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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

United Nations activities*

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

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I. INTRODUCTION

1. This addendum (E/CN.4/Sub.2/2003/23/Add.1) to the final report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2003/23) supplements the 2002 addendum (E/CN.4/Sub.2/2002/25/Add.1) to the progress report of the Special Rapporteur (E/CN.4/Sub.2/2002/25) and the 2001 addendum (E/CN.4/Sub.2/2001/20/Add.1) to the preliminary report of the Special Rapporteur (E/CN.4/Sub.2/2001/20) by providing updated jurisprudence and concluding observations with respect to the rights of non-citizens. This addendum also includes a new section on the relevant jurisprudence of the Committee Against Torture. The jurisprudence and concluding observations in this addendum cover treaty-monitoring body sessions from March 2002 through March 2003.

2. Drawn from periodic reports on national conditions, the jurisprudence and concluding observations discussed below provide a general overview of the problems most commonly addressed by the monitoring bodies. As such, the information provides a basis for some reflection on the frequency of various problems but does not necessarily portray the current situation in a particular country as of the date of this report. The Special Rapporteur would welcome any supplemental information and corrections.

II. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

3. The Committee on the Elimination of Racial Discrimination (CERD) examined cases of discrimination against non-citizens in its consideration of a number of periodic reports and individual communications at its sixty-first session from 5 to 23 August 2002 and its sixty-second session from 3 to 21 March 2003.

Jurisprudence

4. From March 2002 through March 2003, CERD adopted the following views on the rights of non-citizens, pursuant to its mandate under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination to consider communications.

5. At its sixty-first session, CERD considered *K.R.C. v. Denmark*.¹ In this case, the complainant, a United States national, sought a bank loan in Denmark in order to purchase a car. The application form indicated a requirement of Danish nationality. The complainant was informed that the general bank policy was not to provide loans for foreigners, as collecting the loan would be difficult. In view of her personal circumstances (including lengthy residence and employment in Denmark), however, she was invited to re-submit the application form. Instead, the complainant obtained a loan from another bank at a higher interest rate. The original bank refused to reimburse the complainant for the difference in the terms of the loans. Following investigation of her criminal complaint for alleged racial discrimination, the police and public prosecutor decided not to press charges.

6. The Committee decided that the complaint was inadmissible, for, despite being invited to do so, she had not submitted an application detailing her personal circumstances to the original bank. Accordingly, no act of discrimination had taken place which the Committee could examine.

Concluding observations

7. CERD reflected its continuing concern about various forms of discrimination against non-citizens in its consideration of several States parties' reports at its sixty-first and sixty-second sessions. In doing so, CERD made concluding observations and comments on the rights of non-citizens with regard to numerous countries, reflecting its mandate under the Convention to address discrimination against non-citizens.

8. At its sixty-first session, CERD examined the fourteenth, fifteenth, sixteenth, and seventeenth periodic reports of Hungary.² In doing so, the Committee expressed concern "about the number of allegations on ill-treatment and discrimination against the Roma and non-citizens by law enforcement officials, especially by the police".³ Consequently, the Committee recommended "that the State party intensify its efforts to combat ill-treatment of Roma and non-citizens by the Police, especially through the strict application of relevant legislation and regulations providing for sanctions, the adequate training and instructions to be given to law enforcement bodies, and the sensitization of the judiciary".⁴ CERD also recommended that the Government of Hungary "also consider recruiting more members of minority groups and especially of the Roma minority in law enforcement bodies and strengthening the existing legal aid system for alleged victims, as well as empowering Parliamentary Commissioners to investigate allegations of ill-treatment and discrimination by the Police".⁵

9. In the same concluding observations concerning Hungary, CERD also expressed concern "at the prevailing conditions in refugee shelters and conditions of detention of undocumented immigrants".⁶ The Committee noted progress by the State party in this regard, but "strongly encourages the Hungarian authorities to further improve the existing facilities so as to meet international standards and to provide relevant information thereon in the next periodic report".⁷

10. At the same session, CERD examined the eleventh, twelfth, thirteenth, and fourteenth periodic reports of Yemen.⁸ In its Concluding Observations, the Committee, noting the information given by the delegation regarding the conditions governing the acquisition of Yemeni nationality, recommended "that the State party take effective measures to ensure the right to acquire nationality for non-citizens, including for non-Muslims and children of mixed parents, without any discrimination".⁹

11. Also at the sixty-first session, CERD considered the thirteenth and fourteenth periodic reports of Canada.¹⁰ After its consideration, it expressed "concern about information on patterns of racial discrimination affecting people of African and Asian descent, and at expressions of prejudice in the media against such people as well as against foreigners and refugees".¹¹ Additionally, the Committee noted "with concern that current immigration policies, in particular the present level of 'right of landing fee', may have discriminatory effects on persons coming from poorer countries" as well as "about information that most foreigners who are removed from Canada are Africans or of African descent".¹² Consequently, the Committee recommended "that greater attention be given to the possible discriminatory effect of Canadian immigration policies".¹³ CERD also expressed its concern "about allegations of exclusion of children of migrants with no status from the school system in some of the Provinces and hopes that the situation will be remedied".¹⁴

12. The Committee also examined the reports from Canada in the context of the “aftermath of the 11 September 2001 events”.¹⁵ In doing so, CERD noted with concern that “Muslims and Arabs have suffered from increased racial hatred, violence and discrimination”. The Committee therefore welcomed the statement of the Prime Minister in the Ottawa Central Mosque condemning any acts of intolerance and hatred against Muslims, as well as the reinforcement of Canadian legislation to address hate speech and violence.¹⁶ In this connection, however, the Committee also requested that “the State party ensure that the application of the Anti-terrorism Act does not lead to negative consequences for ethnic and religious groups, migrants, asylum-seekers and refugees, in particular as a result of racial profiling”.¹⁷

13. In examining the fifth periodic report of Estonia,¹⁸ also at its sixty-first session, CERD remained “concerned by the significantly high number of stateless persons residing in Estonia”.¹⁹ While it welcomed “the fact that the procedure of naturalization has been rendered easier for children and disabled persons, the Committee note[d] the existence of a significant discrepancy between the number of people passing the language proficiency test and of those effectively filing applications and acquiring Estonian citizenship”.²⁰ Consequently, the Committee recommended “a thorough investigation into possible barriers which may exist, both in terms of the procedure of naturalization and in relation to lack of motivation to apply for citizenship” and called “for a speedy resolution of the issue concerning the difficulties in obtaining citizenship for children born in Estonia of long-term residents whose legal status has not yet been determined”.²¹ CERD also was “concerned that former Soviet Union military personnel residing in Estonia are prevented from acquiring Estonian citizenship and is of the opinion that their applications should be considered on a case-by-case basis, assessing each case on its individual merits”.²²

14. Also with respect to Estonia, CERD expressed “concern that, according to article 48 of the Estonian Constitution, only citizens can be members of political parties”.²³

15. At its sixty-second session, CERD considered the fourteenth, fifteenth, and sixteenth periodic reports of Morocco.²⁴ In doing so, the Committee noted the submission by the State party to its House of Representatives of two bills in November 2002: one relating to “foreigners’ entry into and residence in the Kingdom of Morocco, illegal immigration and emigration”, and the other to terrorism. CERD drew the attention of the State party to the statement on racial discrimination and counter-terrorism measures adopted by the Committee on 8 March 2002 in United Nations document A/57/18, paragraph 514.²⁵ Paragraph 514 states in relevant part:

Statement on racial discrimination and measures to combat terrorism

The Committee on the Elimination of Racial Discrimination,

1. Condemns unequivocally the terrorist attacks on the United States of America of 11 September 2001;

2. Affirms that all acts of terrorism are contrary to the Charter of the United Nations, the Universal Declaration of Human Rights and other human rights instruments referred to in the Preamble to the International Convention on the Elimination of All Forms of Racial Discrimination;

3. Emphasizes that measures to combat terrorism must be in accordance with the Charter of the United Nations and that they are only legitimate if they respect the fundamental principles and the universally recognized standards of international law, in particular, international human rights law and international humanitarian law;

4. Recalls that the prohibition of racial discrimination is a peremptory norm of international law from which no derogation is permitted;

5. Demands that States and international organizations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin;

6. Insists that the principle of non-discrimination must be observed in all matters, in particular in those concerning liberty, security and dignity of the person, equality before the courts and due process of law, as well as international cooperation in judicial and police matters in these fields;

7. Intends, in this context, to monitor, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, the potentially discriminatory effects of legislation and practices in the framework of the fight against terrorism.²⁶

16. At the same session, the Committee reviewed the fifteenth, sixteenth, and seventeenth periodic reports of the Russian Federation.²⁷ CERD expressed concern that a large number of former Soviet citizens, who previously resided legally in the Russian Federation, have been considered illegal migrants since the entry into force in 2002 of the Federal Laws on Russian Citizenship and on the Legal Status of Foreign Citizens in the Russian Federation. The Committee urged the State party to take steps to regularize the position of this category of people.²⁸

17. CERD also was concerned about consistent reports of discrimination against Meskhetians in Krasnodar Krai, including arbitrary denial of residence registration and of formal recognition of citizenship. The Committee urged the State party to ensure that the Meskhetians in Krasnodar Krai, who arrived in the Russian Federation in 1989-1991, are given residence registration and enjoy rights and benefits of citizenship. Also, the Committee urged the State party to ensure that the local authorities do not pressure Meskhetians to resettle outside Krasnodar Krai.²⁹

18. In addition, the Committee expressed concern about the incidence of violent racist attacks against ethnic minorities by, inter alia, skinheads and neo-Nazis. In this regard, the Committee recommended that the State party strengthen its efforts to prevent racist violence and to protect members of ethnic minorities and foreigners, including refugees and asylum-seekers. Also, the Committee requested that the State party provide a list of the cases that have been investigated and brought before the courts in its next periodic report.³⁰

19. CERD considered the initial and second periodic reports of Saudi Arabia at its sixty-second session.³¹ In doing so, it welcomed the recent initiative taken to include non-Saudis in a health insurance system. The Committee also noted with satisfaction that measures are

taken to put an end to the practice of employers who retain the passports of their foreign employees, in particular of domestic workers and noted also the high number of schools that have been authorized so that children of migrant workers can be educated in schools offering programmes designed in their country of origin.³²

20. The Committee, however, was concerned that a Saudi woman is unable to transmit her nationality to her child when she is married to a foreign national; and that a foreign man is unable to acquire Saudi nationality in the same manner as a foreign woman. The Committee requested the State party to consider the possibility of modifying these provisions in order to conform to article 5 (d)(iii) of the Convention.³³

21. Also with respect to Saudi Arabia, CERD expressed concern at allegations that a disproportionate number of foreigners are facing the death penalty. The Committee encouraged the State party to cooperate fully with the Special Rapporteur on extrajudicial, summary and arbitrary executions who has requested information on several cases of migrant workers who have not received legal assistance and have been sentenced to death.³⁴

22. The Committee also requested information on the announced "Saudisation Plan", in particular on the implication of such plan on migrant workers.³⁵ CERD concluded by requesting the State party to include in its next periodic report statistics, disaggregated by migrants' national origin, which would provide a better understanding of the economic and social standing of non-citizens in Saudi Arabia.³⁶

23. In its consideration of the fifth periodic report of Slovenia,³⁷ the Committee was encouraged by the steps taken by the State party to address the long-standing issue of persons living in Slovenia who have not been able to obtain citizenship. It was nonetheless concerned that many of the persons who have not acquired Slovenian citizenship may still experience administrative difficulties in complying with the specific requirements contained in the law. The Committee recommended that the State party give priority to addressing this issue and, taking into account the difficulties that have arisen, ensure that the new citizenship legislation is implemented in a non-discriminatory manner.³⁸ The Committee was concerned that a significant number of persons who have been living in Slovenia since independence without Slovenian citizenship, may have been deprived under certain circumstances of their pensions, of apartments they were occupying, and of health care and other rights.³⁹

24. In considering the fifth to sixteenth periodic reports of Côte d'Ivoire,⁴⁰ CERD expressed concern regarding abusive interpretation of electoral laws with respect to ethnic and religious groups. Noting that such interpretations have contributed to the current crisis in the country, CERD recommended that the State party re-examine the provisions of its legislation in order to bring them into conformity with the Convention particularly as to the right of all citizens to take part in the political life of the country.

III. HUMAN RIGHTS COMMITTEE

25. From March 2002 through March 2003, the Human Rights Committee met for its seventy-fifth session from 8 to 26 July 2002, its seventy-sixth session from 21 October to 8 November 2002, and its seventy-seventh session from 17 March to 4 April 2003.

Jurisprudence

26. The Human Rights Committee, established pursuant to article 28 of the International Covenant on Civil and Political Rights, has adopted the following views from March 2002 through February 2003 on the rights of non-citizens, reflecting its mandate under the (first) Optional Protocol to the International Covenant on Civil and Political Rights to consider individual communications.

27. At its seventy-fourth session, the Committee considered the case of *Mümtaz Karakurt v. Austria*.⁴¹ Mr. Karakurt, a citizen of Turkey, alleged a violation of his rights to equality before the law and to be free of discrimination in breach of article 26 of the Covenant. Specifically, Mr. Karakurt challenged the lawfulness of Section 53 (1) of the Industrial Relations Act (*Arbeitsverfassungsgesetz*), which limited the entitlement to stand for election to work councils (for private employers) to Austrian nationals or members of the European Economic Area (EEA).

28. The Committee recalled its constant jurisprudence that not all distinctions made by a State party's law are inconsistent with article 26, if they are justified on reasonable and objective grounds. The Committee also recalled that, although it has found in one case (Communication No. 658/1995, *Van Oord v. The Netherlands*) that an international agreement, such as that creating the European Economic Area, that confers preferential treatment to nationals of a State party to that agreement might constitute an objective and reasonable ground for differentiation, no general rule can be drawn therefrom to the effect that such an agreement in itself constitutes a sufficient ground with regard to the requirements of article 26 of the Covenant and that every case must be judged on its own facts.⁴²

29. In the present case, the Committee took into account the function of a member of a work council, for example, to promote staff interests and to supervise compliance with work conditions. In view of this, the Committee concluded that it is not reasonable to base a distinction between aliens concerning their capacity to stand for election for a work council solely on their different nationality. Accordingly, the Committee found that the author has been the subject of discrimination in violation of article 26.⁴³ Pursuant to article 2 (3) (a) of the Covenant, the Committee pointed out that the State party is under an obligation to provide the author with an effective remedy, in this case consisting of modifying the applicable law so that no improper differentiation is made between persons in the author's situation and EEA nationals.⁴⁴

Concluding observations

30. From March 2002 through March 2003 the Human Rights Committee also adopted a number of concluding observations and comments regarding the rights of non-citizens under the Covenant.

31. At its seventy-fifth session, the Committee considered the third periodic report of Yemen.⁴⁵ In doing so, the Committee noted the discriminatory situation that affects women in the acquisition and transmission of nationality (articles 3 and 26 of the Covenant) and recommended that the State party eliminate from its legislation all discrimination between men and women with regard to the acquisition and transmission of nationality.⁴⁶

32. In considering the same report, the Committee also expressed its concern about the effects of post-11 September 2001 anti-terrorism efforts on the human rights situation in Yemen, in relation to both nationals and foreigners. It was particularly concerned, in this regard, at the attitude of the security forces, including Political Security, proceeding to arrest and detain anyone suspected of links with terrorism, in violation of the guarantees set out in the Covenant (art. 9). The Committee also expressed its concern about cases of expulsion of foreigners suspected of terrorism without an opportunity for them to legally challenge such measures, including expulsions that are carried out without taking into account the risks to the physical integrity and lives of the persons concerned in the country of destination (arts. 6 and 7). The Committee recommended that the State party ensure that the measures taken in the name of the campaign against terrorism are within the limits of Security Council resolution 1373 and are fully consistent with the provisions of the Covenant. It also requested the State party to ensure that the fear of terrorism does not become a source of abuse.⁴⁷

33. At the same session, the Committee considered the fourth periodic report of New Zealand.⁴⁸ The Committee was concerned the lawfully permanent residents of New Zealand required a return visa to re-enter New Zealand. In the Committee's view, the requirement may raise issues under article 12 (4) of the Covenant which states: "No one shall be arbitrarily deprived of the right to enter his [or her] own country." The Committee therefore recommended that the State party review its legislation to ensure compliance with article 12 (4) of the Covenant.⁴⁹

34. At its seventy-six session, the Committee considered the third and fourth periodic reports of Egypt.⁵⁰ The Committee drew the attention of the Government of Egypt to the discrimination affecting women as regards transmission of nationality to their children when their spouses are not Egyptian and as regards the rules governing inheritance, both in contravention to article 3 and 26 of the ICCPR. The Government was encouraged to do away with all discrimination between men and women in its domestic legislation.⁵¹

35. At its seventy-seventh session, the Human Rights Committee considered the second periodic report of Estonia.⁵² The Committee regretted that the concerns of its previous concluding observations have not been met, and remained deeply concerned by the high number of stateless persons in Estonia and the comparatively low number of naturalizations. While the Committee noted that the State party has adopted a number of measures designed to facilitate naturalization, it also noted that a large number of stateless persons do not even initiate this procedure. The Committee took note of the different reasons underlying this phenomenon but considered that this situation has adverse consequences in terms of the enjoyment of the Covenant rights and that the State party has a positive duty to ensure and protect those rights.⁵³

36. Consequently, the Committee recommended that the State party seek to reduce the number of stateless persons, with priority for children, inter alia by encouraging their parents to apply for Estonian citizenship on their behalf and by promotion campaigns in schools. The State party was invited to reconsider its position as to the accessibility of Estonian citizenship to persons who have taken the citizenship of another country during the period of transition and to stateless persons. The State party was also encouraged to conduct a study on the socio-economic consequences of statelessness in Estonia, including the issue of marginalization and exclusion, keeping in mind articles 24 and 26 of the Covenant.⁵⁴

37. Taking into account the considerable number of non-citizens residing in the State party as their own country, the Human Rights Committee was concerned about legislation prohibiting non-citizens from being members of political parties. Keeping article 22 of the Covenant in mind, the Committee recommended that the State party give due consideration to the possibility for non-citizens to become members of political parties.⁵⁵

IV. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

38. Between March 2002 and February 2003 the Committee on the Elimination of Discrimination against Women (CEDAW) met for its twenty-seventh session from 3 to 21 June 2002 and exceptional session from 5 to 23 August 2002.

39. The Committee considered a number of periodic reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women and issued the following comments and concluding observations regarding the rights of non-citizens under the Convention.

Concluding observations

40. At its twenty-seventh session CEDAW considered the fourth and fifth periodic reports of Denmark.⁵⁶ In doing so, the Committee expressed concern that the situation of foreign married women with temporary residence permits who experience domestic violence will worsen when an amendment to the Aliens Act entered into force on 1 July 2002. The amendment increased the required number of years of residence from three to seven before a permanent residence permit may be obtained and thus may dissuade victims of domestic violence from leaving their abuser.⁵⁷ Furthermore, CEDAW was worried that such women's fear of expulsion will be a deterrent to their seeking assistance or taking steps to seek separation or divorce.⁵⁸ The Committee recommended that revocation of temporary residence permits of foreign married women who experience domestic violence and legislative changes on residency requirements should not be undertaken without a full assessment of the impact of such measures on these women.⁵⁹

41. With respect to the third and fourth periodic reports of Tunisia, also considered at the twenty-seventh session, the Committee, while welcoming the legislative reforms introduced by the State party aimed at eliminating discrimination against women, was still concerned about the remaining discriminatory provisions, especially in the nationality law, so as to bring them into conformity with article 9 of the Convention.⁶⁰

42. Similarly, CEDAW expressed concern that aspects of the Government of Zambia's law on nationality continue to discriminate against female spouses.⁶¹ Consequently, the Committee recommended that the legislation be amended in conformity with article 9 of the Convention and that court decisions recognizing women's equal rights be enforced.⁶²

V. COMMITTEE ON THE RIGHTS OF THE CHILD

43. Between March 2002 and February 2003 the Committee on the Rights of the Child (CRC) met for its thirtieth session from 30 May to 7 June 2002, its thirty-first session from 16 September to 4 October 2002, and its thirty-second session from 13 to 31 January 2003.

44. During those sessions the CRC made concluding observations and comments on the rights of non-citizen children with regard to several countries, reflecting its mandate to foster implementation of the Convention on the Rights of the Child.

Concluding observations

45. At its twenty-sixth session, during its consideration of the initial periodic report of Israel,⁶³ the Committee expressed concern that discrimination, contrary to article 2 of the Convention, persists in the State party, and that non-discrimination is not expressly guaranteed under the Constitution. In particular, the Committee was concerned about “inequalities in the enjoyment of the economic, social and cultural rights (i.e. access to education, health care and social services) of . . . children of foreign workers, and of the rights and freedoms of Palestinian children in the occupied territories”.⁶⁴

46. At the same session, while considering the second periodic report of the United Kingdom of Great Britain and Northern Ireland,⁶⁵ the Committee, while welcoming the adoption of the Race Relations (NI) Order 1997 and the State party’s commitment to end discrimination in its nationality law between children born in and out of wedlock, expressed concern that the principle of non-discrimination is not fully implemented for all children in all parts of the State party and that there is unequal enjoyment of economic, social, cultural, civil and political rights, in particular for . . . asylum-seeking and refugee children.⁶⁶ The Committee also recommended that the State party “amend the nationality law to allow transmission of nationality through unmarried as well as married fathers”.⁶⁷

47. At its thirty-second session in January 2003, the CRC considered the second periodic report of Iceland.⁶⁸ In doing so, it welcomed efforts by the State party to address their needs (e.g. the 2003 Law on Foreigners, the appointment of a special representative in the State police, publications on cultural tolerance for health professionals, and the establishment of an intercultural centre in Reykjavik). Nonetheless, it remained concerned that further proactive efforts needed to be taken to proactively address issues of racism that may arise with growing numbers of immigrants in Iceland. To this end, it recommended, inter alia, to:

(a) Guarantee all children within its jurisdiction all the rights contained in the Convention in accordance with article 2;

(b) Develop comprehensive and coordinated policies to address the developing phenomenon of immigration, including public information campaigns to promote tolerance, as well as monitor and collect data on racially-motivated acts;

(c) Study the situation of immigrant children in the municipalities, especially in the school system, and the effectiveness of measures taken to facilitate their integration;

(d) Include in the next report, measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of General Comment No. 1 on article 29 (1) of the Convention (aims of education).⁶⁹

48. At the same session, the Committee also considered the second periodic report of the Government of the Czech Republic.⁷⁰ The Committee recommended that the State party continue and strengthen its legislative efforts to integrate the right to non-discrimination (article 2 of the Convention) fully in all relevant legislation concerning children and that this right is effectively applied in all political, judicial and administrative decisions and in projects, programmes and services which have an impact on all children, including non-citizen children and children belonging to minority groups, such as the Roma. The Committee further recommended the State party to continue to carry out comprehensive public education campaigns and undertake all necessary proactive measures to prevent and combat negative societal attitudes.⁷¹

49. The Committee also welcomed the drafting process of the new Foster Care Law defining modalities of education and accommodation for foreigners who are also unaccompanied minors. The Committee remains concerned that: (a) special care and protection is not accorded to all asylum-seekers, particularly those in the 15-18 year age group and that children aged under 15 years may be placed in diagnostic institutions which are not equipped to provide the special care these children require; (b) children may be placed in detention facilities for foreigners for prolonged periods; and (c) compulsory school attendance is not always observed.⁷² In this context, the CRC recommended that the State party: (a) guarantee special protection and care to all child asylum-seekers with respect to their special needs, including the 15-18 year age group; (b) avoid any form of detention of asylum-seekers under 18 years of age; (c) facilitate access of children to legal and psychological assistance, including enabling contact with non-governmental organizations offering such assistance; and (d) pursue implementation of the new foster care modalities contemplated by the 2002 legislation.

50. With respect to the consideration of the second periodic report of Romania⁷³ at the same session, the CRC, while welcoming the adoption of the new legislation (Law No. 48/2002) and other efforts to counter discrimination and address the concerns expressed by CERD (United Nations document CERD/C/304/Add.85, paras. 9-16), was concerned that the principle of non-discrimination is not fully implemented for all children in all parts of the State party; that unequal enjoyment of economic, social, cultural, civil and political rights persists (e.g. for asylum-seeking and refugee children, foreign children, Roma and other minority groups).⁷⁴ Consequently, the Committee recommended that effective measures be taken to address discriminatory attitudes or prejudices, in particular of children belonging to those vulnerable groups. It also recommended that the State party fully and effectively implement legal measures to prevent discrimination which are already adopted and to ensure that the Constitution is in full compliance with article 2 of the Convention.⁷⁵

51. After its consideration of the initial periodic report of Estonia⁷⁶ in January 2003, the Committee expressed concern that current discriminatory attitudes against minority language communities (e.g. the Russian-speaking community), non-citizens, especially those without legal status, and other disadvantaged groups, directly or indirectly may restrict the rights guaranteed

under the Convention to children belonging to those groups. In particular, the Committee is concerned that: (a) there are no legislative provisions defining crimes with a racist element as racist crimes, or for racist motivation to be taken into account by the courts as a factor when sentencing. In this regard, the Committee is concerned at the effectiveness of measures to guarantee the security of children who may be victims of racist acts; (b) there is no legislation at present prohibiting discrimination in housing, and access to education and public services; (c) a high proportion of children from Russian-speaking communities are stateless; (d) large minority groups (e.g. the Russian-speaking community, which accounts for approximately 30 per cent of the population) are disproportionately overrepresented among low income and unemployed households, and underrepresented in public service.⁷⁷

52. Consequently, the CRC recommended that the State party (a) take effective measures, including enacting or rescinding legislation where necessary, to ensure that all children enjoy all the rights set out in the Convention without discrimination, in accordance with article 2; (b) study the effectiveness of the measures taken to counter all forms of discrimination; (c) consider the adoption of provisions to criminalize and punish racially-motivated crimes; and (d) carry out comprehensive public education campaigns, to prevent and combat negative societal attitudes in this regard.⁷⁸

53. Regarding the second periodic report of the Republic of Korea,⁷⁹ the Committee expressed concern that education and social welfare laws and regulations do not include specific provisions providing for the welfare and rights of foreign children, in particular those of undocumented migrant workers.⁸⁰ The Committee therefore recommended that the State party: (a) amend domestic laws, in particular those on education and social welfare, to include specific provisions which ensure equal access to services for all foreign children, including those of undocumented migrant workers; and (b) consider ratifying the 1990 International Convention on the Rights of All Migrant Workers and Members of Their Families.⁸¹

54. In the concluding observations on the second periodic report of the Government of Italy,⁸² the CRC noted the establishment of several Observatories on discrimination in the State party as well as the provisions on discrimination in Law 40/98 (Regulations of Immigration and Rules on the Conditions of the Foreigner). Nonetheless, the Committee is concerned at racist incidents against minorities; the use of hate speech in public presentations; the disparities in the enjoyment of economic and social rights, particularly health, social welfare, education, and housing experienced by poor children, Roma children, non-Italian children, including unaccompanied minors, and disabled children.⁸³ The Committee also recommended that the State party study promptly the situation of foreign children in detention, ensure their full rights without discrimination especially to education and ensure their right to integration into society.⁸⁴

VI. COMMITTEE AGAINST TORTURE

55. The Committee Against Torture has had the opportunity to consider the rights of non-citizens under the Convention against Torture. The rights of non-citizens have arisen particularly in the context of expulsion of non-citizens.

56. Article 3 of the Convention reads:

1. No State party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁸⁵

Jurisprudence

57. The Committee Against Torture (CAT) considers individual communications pursuant to its mandate under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to consider communications.

58. Prior to 2002, CAT has considered a number of individual communications alleging a violation of article 3 due to the pending deportation of the petitioners.⁸⁶ CAT relied on its article 3 jurisprudence and its General Comment No. 1 on article 3 in deciding the merits of these communications. In doing so, CAT recalled that it must decide whether there were substantial grounds for believing that the respective authors of the communications would be in danger of being subjected to torture upon return to the country in question. Foremost, the Committee must determine whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. In reaching its decisions, the Committee noted that it must take into account all relevant considerations, pursuant to article 3(2), including the existence of a consistent pattern of gross, flagrant, or mass violations of human rights. The lack of such a pattern, however, does not mean that a person might not be subjected to torture in his or her specific circumstances.⁸⁷

59. Turning to its General Comment No. 1, CAT reasoned that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable”.⁸⁸ General Comment No. 1 also requires that the author “establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present”.⁸⁹ Also according to General Comment No. 1, the following information, while not exhaustive, would be pertinent:

(a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights (see article 3, paragraph 2)?

(b) Has the author been tortured or maltreated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?

(c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had after-effects?

(d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?

(e) Has the author engaged in political or other activity within or outside the State concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question?

(f) Is there any evidence as to the credibility of the author?⁹⁰

60. At its twenty-eighth session from 29 April to 17 May 2002, CAT issued the following decisions regarding communications alleging violations or pending violations of article 3.

61. On 25 May 2002, CAT issued its decision in the case of *Chedli Ben Ahmed Karoui v. Sweden*.⁹¹ Mr. Karoui is a citizen of Tunisia who faced deportation by Sweden after the rejection of his petition for asylum. Mr. Karoui was also an active member of the Islamic Al-Nahdha Movement since 1981. Because of his association with the Al-Nahdha Movement, he was expelled from school in 1979 and arrested and detained seven times between 1981 and 1986. In 1999, after leaving Tunisia, he was tried in absentia and sentenced to eight years' imprisonment for his support of an outlawed organization.

62. In addition to the above information, which was deemed by CAT to be factual, the Committee referred to its consideration of the periodic report submitted by Tunisia in 1997. In its concluding observations on that report, it expressed concern over the reported widespread practice of torture and other cruel and inhuman treatment perpetrated by police and security forces. The Committee also relied on later human rights reports from reliable sources which suggested that a pattern of detention, imprisonment, torture, and ill-treatment of persons accused of political opposition activities, including links with the Al-Nahdha Movement, still existed in Tunisia. After considering both the general human rights situation in Tunisia as well as the past persecution of Mr. Karoui and the fact that he was tried and convicted in absentia, the Committee concluded that the removal of Mr. Karoui to Tunisia would constitute a breach of article 3 of the Convention.

63. In *E.T.B. v. Denmark*,⁹² the Committee considered the case of a Georgian citizen of Mengrel ethnicity facing deportation from Denmark. The author of the communication stated that she and her deceased husband, M.B., were working for the former Georgian President, Gamsakhurdia (also a Mengrel), and his political party, the Zviadists, and for the Mengrel cause in Georgia. The complainant has been a member of the Zviadists since mid-1992, and started nursing wounded Zviadists after she became a nurse in 1993. Her husband and her father had fought for the Mengrel partisan army. On 19 November 1993, the complainant was arrested together with 30 other women, among them her mother, while participating in an illegal demonstration of about 1,500 persons in her home city Zugditi, against the Shevardnadze Government. After being released, the complainant moved with her family to Gegetjkori. Meanwhile, the complainant's husband lived in a Mengrel partisan camp in the forest nearby. On 18 August 1994 he was wounded and captured by the Georgian army, and thereafter executed. She fled Georgia on 3 February 1996 and applied for asylum in Denmark. Danish authorities rejected her application because the facts she alleged conflicted with public information on the situation in Georgia and were not mentioned in her father's asylum application.

64. CAT considered the above information as well as the inconsistencies in the applicant's testimony. The Committee reaffirmed its jurisprudence that torture victims cannot be expected to recall entirely consistent facts relating to events of extreme trauma, but they must be prepared to advance such evidence as there is in support of such a claim. The political activities that the complainant claims to have carried out since she became a member of the Zwiadists, were not of such a nature as to conclude that she risks being tortured upon her return. Nor did any of the information provided reveal that the complainant risks being subjected to torture because of her husband's partisan work and execution by the governmental forces. This view was further supported by the fact that the complainant was not the object of interest by Georgian authorities after she was released from detention in 1993, and until she left the country in 1996. Consequently, the Committee concluded that the complainant had not substantiated her claim that she risks being subjected to torture upon return to Georgia and thus her return would not constitute a breach of article 3.

65. In *F.F.Z. v. Denmark*,⁹³ CAT considered the case of a citizen of Libya facing deportation from Denmark. The complainant's cousin was a member of the Islamic Movement Al-Jama'a al-Islamiya al-Libya. The cousin often borrowed the complainant's car which brought the complainant to the attention of Libyan authorities. The complainant alleged to have been arrested on three occasions in Libya. On at least one occasion, he was arrested, blindfolded, and taken to an unknown place, where he underwent interrogation during which he was subjected to violence, and forced to confess that he was involved in the Islamic movement. The Government of Libya, however, indicated that his arrests were not on political grounds, that the complainant was issued an exit stamp to leave Libya, and that his family has not been harassed.

66. The Committee had to determine whether the person concerned would be *personally* at risk of being subjected to torture in the country to which he would be expelled and that the existence of a consistent pattern of gross, flagrant, or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a given person would be in danger of being subjected to torture after returning to his country. In deciding whether the expulsion of the complainant to Libya would have the *foreseeable* consequence of exposing him to a *real and personal risk* of being arrested and tortured, CAT found that the political activities that the complainant claimed to have carried out were not of such a nature as to conclude that he ran a real risk of being tortured upon his return and, indeed, that he did not seem to be particularly exposed to persecution by the Libyan authorities. Consequently, the Committee concluded that the removal of the complainant to Libya would not constitute a breach of article 3 of the Convention.

67. In *Y.H.A. v. Australia*,⁹⁴ the Committee considered the case of a Somali national from the Shikal clan. The complainant alleged that he was detained and tortured by the United Somali Congress. He further alleged that, as a member of a minority clan and his former work as an informer with the United Nations Operations in Somalia, he faced the threat of torture by the United Somali Congress if returned to Somalia.

68. The Committee recalled that, even if the evidence of past torture provided by the petitioner was not in question, the aim of the Committee's examination of the communication is to ascertain whether the petitioner would risk being subjected to torture now, if returned to Somalia. Given the composition of the new Transitional Government, including members of the

Shikal clan itself, the Committee was of the opinion that the complainant would not now face such a risk. Consequently, CAT concluded that the complainant's removal to Somalia by the State party would not constitute a breach of article 3 of the Convention.

69. In *S.T. v. The Netherlands*,⁹⁵ CAT considered the case of a Sri Lankan citizen of Tamil ethnicity facing deportation by The Netherlands. The complainant had worked for the Tamil Tigers ("LTTE") in an auto-repair shop in Killinochi at which he also took care of wounded Tamil Tigers and distributed food supplies. The complainant alleged that he was arrested on several occasions by Sri Lankan authorities and subjected to torture. He stated that in each case he was released after one day.

70. The Committee recalled that the existence of a consistent pattern of gross, flagrant, or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country, and that additional grounds must be adduced to show that the individual concerned would be personally at risk. The Committee was not of the view that the complainant is suspected of involvement with the LTTE, considering the fact that he was held for only one day on each occasion of his arrest and was never actually a member of this organization. The Committee also noted that the petitioner only worked for two months for the LTTE, six years prior to his first arrest. For these reasons, the Committee found that the complainant did not provide substantial grounds for believing that he would be in danger of being tortured were he to be returned to Sri Lanka and that such danger is personal and present. Consequently, his removal would not constitute a breach of article 3 of the Convention.

Notes

¹ *K.R.C. v. Denmark*, Case No. 23/2002.

² Concluding observations of the Committee on the Elimination of Racial Discrimination: Hungary, United Nations document CERD/C/61/CO/6 (23 August 2002).

³ *Ibid.*, para. 12.

⁴ *Ibid.*, para. 13.

⁵ *Ibid.*

⁶ *Ibid.*, para. 14.

⁷ *Ibid.*

⁸ Concluding observations of the Committee on the Elimination of Racial Discrimination: Yemen, United Nations document CERD/C/61/CO/10 (23 August 2002).

⁹ *Ibid.*, para. 14.

¹⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, United Nations document CERD/C/61/CO/3 (23 August 2002).

¹¹ Ibid., para. 21

¹² Ibid., para. 22.

¹³ Ibid.

¹⁴ Ibid., para. 23.

¹⁵ See *ibid.*, para. 24.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Concluding observations of the Committee on the Elimination of Racial Discrimination: Estonia, United Nations document CERD/C/61/CO/4 (23 August 2002).

¹⁹ Ibid., para. 10.

²⁰ Ibid.

²¹ Ibid.

²² Ibid., para. 11.

²³ Ibid., para. 16.

²⁴ Concluding observations of the Committee on the Elimination of Racial Discrimination: Morocco, United Nations document CERD/C/62/CO/5 (21 March 2003).

²⁵ Ibid., para. 19.

²⁶ United Nations document A/57/18, para. 514, Statement on racial discrimination and measures to combat terrorism (8 March 2002).

²⁷ Concluding observations of the Committee on the Elimination of Racial Discrimination: Russian Federation, United Nations document CERD/C/62/CO/7 (21 March 2003).

²⁸ Ibid., para. 12.

²⁹ Ibid., para. 15.

³⁰ Ibid., para. 27.

³¹ Concluding observations of the Committee on the Elimination of Racial Discrimination: Saudi Arabia, United Nations document CERD/C/62/CO/8 (21 March 2003).

³² Ibid., para. 6.

³³ Ibid., para. 14.

³⁴ Ibid., para. 18.

³⁵ Ibid., para. 19.

³⁶ Ibid., para. 20.

³⁷ Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovenia, United Nations document CERD/C/62/CO/9 (21 March 2003).

³⁸ Ibid., para. 13.

³⁹ Ibid., para. 14.

⁴⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: Côte d'Ivoire, United Nations document CERD/C/62/CO/1 (21 March 2003).

⁴¹ Communication 964/2000, *Mümtaz Karakurt v. Austria*, United Nations document CCPR/C/74/D/965/2000 (29 April 2002).

⁴² Ibid., para. 8.4.

⁴³ Ibid.

⁴⁴ Ibid., para. 10.

⁴⁵ Concluding observations of the Human Rights Committee: Yemen, United Nations document CCPR/CO/75/YEM (26 July 2002).

⁴⁶ Ibid., para. 11.

⁴⁷ Ibid., para. 18.

⁴⁸ Concluding observations of the Human Rights Committee: New Zealand, United Nations document CCPR/CO/75/NZL (7 August 2002).

⁴⁹ Ibid., para. 12.

⁵⁰ Concluding observation of the Human Rights Committee: Egypt, United Nations document CCPR/CO/76/EGY (1 November 2002).

⁵¹ Ibid., para. 11.

⁵² Concluding observation of the Human Rights Committee: Estonia, United Nations document CCPR/CO/77/EST (3 April 2003).

⁵³ Ibid., para. 14.

⁵⁴ Ibid.

⁵⁵ Ibid., para. 17.

⁵⁶ Report of the Committee on the Elimination of Discrimination against Women, twenty-seventh session, United Nations document A/57/38 (Part II), paragraphs 256-302 (8 October 2002).

⁵⁷ Ibid., para. 347.

⁵⁸ Ibid.

⁵⁹ Ibid., para. 348.

⁶⁰ Ibid., para. 190.

⁶¹ Ibid., para. 254.

⁶² Ibid., para. 255.

⁶³ Concluding observations of the Committee on the Rights of the Child: Israel, United Nations document CRC/C/15/Add.195 (9 October 2002).

⁶⁴ Ibid., para. 26.

⁶⁵ Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, United Nations document CRC/C/15/Add.188 (9 October 2002).

⁶⁶ Ibid., para. 22.

⁶⁷ Ibid., para. 23 (d).

⁶⁸ Concluding observations of the Committee on the Rights of the Child: Iceland, United Nations document CRC/C/15/Add.203 (31 January 2003).

⁶⁹ Ibid., para. 23.

⁷⁰ Concluding observations of the Committee on the Rights of the Child: Czech Republic, United Nations document CRC/C/15/Add.201 (31 January 2003).

⁷¹ Ibid., para. 29.

⁷² Ibid., para. 56.

⁷³ Concluding observations of the Committee on the Rights of the Child: Romania, United Nations document CRC/C/15/Add.199 (31 January 2003).

⁷⁴ Ibid., para. 25.

⁷⁵ Ibid., para. 26.

⁷⁶ Concluding observations of the Committee on the Rights of the Child: Estonia, United Nations document CRC/C/15/Add.196 (31 January 2003).

⁷⁷ Ibid., para. 23.

⁷⁸ Ibid., para. 24.

⁷⁹ Concluding observations of the Committee on the Rights of the Child: Republic of Korea, United Nations document CRC/C/15/Add.197 (31 January 2003).

⁸⁰ Ibid., para. 58.

⁸¹ Ibid., para. 59.

⁸² Concluding observations of the Committee on the Rights of the Child: Italy, United Nations document CRC/C/15/Add.198 (31 January 2003).

⁸³ Ibid., para. 20.

⁸⁴ Ibid., para. 21.

⁸⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3, General Assembly resolution 39/46, [annex, 39 United Nations GAOR Supp. (No. 51) at 197, United Nations document A/39/51 (1984)], *entered into force* 26 June 1987.

⁸⁶ Communication No. 144/1999, *A.M. v. Switzerland* (14 November 2000); Communication No. 147/1999, *Y.S. v. Switzerland* (14 November 2000); Communication No. 160/2000, *P.R. v. Spain* (23 November 2000); Communication No. 49/1996, *S.V. et al. v. Canada* (15 May 2001); Communication No. 123/1998, *Z.Z. v. Canada* (15 May 2001); Communication No. 128/1999, *X.Y. v. Switzerland* (15 May 2001); Communication No. 134/1999, *M.K.O. v. The Netherlands* (9 May 2001); Communication No. 142/1999, *S.S. and S.A. v. The Netherlands* (11 May 2001); Communication No. 150/1999, *S.L. v. Sweden* (11 May 2001).

⁸⁷ See Communication No. 144/1999, *A.M. v. Switzerland* (14 November 2000).

⁸⁸ Committee Against Torture, General Comment No. 1: Implementation of article 3 of the Convention in the context of article 22, paragraph 6 (21 November 1997).

⁸⁹ Ibid., para. 7.

⁹⁰ Ibid., para. 8.

⁹¹ Communication No. 185/2001, *Chedli Ben Ahmed Karoui v. Sweden*, United Nations document CAT/C/28/D/185/2001 (25 May 2002).

⁹² Communication No. 146/1999, *E.T.B. v. Denmark*, United Nations document CAT/C/28/D/146/1999 (24 May 1999).

⁹³ Communication No. 180/2001, *F.F.Z. v. Denmark*, United Nations document CAT/C/27/D/162/2000 (24 May 2002).

⁹⁴ Communication No. 162/2000, *Y.H.A. v. Australia*, United Nations document CAT/C/27/D/162/2000 (27 March 2002).

⁹⁵ Communication No. 175/2000, *S.T. v. The Netherlands*, United Nations document CAT/C/27/D/175/2000 (21 March 2002).
