



General Assembly

Distr.: General
19 December 2011

Original: English

Human Rights Council

Nineteenth session

Agenda items 2 and 3

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Human rights and arbitrary deprivation of nationality

Report of the Secretary-General

Summary

The present report is submitted pursuant to resolution 13/2 of the Human Rights Council. In the report, the Secretary-General analyzes the impact of the arbitrary deprivation of nationality on the enjoyment of human rights, including civil, political, economic, social and cultural rights. He notes that, while international human rights law clearly establishes the obligation of all States to respect the human rights of all individuals without distinction of any kind, States may restrict the enjoyment of some international human rights vis-à-vis non-citizens, subject to stringent conditions related to the principle of non-discrimination.

The Secretary-General further notes that the arbitrary deprivation of nationality leads the affected persons to become non-citizens with respect to the State that deprived them of their nationality. Arbitrary deprivation of nationality, therefore, effectively places the affected persons in a more disadvantaged situation concerning the enjoyment of their human rights because some of these rights may be subjected to lawful limitations that otherwise would not apply, but also because these persons are placed in a situation of increased vulnerability to human rights violations.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–4	3
II. Impact of arbitrary deprivation of nationality on the enjoyment of human rights...	5–44	4
A. Political rights	5–7	4
B. Right to freedom of movement	8–13	5
C. Right to liberty	14–16	6
D. Right to an effective remedy	17–20	8
E. Right to family life	21–22	9
F. Right to work	23–26	9
G. Right to social security	27–29	11
H. Right to health	30–32	11
I. Right to adequate housing	33–35	12
J. Children’s rights	36–38	13
K. Women’s rights	39–42	14
L. Minority rights	43–44	15
III. Conclusions	45–47	16

I. Introduction

1. In its resolution 13/2 on human rights and arbitrary deprivation of nationality, the Human Rights Council requested the Secretary-General to prepare a report on the impact that arbitrary deprivation of nationality may have on the enjoyment by persons of their human rights, including civil, political, economic, social and cultural rights, and to present it to the Council at its nineteenth session.

2. In the present report, it is recalled that States are bound to respect the human rights of all persons in their territory or under their jurisdiction, irrespective of their nationality or lack thereof. The Universal Declaration of Human Rights, among others, declares that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration. Other international human rights instruments, including the International Covenant on Civil and Political Rights (arts. 2, para. 1, and 26); the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 2); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 1, para. 1); the Convention on the Elimination of All Forms of Discrimination against Women (art. 1); and the Convention on the Rights of the Child (art. 2, para. 1), also provide that the human rights contained therein should be enjoyed by everyone without discrimination. This has been confirmed in relation to specific human rights by United Nations treaty bodies, including the Human Rights Committee in its general comments No. 15 (1986) on the position of aliens under the Covenant, No. 18 (1989) on non-discrimination, No. 23 (1994) on the rights of minorities and No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant; the Committee on the Elimination of Racial Discrimination in its general recommendation No. 30 (2004) on discrimination against non-citizens; the Committee on the Rights of the Child in its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin; the Committee on Economic, Social and Cultural Rights in its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights; and the Committee on the Elimination of Discrimination against Women in its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. The Human Rights Committee, for instance, stated in its general comment No. 31 that the enjoyment of the rights in the International Covenant on Civil and Political Rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, who may find themselves in the territory or subject to the jurisdiction of the State party (para. 10).

3. As recognized in the Guidance Note of the Secretary-General on the United Nations and Statelessness (June 2011), international human rights law reserves a very limited set of rights to citizens, in particular in relation to political rights, right to freedom of movement, and economic rights. The Committee on the Elimination of Racial Discrimination has stated that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.¹

4. States may limit the enjoyment of certain human rights to nationals, but any such restriction must nevertheless meet stringent conditions so as to comply with the principle of non-discrimination.² For example, the Human Rights Committee has stated that although

¹ General recommendation No. 30, para. 4.

² Human Rights Committee, general comment No. 15, paras. 2 and 7.

nationality is not explicitly listed among the prohibited grounds for discrimination, it is included within the reference to the “other status” included in article 2 of the International Covenant on Civil and Political Rights.³ Therefore, if States distinguish between citizens and non-citizens in the protection of civil and political rights, such law or practice may be subject to scrutiny and could be found to violate the principle of non-discrimination.⁴

II. Impact of arbitrary deprivation of nationality on the enjoyment of human rights

A. Political rights

5. Article 25 of the International Covenant on Civil and Political rights provides for the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service.⁵ Persons who have been arbitrarily deprived of their nationality may, as a result, be precluded from the enjoyment of these rights.

6. Current State practice reflects the continuing importance of nationality to the exercise of political rights. The predominant view is that the exercise of political rights is an entitlement of citizens only.⁶ The independent expert on minority issues has stated that deprivation of citizenship generally results in the inability to participate politically (A/HRC/7/23, para. 45). Yet, recent developments show an increasing separation between the exercise of political rights and nationality. In a number of States, non-citizens who meet various conditions are now entitled to cast a vote or stand for office in certain elections, primarily in the context of local-level systems of government, rather than national level politics.

7. This development has been viewed favourably by United Nations treaty bodies, in particular the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.⁷ There is further support for this more flexible approach to political participation in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 42, para. 3). The Human Rights Committee has expressed concern about how the perpetuation of a situation of exclusion from nationality continues to result in a concomitant lack of effective enjoyment of political

³ Human Rights Committee, communication No. 196/1985, *Gueye et al. v. France*, Views adopted on 3 April 1989, para. 9.4.

⁴ See also Human Rights Committee, communications No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996; No. 857/1999, *Blazek et al. v. Czech Republic*, Views adopted on 12 July 2001; No. 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October 2007; and No. 1533/2006, *Ondracka v. Czech Republic*, Views adopted on 31 October 2007.

⁵ See also the Universal Declaration of Human Rights, art. 21; the American Convention on Human Rights, art. 23; the African Charter on Human and Peoples' Rights, art. 13; and the Human Rights Committee, general comments No. 15, para. 2, and No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, para. 3.

⁶ See, for example, the report of the Working Group on the Universal Periodic Review: Estonia (A/HCR/17/17), para. 38.

⁷ Committee on the Elimination of Racial Discrimination, concluding observations: Sweden (CERD/C/304/Add.37), para. 10; Estonia (CERD/C/304/Add.98), para. 7; Lithuania (CERD/C/60/CO/8), para. 8; Liechtenstein (CERD/C/60/CO/7), para. 8. Human Rights Committee, concluding observations: Portugal (CCPR/C/79/Add.77), paras. 14 and 18; Switzerland, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40*, vol. I (A/57/40 (vol. I)), para. 76 (4); general comment No. 25, para. 3.

rights, the impossibility of occupying certain State and public positions and the exclusion from membership of a political party.⁸

B. Right to freedom of movement

8. Article 12 of the International Covenant on Civil and Political Rights provides for the right of everyone lawfully within the territory of a State to liberty of movement and the freedom to choose a residence. The right to freedom of movement is of fundamental importance, as it deals with the question of physical access to a State's territory and, by consequence, with the opportunity to exercise other human rights.⁹ Persons who have been arbitrarily deprived of their nationality may face severe limitations on their ability to travel and to choose a place of residence if, by depriving them of their nationality, the State has put them in a situation of irregularity concerning their country of residence.

9. The Human Rights Committee has stated that the question of whether a non-citizen is lawfully within the territory of a State is a matter governed by domestic law and that States may subject the entry of a non-citizen to the territory of a State to restrictions, provided they are in compliance with the State's international obligations.¹⁰ However, the Committee also indicated that the right to enter one's own country provided in article 12, paragraph 4, of the Covenant is not limited to an individual's country of nationality in a formal sense, but that it also covers the country with which the person has special ties or claims. The Committee further stated that this would be the case of nationals of a country who have been arbitrarily deprived of their nationality, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is denied to them. This also includes other categories of long-term residents, including stateless persons who have been arbitrarily deprived of the right to acquire the nationality of their country of residence.¹¹

10. The Human Rights Committee has also stated that, according to article 12, paragraph 3, of the Covenant, once a person is lawfully within a State, any restrictions on the right to freedom of movement, as well as any treatment different from that accorded to nationals, may not be imposed except if they are provided by law and are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others. If none of these restrictions is invoked, non-citizens should have the right to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place.¹² However, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has reported on certain practices where stateless persons are subject to severe restrictions to their freedom of movement, which resulted in their inability to access medical and educational services. Moreover, stateless persons wishing to travel outside their respective villages were required to obtain official authorization and to pay a fee that in many cases they could not afford (A/HRC/4/19/Add.1, para. 126).

11. The right to freedom of movement also comprises the right to leave any country, as provided in article 12, paragraph 2, of the Covenant. The Human Rights Committee has

⁸ See, for example, the Committee's concluding observations on Estonia (CCPR/CO/77/EST), para. 17, and Latvia (CCPR/CO/79/LVA), para. 18.

⁹ Human Rights Committee, general comment No. 27 (1999) on freedom of movement.

¹⁰ *Ibid.*, para. 4.

¹¹ *Ibid.*, para. 20.

¹² *Ibid.*, para. 5.

highlighted that freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country.¹³ The Committee has, therefore, expressed concern about certain practices that limit the right of non-citizens to leave their country of residence. For instance, the Committee has indicated that the requirement for non-citizens to obtain exit visas constitutes a violation of article 12 of the Covenant.¹⁴

12. Furthermore, the Human Rights Committee has stated that the right of the individual to leave a country also implies the right to determine the State of destination and that this right should not be restricted to persons lawfully within the territory of a State. The Committee has further stated that a non-citizen who is expelled must be allowed to leave for any country that agrees to take him.¹⁵ Article 13 of the Covenant further regulates the issue of expulsion and provides that non-citizens lawfully in the territory of a State may be expelled only in pursuance of a decision reached in accordance with the law. According to the Human Rights Committee, this provision is applicable to all procedures aimed at the obligatory departure of a non-citizen lawfully in the territory of the State, whether described in national law as expulsion or otherwise. Therefore, national legislation concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and non-citizens who are not legally in the territory of the State, or have stayed longer than the law or their permits allow, are not covered by this provision.¹⁶

13. However, States may not expel a non-citizen to a State in which there is a risk of being subject to torture or ill-treatment. For instance, the Human Rights Committee has expressed concern about reports of extraditions and informal transfers of non-citizens to countries in which the practice of torture is alleged. The Committee stated that States should ensure that no individual, including persons suspected of terrorism, who is extradited, is exposed to the danger of torture or cruel, inhuman or degrading treatment or punishment and that States should exercise the utmost care in the use of diplomatic assurances.¹⁷

C. Right to liberty

14. Persons who have been arbitrarily deprived of their nationality may also face violations of the right to liberty provided for in article 9 of the International Covenant on Civil and Political Rights, according to which no one shall be subject to arbitrary arrest or detention, and that procedures to deprive a person of his liberty shall be established in the law.

15. The Working Group on Arbitrary Detention has stated that detention is a direct response to the irregular status of the person within a State or to a lack of identity documentation that may itself also be a direct consequence of arbitrary deprivation of nationality. According to the Working Group, statistics indicate that in some countries, the number of non-citizens in administrative detention exceeds the number of sentenced

¹³ General comment No. 27, para. 8.

¹⁴ Human Rights Committee, concluding observations: Gabon (CCPR/CO/70/GAB), para. 16; Democratic People's Republic of Korea (CCPR/CO/72/PRK), para. 20.

¹⁵ General comment No. 15, paras. 8-9.

¹⁶ *Ibid.*, para. 9.

¹⁷ Human Rights Committee, concluding observations: Russian Federation (CCPR/C/RUS/CO/6 and Corr. 1), para. 17; Sweden (CCPR/CO/74/SWE), para. 12; Ukraine (CCPR/C/UKR/CO/6), para. 9; Uzbekistan (CCPR/CO/83/UZB), para. 12.

prisoners or detainees who have or are suspected of having committed a crime (A/HRC/7/4, para. 45). Sometimes detention lasts only for a short period, while the person's identity is verified. However, detention may also become prolonged, as the State seeks to process the individual's deportation.

16. The Committee on the Elimination of Racial Discrimination has explicitly reminded States of the need to ensure the security of non-citizens, in particular with regard to arbitrary detention.¹⁸ The Human Rights Committee has also considered that practices involving the continued detention of a non-citizen when there is no real prospect of them being expelled constitute a violation of the right to liberty.¹⁹ For instance, the Committee has recalled that in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification. The Committee, therefore, considered arbitrary the continued detention for a period of four years of a person as an unlawful non-citizen because the State did not demonstrate that, in the light of the person's particular circumstances, there were no less invasive means of achieving the same ends.²⁰ The Committee has also expressed concern about the prolonged detention pursuant to immigration laws of non-citizens suspected of committing terrorist-related offences, with fewer guarantees than in the context of criminal procedures.²¹ Similarly, the Committee against Torture has indicated that States should take measures to ensure that detention of non-citizens is used only in exceptional circumstances or as a last resort, and only for the shortest possible time.²² The Committee on the Elimination of Racial Discrimination has expressed its concern that non-citizens may be remanded in custody when they are not able to produce a valid identity document, or on suspicion of having produced a false identity. According to the Committee, in such circumstances, detention should only be imposed on the basis of objective grounds stipulated in law, such as the risk of flight, the risk that the person might destroy evidence or influence witnesses, or the risk of serious disturbance of public order.²³ The independent expert on minority issues has also expressed concern that travel of non-citizens or stateless persons between different areas or to a particular region may sometimes be limited or confined to the boundaries of a particular village or dedicated settlement and that failure to comply with such measures may lead to arrest and imprisonment (A/HRC/4/19/Add.1, para. 126).

¹⁸ General recommendation No. 30, para. 19.

¹⁹ See, for example, Human Rights Committee, communications No. 560/1993, *A. v. Australia*, Views adopted on 3 April 1997; No. 900/1999, *C. v. Australia*, Views adopted on 28 October 2002; No. 1014/2001, *Baban et. al. v. Australia*, Views adopted on 6 August 2003; No. 1069/2002, *Bakhtiyari v. Australia*, Views adopted on 29 October 2003; No. 1050/2002, *D. and E. v. Australia*, Views adopted on 11 July 2006; Nos. 1255, 1256, 1259, 1260, 1266, 1268, 1270, 1288/2004, *Shams et. al. v. Australia*, Views adopted on 20 July 2007; No. 794/1998, *Jalloh v. Netherlands*, Views adopted on 23 March 2002, para. 8.2; Human Rights Committee, concluding observations: United Kingdom of Great Britain and Northern Ireland (CCPR/CO/73/UK-CCPR/CO/73/UKOT), para. 16; European Court of Human Rights, *Chahal v. the United Kingdom*, 23 EHRR 413, 15 November 1996; European Commission on Human Rights, *Caprino v. the United Kingdom*, Application No. 6871/75, 3 March 1978.

²⁰ Communication No. 1442/2005, *Yin Fong v. Australia*, Views adopted on 23 October 2009.

²¹ Human Rights Committee, concluding observations: United States of America (CCPR/C/USA/CO/3/Rev.1), para. 19.

²² Committee against Torture, concluding observations: Hungary (CAT/C/HUN/CO/4), para. 9.

²³ Committee on the Elimination of Racial Discrimination, concluding observations: Canada (CERD/C/CAN/CO/18), para. 18; Norway (CERD/C/NOR/CO/18), para. 18.

D. Right to an effective remedy

17. Non-citizens also face obstacles in exercising their right to an effective remedy and to a fair trial provided in articles 2, paragraph 3(a), 9 and 14 of the International Covenant on Civil and Political Rights.²⁴

18. Numerous factors are of concern in relation to the enjoyment of the right of access to courts, the right to an effective remedy and the principle of fair trial. Non-citizens in general and persons who have been arbitrarily deprived of their nationality in particular are often exposed to the threat of detention or expulsion and may, therefore, decide not to assert their rights. As a result, they are often left without the effective means to challenge and obtain remedies for violations of their human rights. For instance, the Committee on the Elimination of Racial Discrimination has expressed concern in relation to the small numbers of complaints of acts of racial discrimination lodged with courts and other relevant authorities in spite of persistent reports of *de facto* discrimination against non-citizens, including migrants and refugees.²⁵

19. Persons who have been arbitrarily deprived of their nationality may also face legal constraints in relation to their access to an effective remedy, in particular in relation to the right to challenge administrative or judicial decisions affecting them. For example, the Committee against Torture has expressed concerns with regard to the difficulties affecting documented and undocumented non-citizens detained under immigration laws and awaiting deportation, who are unable to contest the validity of their detention or claim asylum or refugee status without access to legal aid.²⁶ Similarly, the Human Rights Committee has recommended that constitutional provisions relating to the right of the executive branch to expel any non-citizen whose stay is deemed inappropriate, with immediate effect and without the possibility of appeal, should be amended in order to comply with the right to an effective remedy.²⁷ The Committee on the Elimination of Racial Discrimination has also expressed concern about the impossibility to appeal, before a judicial body, presidential decrees declaring a non-citizen as a prohibited migrant.²⁸ Another difficulty is that persons who have been arbitrarily deprived of their nationality often lack documents to establish their identity, which leaves them in a situation where they may not effectively pursue any kind of legal claim.

20. Therefore, a range of procedural safeguards should be adopted to guarantee access to justice in decisions relating to the rights of non-nationals and stateless people, as well as in any decision on the deprivation of nationality itself. Where the initial decision has failed to take all factors into account, the ability to challenge this decision will present a chance to review the decision, taking into account the principles of proportionality and non-discrimination. Without effective access to justice, persons who have been arbitrarily deprived of their nationality are hindered from seeking a remedy and redress for any subsequent human rights violations suffered. Moreover, in order to gain access to most regional or international individual complaints procedures against human rights violations, applicants are required to first exhaust all domestic remedies, thereby compelling them to

²⁴ See the report of the Special Rapporteur on the rights of non-citizens on examples of practices in regard to non-citizens (E/CN.4/Sub.2/2003/23/Add.3).

²⁵ Committee on the Elimination of Racial Discrimination, concluding observations: Republic of Moldova (CERD/C/MDA/CO/8-9), para. 10.

²⁶ Committee against Torture, concluding observations: South Africa (CAT/C/ZAF/CO/1), para. 16.

²⁷ Human Rights Committee, concluding observations: Mexico (CCPR/C/MEX/CO/5), para. 17.

²⁸ Committee on the Elimination of Racial Discrimination, concluding observations: Botswana (CERD/C/BWA/CO/16), para. 17.

first seek redress at the national level. Where they encounter obstacles in that respect, the pathway to an international remedy could present serious legal challenges.

E. Right to family life

21. Article 23 of the International Covenant on Civil and Political Rights recognizes the obligation of States to protect the family. Furthermore, article 17 of the Covenant establishes a prohibition on arbitrary or unlawful interference with the family. Persons who have been arbitrarily deprived of their nationality may experience difficulties in exercising their right to family life due to limitations to the right to enter or reside in the territory of a State.²⁹

22. The Human Rights Committee has stated that while the Covenant does not recognize the right of non-citizens to enter or reside in the territory of a State, in certain circumstances a non-citizen's right to entry or residence may be protected under the Covenant when considerations of non-discrimination, prohibition of inhuman treatment and respect for the right to family life arise.³⁰ For instance, while the Committee has indicated that the mere fact that certain members of the family are entitled to remain on the territory of a State does not necessarily mean that requiring other members of the family to leave involves an unlawful interference to the right to family life, it has also stated that there may be cases in which a State's refusal to allow one member of a family to remain in its territory would involve interference in that person's family life.³¹ In that regard, the Committee has ruled that a deportation order issued against two stateless parents of a child violated rights relating to the protection of the family and of the child.³² The Committee also found that the deportation of a non-citizen violated his right to family life because, notwithstanding the fact that he had been convicted of a serious crime and was in the country in an irregular situation, all his family resided in that State and he had no family ties with his home country.³³ The European Court of Human Rights has also ruled that the prolonged refusal to grant a permanent residence permit violated the right to private life.³⁴

F. Right to work

23. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to work, including the right to earn one's living by work which the individual freely chooses or accepts. This right is not, in principle, subject to citizenship or statelessness.³⁵ The Committee on the Elimination of Racial Discrimination has held that

²⁹ Report of the independent expert on minority issues (A/HRC/7/23), para. 62.

³⁰ General comment No. 15, para. 5.

³¹ See, for example, communications No. 930/2000, *Winata and Li v. Australia*, Views adopted on 26 July 2001, para. 7.1; No. 1011/2001, *Madafferi v. Australia*, Views adopted on 26 July 2004, para. 9.7; and No. 1222/2003, *Byahuranga v. Denmark*, Views adopted on 1 November 2004, para. 11.5.

³² Human Rights Committee, *Winata and Li v. Australia*.

³³ Human Rights Committee, communication No. 1792/2008, *Dauphin v. Canada*, Views adopted on 28 July 2009, para. 8.3.

³⁴ European Court of Human Rights, *Family K. and W. v. The Netherlands*, Application No. 11278/84, 1 July 1985; *Slivenko v. Latvia*, Application No. 48321/99, 9 October 2003; *Sisojeva and others v. Latvia*, Application No. 60654/00, 16 June 2005; *Kaftailova v. Latvia*, Application No. 59643/00, 22 June 2006.

³⁵ See the report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2003/23, para. 7).

while States may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.³⁶ The Committee on Economic, Social and Cultural Rights has further determined that the labour market must be open to everyone under the jurisdiction of the State, which suggests that the lack of a work permit should not, in fact, form an obstacle to access to employment.³⁷ However, given that States are generally free to regulate access by non-nationals to their territory and thereby jurisdiction, whether it is through the withholding of a work permit or residence permit or both, there is no guarantee that a person will be entitled to exercise the right to work in respect of a State in which he or she is a non-citizen.

24. The Committee on the Elimination of Racial Discrimination has recalled the obligation to ensure adequate working conditions for non-citizens. The Committee has recommended to States that they strengthen the protection of all non-citizen workers through adequate legislation and policies aimed at curbing abuses such as the withholding of passports by employers, extended non-payment of wages, arbitrary deductions of wages, and non-payment of overtime and working hours. It has also recommended the effective implementation of existing legislation and the strengthening of monitoring mechanisms, such as labour inspections, with regard to payment of wages, medical care, housing and other living and working conditions of non-citizen workers.³⁸

25. The Committee has also expressed concern in relation to other discriminatory situations affecting non-citizens. For instance, the Committee has recommended that States intensify their efforts to protect non-citizens against exploitative work conditions and discrimination in job recruitment, for example, by providing effective remedies for victims and by training judges and labour inspectors on the application of labour standards.³⁹ It has also expressed concern about restrictions that prohibit non-citizens from freely changing employment, and has recommended that States take measures to ensure that non-citizens are able to freely exercise their right to seek alternative employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.⁴⁰

26. The Special Rapporteur on the rights of non-citizens has pointed out that non-citizenship renders people vulnerable to poor working conditions, including difficult, dangerous jobs; verbal abuse; violence; racism; discriminatory attitudes; cramped living conditions; intimidating workplace environments; and low salaries, which are often withheld (E/CN.4/Sub.2/2003/23/Add.3, para. 11). He has indicated that the root of these problems is the restrictions commonly imposed by States on entry to the formal labour market for non-citizens (*ibid.*). Where a non-citizen lacks any form of personal identification, this is likely to also obstruct the opportunity to legally enter into even a basic employment contract.⁴¹ Specific restrictions imposed on non-citizens' exercise of certain

³⁶ General recommendation No. 30, para. 35.

³⁷ General comment No. 18 (2006) on the right to work, para. 12.

³⁸ Committee on the Elimination of Racial Discrimination, concluding observations: United Arab Emirates (CERD/C/ARE/CO/17), para. 14.

³⁹ Committee on the Elimination of Racial Discrimination, concluding observations: Russian Federation (CERD/C/RUS/CO/19), para. 25.

⁴⁰ Committee on the Elimination of Racial Discrimination, concluding observations: Mongolia (CERD/C/MNG/CO/18), para. 20.

⁴¹ See, for example, Report of the Working Group on the Universal Periodic Review – Dominican Republic (A/HRC/13/3), para. 53.

professions or participation in certain employment sectors, as well as fixed quotas on foreign labour, also serve to curtail access to the formal labour market for non-citizens.⁴²

G. Right to social security

27. Closely related to the right to work are the rights to social security and social insurance, as provided in article 9 of the International Covenant on Economic, Social, and Cultural Rights. As stated by the Committee on Economic, Social and Cultural Rights, the right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; unaffordable access to health care; and insufficient family support, particularly for children and adult dependents.⁴³

28. The Committee has further recalled that article 2, paragraph 2, of the Covenant prohibits discrimination on grounds of nationality. The Committee has noted that the Covenant contains no express jurisdictional limitation and, therefore, where non-citizens, including migrant workers, have contributed to a social security scheme, they should be able to benefit from that contribution or retrieve their contributions if they leave the country.⁴⁴ Moreover, according to the Committee, non-citizens should be able to access non-contributory schemes for income support, affordable access to health care and family support. Refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards. Indeed, all persons, irrespective of their nationality, residency or immigration status, are entitled to primary and emergency medical care. Any restrictions, including a qualification period, must be proportionate and reasonable.⁴⁵

29. However, it should be noted that social security is an area in which States have used bilateral agreements to define the treatment of non-citizens. Where arbitrary deprivation of nationality renders a person stateless, they will likely be unable to benefit from such bilateral arrangements.

H. Right to health

30. Article 12 of the International Covenant on Economic, Social and Cultural Rights provides that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights has stated that everyone, regardless of nationality, statelessness or legal status, should have access to existing health-care opportunities.⁴⁶ Indeed, article 2, paragraph 2, of the Covenant prohibits discrimination of any kind as to race, colour, sex, language, religion, political or

⁴² Laura van Waas, “The situation of stateless persons in the Middle East and North Africa” (Office of the United Nations High Commissioner for Refugees (UNHCR), 2010), p. 24; Marjorie Farquharson, “Statelessness in Central Asia” (UNHCR, 2011), p. 65.

⁴³ General comment No. 19 (2008) on the right to social security, para. 2.

⁴⁴ *Ibid.*, para. 36.

⁴⁵ *Ibid.*, paras. 37 and 38.

⁴⁶ General comment No. 14 (2000) on the right to the highest attainable standard of health, para. 12 (b). See also Committee on the Elimination of Racial Discrimination, general recommendation No. 30, para. 36.

other opinion, national or social origin, property, birth or other status in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement.

31. The Committee has stressed that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes. States have, therefore, a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health. Moreover, the Committee has recalled that inappropriate health resource allocation can lead to discrimination that may not be overt.⁴⁷ As such, initiatives taken to include non-citizens in national health insurance systems have been welcomed.⁴⁸

32. In practice, however, the enjoyment of the right to health by non-citizens can be severely restricted, especially as compared to the services often available to citizens. The causes range from formal exclusion from some or all public health-care services to practical inability to access such services due to fees charged to non-nationals, absence of a regular immigration status or lack of any basic identity documentation.⁴⁹ For instance, while acknowledging the efforts of a State regarding health care and the improvement of living conditions, the Committee expressed concern at the very high rate of HIV/AIDS among persons belonging to the most vulnerable groups, including non-citizens and persons without any identification documents, as well as at their access to health care.⁵⁰

I. Right to adequate housing

33. The right to adequate housing is one component of the right to the enjoyment of the highest attainable standard of living and is recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights. The right to adequate housing has been defined by the Committee on Economic, Social and Cultural Rights as the right to live somewhere in security, peace and dignity.⁵¹ Key elements of this right, also considered part of the core obligation of the Covenant, are access to at least basic shelter and the prohibition of forced eviction.⁵² As with other economic, social and cultural rights, the Committee on the Elimination of Racial Discrimination has called upon States to guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens.⁵³

34. In practice, however, persons arbitrarily deprived of their nationality face numerous obstacles to enjoy their right to adequate housing. States sometimes impose restrictions on

⁴⁷ General comment No. 14, paras. 18 and 19.

⁴⁸ Committee on the Elimination of Racial Discrimination, concluding observations: Saudi Arabia (CERD/C/62/CO/8), para. 6.

⁴⁹ Committee on Economic, Social and Cultural Rights, concluding observations: Nepal (E/C.12/1/Add.66), para. 29; Committee on the Elimination of Racial Discrimination, concluding observations: Saudi Arabia (CERD/C/62/CO/8); Slovenia (CERD/C/62/CO/9), para. 14; Bahrain (CERD/C/BHR/CO/7), para. 14; E/CN.4/Sub.2/2003/23, para. 7; van Waas, "The situation of stateless persons" (footnote 42 above), pp. 26-27.

⁵⁰ Committee on Economic, Social and Cultural Rights, concluding observations: Mozambique (CERD/C/MOZ/CO/12), para. 18.

⁵¹ General comment No. 4 (1991) on the right to adequate housing, para. 7.

⁵² Committee on Economic, Social and Cultural Rights, general comments No. 3 (1990) on the nature of State parties' obligations, para. 10; and No. 7 (1997) on the right to adequate housing – forced evictions, para. 1.

⁵³ General recommendation No. 30, para. 32.

the enjoyment of property rights by non-citizens, in particular with regard to land or other immovable assets.⁵⁴ There have also been situations in which non-citizens have seen their property confiscated, impacting their enjoyment of the right to adequate housing.⁵⁵

35. Non-citizens may face difficulties in exercising their right to adequate housing because they are unable to enter lease agreements or are excluded from government housing assistance as a result of lack of residence status or of basic identity documents.⁵⁶ The Committee on the Elimination of Racial Discrimination has also pointed out that States should take effective measures to ensure that housing agencies refrain from engaging in discriminatory practices.⁵⁷

J. Children's rights

36. With regard to the impact of arbitrary deprivation of nationality on the enjoyment of rights by children, one of the most evident problems relates to the right to education. Both the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child recognize that neither non-citizenship nor statelessness should have a bearing on the enjoyment of the right to education.⁵⁸ However, non-citizen and stateless children in law and practice experience difficulties in exercising their right to education.⁵⁹ The Special Rapporteur on the right to education has pointed out that many countries formally guarantee this right to all citizens in their national constitutions.⁶⁰ While this does not imply that non-citizens cannot access education, the lack of a constitutional guarantee of equal access to education for everyone may present a problem when non-citizens seek to challenge education policies that exclude them. Thus, domestic law or policy may directly exclude

⁵⁴ Human Rights Committee, *Adam v. Czech Republic* (footnote 4 above); Inter-American Court of Human Rights, *Ivcher Bronsteun v. Peru*, Series C, No. 74, 6 February 2001; A/HRC/13/3, para. 53; van Waas, "The situation of stateless persons" (footnote 42 above), pp. 23-24; UNHCR, discussion paper presented at the Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia, held on 28-29 October 2010 in Bangkok, p. 28; Farquharson, "Statelessness in Central Asia" (footnote 42 above), pp. 70-72; report of the Working Group on the Universal Periodic Review – Lebanon (A/HRC/16/18).

⁵⁵ Human Rights Committee, communication No. 747/1997, *des Fours Walderode v. Czech Republic*, Views adopted on 30 October 2001; CERD/C/62/CO/9.

⁵⁶ Committee on Economic, Social and Cultural Rights, concluding observations: Azerbaijan (E/C.12/1/Add.104), para. 15; Committee on the Elimination of Racial Discrimination, concluding observations: Luxembourg (CERD/C/LUX/CO/13), para. 17.

⁵⁷ Communication No. 18/2000, *F.A. v. Norway*, Views adopted on 21 March 2001; Committee on Economic Social and Cultural Rights, general comment No. 4.

⁵⁸ Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 6 (b); Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, para. 41; see also Committee on the Elimination of Racial Discrimination, general recommendation No. 30, para. 30; reports of the Special Rapporteur on the right to education (A/HRC/14/25, A/HRC/17/29 and Corr.1); 1954 Convention relating to the Status of Stateless Persons, art. 22.

⁵⁹ See, for instance, Committee on Economic Social and Cultural Rights, concluding observations: Sri Lanka (E/C.12/1/Add.24), para. 8; Italy (E/C.12/1/Add.103), paras. 24 and 45; Committee on the Rights of the Child, concluding observations: Belize (see CRC/C/15/Add.99, para. 16); Djibouti (CRC/C/15/Add.131), paras. 47 and 49; Spain (CRC/C/15/Add.185), para. 27; Iceland (CRC/C/15/Add.203), para. 36; Kyrgyzstan (CRC/C/15/Add.244), para. 53; Islamic Republic of Iran (CRC/C/15/Add.254), para. 37.

⁶⁰ E/CN.4/2003/9/Add.1, para. 15; A/HRC/14/25/Add.3, para. 33; A/HRC/17/29 and Corr. 1, para. 40.

non-citizens from access to education generally, to the public school system or to certain levels of schooling, e.g. higher education or vocational training.⁶¹

37. The difficulties faced by non-citizen children in accessing education are indirectly, yet closely, linked to their non-citizenship. One significant issue, for instance, is that while non-citizens are technically eligible to access a State's education system, they may not enjoy the same entitlement as nationals to subsidized schooling. Thus, a child or adult who has been arbitrarily deprived of nationality could find himself or herself confronting fees and other costs that would not otherwise have been levied against them.⁶² Inability to meet these costs could result in exclusion from schooling. Even in States that provide equal access to subsidized education at the primary level, regardless of nationality, problems are reported in the context of secondary schooling, higher education or vocational training where higher fees may be levied against non-citizens.⁶³

38. As with the enjoyment of other human rights, a lack of requisite documentation, in particular residence permits or even basic identity documents, affects non-citizens' right to education.⁶⁴

K. Women's rights

39. Arbitrary deprivation of nationality has particularly negative effects on the human rights of women. Where national legislation contains discriminatory elements against women that result in non-citizenship or statelessness, women are put in a particularly precarious situation, among others because it heightens the risk that they may become exposed to violence or human trafficking. For instance, the Committee on the Elimination of Racial Discrimination has stated its concern over the trafficking of women and girls, in particular non-citizens, for the purpose of sexual exploitation.⁶⁵

40. Stateless women may seek to marry in order to acquire a nationality or better legal status for themselves or their children and may subsequently find themselves trapped in an abusive relationship, because to leave would mean to forfeit this nationality or status. For instance, the Committee on the Elimination of Racial Discrimination has expressed concern over nationality-related cases of discrimination against women allowing the transfer of nationality only by fathers who have the nationality of that State.⁶⁶

⁶¹ A/HRC/7/23; van Waas, "The situation of stateless persons" (footnote 42 above), p. 27; UNHCR, discussion paper (footnote 54 above), p. 10.

⁶² Committee on Economic, Social and Cultural Rights, concluding observations: Azerbaijan, (E/C.12/1/Add.104), para. 33; van Waas, "The situation of stateless persons" (footnote 42 above), p. 27; UNHCR, discussion paper (footnote 54 above), p. 28.

⁶³ Committee on Economic, Social and Cultural Rights, concluding observations: Canada (E/C.12/1/Add.31), para. 39; Farquharson, "Statelessness in Central Asia" (footnote 42 above), pp. 61-62.

⁶⁴ Report of the Special Rapporteur on the right to education (A/HRC/11/8/Add.2, para. 34); Committee on the Rights of the Child, concluding observations: Russian Federation (CRC/C/15/Add.110), para. 53; Argentina (CRC/C/15/Add.187), paras. 29 and 56; Netherlands (including Aruba) (CRC/C/15/Add.227), para. 53.

⁶⁵ Committee on the Elimination of Racial Discrimination, concluding observations: Lithuania, (CERD/C/LTU/CO/3), para. 24.

⁶⁶ Committee on the Elimination of Racial Discrimination, concluding observations: Lebanon (CERD/C/64/CO/3), para. 13; Committee on the Elimination of Discrimination against Women, concluding observations: Bahrain (CEDAW/C/BHR/CO/2), para. 30; Committee on the Rights of the Child, concluding observations: Qatar (CRC/C/QAT/CO/2), para. 33, and Oman (CRC/C/OMN/CO/2), para. 31.

41. Where non-citizenship or statelessness causes difficulties in accessing health-care services, this can also have a disproportionately severe impact on the well-being of women. For example, women may be unable to receive maternal or neonatal care or to benefit from a State's HIV/AIDS or vaccination programmes.

42. The Human Rights Committee has indicated that while States have the obligation under the International Covenant on Civil and Political Rights to ensure the equal right of men and women to the enjoyment of their Covenant rights, legislation or administrative measures adopted by States to regulate matters other than those dealt with in the Covenant could have a negative effect on the equal enjoyment of human rights by women. For example, the Committee has highlighted the degree to which immigration laws which distinguish between a male and a female citizen may adversely affect the scope of the right of the woman to marriage to non-citizens or to hold public office.⁶⁷

L. Minority rights

43. Another area in which non-citizens experience difficulties and where the impact of arbitrary deprivation of nationality can be felt is in respect of the enjoyment of minority rights. Although non-citizenship or statelessness should not be a bar to the enjoyment of minority rights under international law,⁶⁸ the independent expert on minority issues stated that in practice, some States explicitly reserve the enjoyment of minority rights to citizens. Persons arbitrarily deprived of their nationality face additional challenges to the realization of the right to the protection and promotion of their collective cultural identity, including with regard to the recognition and use of minority languages or the freedom to practice minority religions (A/HRC/7/23, para. 45).

44. In the context of the protection of the rights of minorities, article 2, paragraph 3, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, persons belonging to minorities have the right to participate effectively in decisions at the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. According to the independent expert on minority issues, denial of citizenship has been used by States to exclude minorities from the enjoyment of their rights. The independent expert, therefore, indicated that States should consider allowing non-citizens belonging to minorities to vote, stand as candidates in local elections and be members of the governing boards of self-governing bodies, while making sure that access to citizenship is regulated in a non-discriminatory manner.⁶⁹ The Forum on Minority Issues also recommended that where citizenship is a requirement for the exercise of political rights, there should be a reasonable process for attaining such citizenship that is clearly defined, widely communicated and non-discriminatory with regard to race, ethnicity or religion.⁷⁰

⁶⁷ Human Rights Committee, general comments No. 4 (1981) on equality between the sexes, para. 3, and No. 28 (2000) on the quality of rights between men and women, para. 31.

⁶⁸ Article 27 of the International Covenant on Civil and Political Rights; Human Rights Committee, general comments No. 15, para. 7 and No. 23 (1994) on the rights of minorities, para. 5.1; E/CN.4/Sub.2/2003/23, para. 42; Committee on the Elimination of Racial Discrimination, general recommendation No. 30, para. 37.

⁶⁹ Background document by the independent expert on minority issues, on minorities and effective political participation presented at the second session of the Forum on Minority Issues (A/HRC/FMI/2009/3), para. 37.

⁷⁰ Recommendations of the second session of the Forum on Minority Issues on minorities and effective political participation (A/HRC/13/25), para. 26.

III. Conclusions

45. **International human rights law clearly establishes the international obligation of States to respect the human rights of all individuals without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

46. **While according to international law States may restrict the enjoyment of some international human rights vis-à-vis non-citizens, any such restriction must nevertheless meet stringent conditions related to the principle of non-discrimination.**

47. **Arbitrary deprivation of nationality leads the affected persons to become non-citizens with respect to the State that deprived them of their nationality. Arbitrary deprivation of nationality, therefore, effectively places the affected persons in a more disadvantaged situation concerning the enjoyment of their human rights because some of these rights may be subjected to lawful limitations that otherwise would not apply, but also because these persons are placed in a situation of increased vulnerability to human rights violations.**
