated the Immigration Act B.E. 2522 (1979) and must not seek to be employed in a job infringing upon the national economy and national security. Non-citizens who do not fall under the above restrictions can register as migrant workers with the Ministry of Labour. Employers are required to accord the same protection to non-citizen registered workers as to Thai workers. In general, non-citizens can access health care without discrimination. Non-discriminatory and overall protection of personal property is ensured to all citizens and non-citizens alike. Under the condition that the practices of the religion, beliefs, customs and cultures do not infringe upon the public order or the general social welfare, the Thai Constitution and Government fully protect the mentioned rights of non-citizens. The Thai legal system guarantees marriage rights for non-citizens. To further enhance gender equality, the Office of the Attorney-General is working towards reviewing laws related to marriage. The Government is in the process of drafting the "Child Protection Act" in line with the Convention on the Rights of the Child. The Ministry of Education has established regulations to facilitate enrolment for students who have no Thai nationality legal documents. Under these procedures, according to the National Education Act B.E. 2545 (1999), non-citizen children can receive the normal mandatory level of education while in Thailand.

53. The Government reported that it has not ratified the Refugee Convention, its 1967 Protocol, the Convention on Statelessness, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live. Nonetheless, Thailand has consistently undertaken the humanitarian responsibility of

taking care of millions of displaced persons from neighbouring countries and has hosted a million undocumented migrants. The Government provided further details regarding the objectives of its policy towards displaced persons and indicated that it collaborates with various NGOs to provide shelter, food, medicine, clothing, education and vocational training for the displaced persons. The Government also indicated that exploitation and human rights abuses of non-citizens often stem from the gaps between policies and their implementation. Some non-citizens in Thailand fall prey to smuggling and trafficking networks and are therefore not protected by law. Thai Government agencies are aware of the problems and do the utmost to alleviate the situation.

## **Venezuela**

54. The Government of Venezuela stated that its Constitution recognizes rights without making any distinction between citizens and non-citizens. In recognizing individual rights, the State does not discriminate on the basis of citizen or non-citizen status. Articles 19, 21 and 22 of the Constitution enshrine this equality of status. Inasmuch as it has ratified the Civil and Political Covenant, the State accords non-citizens the rights contained in the Covenant. Moreover, the Civil and Political Covenant is generally consistent with the Constitution and laws relating to specific rights, as illustrated by article 2 of the Aliens Act according to which “foreigners in Venezuela shall enjoy the same civil rights as Venezuelans, subject to exceptions already prescribed or that may be prescribed”. There are several restrictions regarding the right to vote, eligibility for the office of the President of the Republic, and appointment to certain public offices (referring to articles 40, 41 and 227 of the Constitution). In principle, the legal system does not contain substantive restrictions regarding civil rights. There are, however, certain considerations, for example, in connection with entry into the country (referring to article 50 of the Constitution). Article 9 of the Refugees and Asylum-Seekers Act contains exceptions to the granting of refugee status. Mechanisms to protect economic, social and cultural rights are the same as those used to safeguard civil and political rights. The Education Act (articles 2 and 6) fully reflects the provisions of the Economic Covenant. The Government also listed various ILO Conventions that are law in Venezuela. It also noted article 3 of the Social Security Act, stating that, generally, its legal limitations depend on the type of work done and made no distinction between citizens performing particular work on the basis of their legal status. The Government also noted certain exceptions made regarding public service employees as contained in the Civil Service Act (articles 16 and 17). Additionally, according to article 30 of the Labour Act, “When recruiting foreign staff, preference shall be given to persons with children born in Venezuela, those married to Venezuelans, those domiciled in Venezuela or long-term residents.”

55. The Government reported that article 30 of the Constitution recognizes and guarantees the rights to asylum and refuge and prohibits extradition of Venezuelan citizens. Adoption of the Refugee and Asylum-Seekers Act (3 October 2001) is the realization of the State’s desire to comply with the international instruments ratified by Venezuela in this area (articles 2, 22 and 23 of the Act). In accordance with international human rights instruments, the same rights are recognized with regard to asylum-seekers as with regard to other non-citizens. Article 41 of the Refugee and Asylum-Seekers Act, however, establishes important restrictions while stating that “Asylum may not be granted to any person who has been accused, tried or convicted in ordinary courts competent to try non-political offences, or who has committed a crime against peace, a war crime, or a crime against humanity, as defined in international instruments.” Venezuela is

not a party to the Convention on Statelessness and it may thus not be formally invoked as a norm in the domestic legal order. As the Constitution establishes that human rights are progressive, interdependent and indivisible, there are no major differences or restrictions in terms of economic and social rights. The status of stateless persons in no way impairs their exercise of fundamental rights. The Government also noted that the biggest problem facing non-citizens is the fact that the National Refugee Commission, which is to consider applications and determine status, has not yet been established. Additional problems might arise from: the lack of any compendium of specific, up-to-date legislation governing this area and reflecting the development of international instruments; delays by competent bodies in providing timely answers to the requests of non-citizens; and the social and economic situation of Venezuela which prevents the State from providing sustainable solutions to non-citizens' basic needs.

### Notes

<sup>1</sup> The full text of the replies is available for consultation in the Secretariat files.

<sup>2</sup> The Special Rapporteur in preparing the final report further took into account additional replies, information, and publications provided by: CERD, Special Rapporteur on human rights of migrants, United Nations Population Fund, UNHCR, UNAIDS, UN DESA/Population Division, ILO, IOM, OSCE ODIHR, Anti-Slavery International, Centre on Housing Rights and Evictions, Lutheran Immigration and Refugee Service, and Save the Children. The full text of the replies is available for consultation in the Secretariat files.

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