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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

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Executive summary

The present final report is divided into five parts - a principal report and four addenda.* The principal report presents a synthesis of the general principles of and specific exceptions to the rights of non-citizens under international human rights law together with a brief identification of some of the areas in which these rights are not being respected. The principal report also draws conclusions and makes recommendations for further action and study. Addendum 1 provides an update of international standards and jurisprudence of treaty monitoring bodies relevant to the rights of non-citizens. Addendum 2 presents an update of regional standards and jurisprudence that relate to the rights of non-citizens. Addendum 3 presents information about practical situations and concerns that have arisen with regard to non-citizens based on the material and information-gathering approach contained in E/CN.4/Sub.2/2002/25/Add.3; comments received on that addendum; and the responses received from Governments, intergovernmental organizations and non-governmental organizations, plus the Committee on the Elimination of Racial Discrimination and the United Nations Special Rapporteur on the human rights of migrants, in answer to the questionnaire prepared by the Special Rapporteur and disseminated pursuant to Commission decision 2002/107. Addendum 4 summarizes the Governments' replies.

Based on a review of international human rights law, the Special Rapporteur has concluded that all persons should by virtue of their essential humanity enjoy all human rights unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective. For example, non-citizens should enjoy freedom from arbitrary killing, inhuman treatment slavery, forced labour, child labour, arbitrary arrest, unfair trial, invasions of privacy, refoulement and violations of humanitarian law. They also have the right to marry, protection as minors, peaceful association and assembly, equality, freedom of religion and belief, social, cultural, and economic rights in general, labour rights (for example, as to collective bargaining, workers' compensation, social security, appropriate working conditions and environment, etc.) and consular protection. While all human beings are entitled to equality in dignity and rights, States may draw narrow distinctions between citizens and non-citizens with respect to political rights explicitly guaranteed to citizens and freedom of movement.

There is a large gap between the rights that international human rights law guarantee to non-citizens and the realities they must face. In many countries there are institutional and endemic problems confronting non-citizens. The situation, however, has worsened as several countries have detained or otherwise violated the rights of non-citizens in response to fears of terrorism. Continued discriminatory treatment of non-citizens demonstrates the need for clear, comprehensive standards governing the rights of non-citizens and their implementation by States, and more effective monitoring of compliance.

* Owing to resource limitations, it is unfortunately possible to edit and translate into the official languages of the United Nations only the main report; the addenda are being circulated in English only.

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I. INTRODUCTION

1. In general, international human rights law requires the equal treatment of citizens and non-citizens. Exceptions to this principle may be made only if they are to serve a legitimate State objective and are proportional to the achievement of that objective. This standard affects approximately 175 million individuals - or 3 per cent of the world's population - who currently reside in a country other than where they were born.[1]

2. There is, however, a disjuncture between the rights that international human rights law guarantees to non-citizens and the realities non-citizens must face. In many countries there are institutional and endemic problems confronting non-citizens. The situation, however, has worsened since 11 September 2001, as several countries have detained or otherwise violated the rights of non-citizens in response to fears of terrorism. The narrow exceptions to the principle of non-discrimination that are permitted by international human rights law do not justify such pervasive violations of non-citizens' rights.

3. At the same time, there have been some positive developments. On 1 July 2003, the International Convention on the Protection of All Migrant Workers and Members of Their Families (Migrant Workers' Convention) entered into force with ratification by 20 nations. Since this study was initially proposed to the Sub-Commission by the Committee on the Elimination of Racial Discrimination (CERD), the Special Rapporteur was very pleased by the positive response of that Committee to the Special Rapporteur's "important analysis regarding the status and the rights of non-citizens" and expressing "the hope that the present dialogue" "will be continued".[2] CERD has already responded positively to the Special Rapporteur's recommendation, indicating "that it stands ready to begin working towards an updated general recommendation on the rights of non-citizens".[3] All of the treaty bodies should also consider the preparation of a joint general comment/recommendation that would establish a consistent, structured approach to the protection of non-citizens' rights.

4. This final report presents a synthesis of the general principles of and specific exceptions to the rights of non-citizens under international human rights law, on the basis of the working paper,[4] preliminary report,[5] and progress report[6] submitted by the Special Rapporteur - the procedural history of which was set forth in those previous reports. The final summary of the relevant international law and jurisprudence will first focus on the rights of non-citizens and then upon the narrow exceptions to the rule that States may not discriminate against non-citizens. The report, as supplemented by the addenda, also identifies some of the problems faced by non-citizens. This report will draw conclusions and make recommendations.

5. Addendum 1 provides an update of the international standards and jurisprudence of treaty monitoring bodies relevant to non-citizens. Addendum 2 presents an update of regional standards and jurisprudence that relate to the rights of non-citizens. Addendum 3 presents information about practical situations and concerns that have arisen with regard to non-citizens, based principally on the responses received from 22 Governments,[7] 7 United Nations bodies, specialized agencies and intergovernmental organizations,[8] and 4 non-governmental organizations,[9] plus CERD and the United Nations Special Rapporteur on the human rights of migrants, in answer to the questionnaire prepared by the Special Rapporteur and disseminated pursuant to Commission decision 2002/107. The Special Rapporteur is extremely grateful for those responses.[10] Addendum 4 summarizes the Governments' replies.

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

6. The architecture of international human rights law is built on the premise that all persons, by virtue of their essential humanity, should enjoy all human rights[11] unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective[12] and are proportional to the achievement of that objective.[13] In its general comment No. 15 the Human Rights Committee explained that

> "the rights set forth in the International Covenant on Civil and Political Rights apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness … [T]he general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens".[14]
>
> General comment No. 15 delineated further the fundamental rights of non-citizens:
>
> "Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority ..., they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant" (para. 7).[15]

7. Similarly, the International Covenant on Economic, Social, and Cultural Rights establishes that Governments shall take progressive measures to the extent of available resources to protect the rights of everyone - regardless of citizenship - to: work (art. 6); just and favourable working conditions (art. 7); establish trade unions (art. 8); social security for everyone (art. 9); an adequate standard of living including adequate food, clothing, housing, and the continuous improvement of living conditions (art. 11); the enjoyment of the highest attainable standard of physical and mental health (art. 12); education (art. 13); and to take part in cultural life (art. 15).

8. The Migrant Workers' Convention protects all migrant workers and their families, but does not generally include employees of international organizations, foreign development staff, refugees, stateless persons, students and trainees (arts. 1, 3). The Convention provides for: non-discrimination (art. 7); freedom to leave any country and to enter the country of origin (art. 8); the right to life (art. 9); freedom from torture and ill-treatment (art. 10); freedom from slavery or forced labour (art. 11); freedom of thought, conscience, and religion (art. 12); freedom of opinion and expression (art. 13); freedom from arbitrary or unlawful interference with privacy, family, home, correspondence, or other communications (art. 14); property rights (art. 15); liberty and security of person (art. 16); the right of migrants deprived of their liberty to be treated with humanity (art. 17); a fair and public hearing by a competent, independent and impartial tribunal (art. 18); prohibition of retroactive application of criminal laws (art. 19); no imprisonment for failure to fulfil a contract (art. 20); no destruction of travel or identity documents (art. 21); no expulsion on a collective basis or without fair procedures (art. 22); the right to consular or diplomatic assistance (art. 23); the right to recognition as a person before the law (art. 24); equality of treatment between nationals and migrant workers as to work conditions and pay (art. 25); the right to participate in trade unions (art. 26); equal access to social security (art. 27); the right to emergency medical care (art. 28); the right of a child to a name, birth registration and nationality (art. 29); and equality of access to public education (art. 30). In addition, States parties must ensure respect for migrants' cultural identity (art. 31); the right to repatriate earnings, savings, and belongings (art. 32); and information about rights under the Convention (art. 33).

9. Further, the situation of children born to non-citizen parents is addressed in the Convention on the Rights of the Child. Under article 7 of that Convention, a child "shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality … States parties shall ensure the implementation of these rights … in particular where the child would otherwise be stateless".[16] In view of the near universal ratification of the Convention on the Rights of the Child, the principle of jus soli (citizenship based on the place of birth) has emerged as the overriding international norm governing the nationality of children born to non-citizen parents.[17] This right must be enforced without discrimination as to the gender of the parent.[18] Furthermore, article 7 of the Convention requires transmittal of citizenship from a parent to his or her adopted child.[19] Article 7 should be read in conjunction with article 8 (preservation of identity, including nationality, name, and family relations), article 9 (avoiding separation from parents), article 10 (family reunification), and article 20 (continuity of upbringing of children deprived of their family environment). Within the holistic approach recommended by the Committee on the Rights of the Child for the interpretation of the Convention, those articles should be understood according to the general principles of the Convention as reflected in articles 2 (right to non-discrimination), 3 (principle of the best interests of the child), 6 (right to life and development) and 12 (right to respect for the child's views in all matters affecting the child and opportunity to be heard in any judicial or administrative proceedings affecting the child).[20] In any case, children of non-citizens without legal status should not be excluded from schools.[21]

10. European human rights institutions have recognized and expanded upon these principles. Although neither the acquisition nor loss of citizenship is directly regulated by the European Convention on Human Rights, decisions to confer and revoke citizenship are subject to both the substantive and procedural requirements of the Convention. For example, an arbitrary deprivation of citizenship may rise to the level of inhuman or degrading treatment prohibited

under article 3, or violate the right to respect for private and family life guaranteed under article 8 of the Convention.[22] A State's denial of citizenship combined with the issuance of an expulsion order may create a presumption that the purpose of the denial was to achieve the expulsion of a citizen,[23] which is prohibited under article 3 of Protocol No. 4 to the European Convention.[24] In the context of State succession, Council of Europe standards would appear to permit language requirements as well as distinctions drawn according to ethnic origin, insofar as consideration of ethnicity serves to identify an ability to integrate into a society.[25]

11. Non-citizens also enjoy the right not to be deported to a country where he or she may be subjected to persecution or abuse. The principle of non-refoulement exists in a number of international instruments with slightly varying coverage.[26] Any measure that compels non-citizens, as a group, to leave a country is prohibited except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual non-citizen in the group.[27] Hence, for example, if one member of a group of non-citizens is found not to qualify for refugee status because there is a safe country of origin and is ordered to be deported, other members of the group from the same country cannot be ordered deported unless they too are individually deemed not to qualify for refugee status.[28] Furthermore, international standards pertaining to refugees and asylum-seekers should be applied equally, regardless of the nationality of the asylum-seeker or refugee.[29]

12. The Convention and Protocol relating to the Status of Refugees provide that refugees should be entitled to treatment at least as favourable as that accorded to their citizens with respect to religion (art. 4); protection of intellectual property (art. 4); access to courts and legal assistance (art. 16); rationing measures (art. 20); elementary education (art. 22 (1)); public relief and assistance (art. 23); labour legislation and social security (art. 24); as well as fiscal taxes and charges (art. 29). The Convention and Protocol also require that States parties accord to refugees treatment no less favourable than that accorded to non-citizens generally with respect to exemption from legislative reciprocity (art. 7 (1)); acquisition of property (art. 13); non-political and non-profit-making associations and trade unions (art. 15); wage-earning employment (art. 17); self-employment (art. 18); professions (art. 19); housing (art. 21); post-elementary education (art. 22 (2)); and freedom of movement (art. 26).[30]

13. International human rights law is also relevant in the context of defining adequate reception standards for asylum-seekers.[31] Asylum-seekers should not be left in a destitute condition while awaiting examination of their asylum claims.[32] Such poor conditions could reinforce prejudice, stereotypes and hostility towards asylum applicants. The procedure for determining eligibility for asylum should not be slow, and States should ensure that applicants are given access to sufficient legal assistance.[33] Time limits for registration to lodge asylum claims should not be so short as to deprive persons of the protection to which they are entitled under international law.[34] Free legal advice to applicants by the State is encouraged.[35] Asylum-seekers should also be granted the right to work.[36] Employment, housing and social assistance should not be denied to recognized refugees,[37] especially on grounds of their ethnicity.[38] Eligibility for asylum should not depend on the ethnic or national origin of applicants.[39] The holding of asylum-seekers in detention should be avoided to the greatest extent possible, particularly in the cases of persons arriving with families.[40] Asylum-seekers should not be detained indefinitely.[41] Asylum-seekers and refugees should not be detained alongside convicted criminals,[42] nor should they be detained for lack of identity papers or their uncertainty about travel routes into the receiving State.[43] Asylum-seekers' freedom of movement should be

guaranteed wherever possible.[44] The human rights of asylum-seekers may also be protected by regional human rights instruments in Africa,[45] Europe,[46] and Latin America[47] that apply to all persons residing in the respective States parties, regardless of their legal status in the country of asylum.

14. As regards children, the Convention on the Rights of the Child provides important guidance for designing and implementing reception policies under the "best interest" principle. States must guarantee: special protection and care to child-asylum-seekers with respect to their special needs; avoidance of detention for asylum-seekers under 18 years of age; and access of children to legal and psychological assistance, including by enabling contact with non-governmental organizations offering such assistance.[48] Asylum-seekers and refugees who are children should not be placed in institutions that are not equipped to provide the special care these children require.[49] Schools that allow children of non-citizens to be educated in programmes designed in their country of origin should be welcomed.[50]

15. International Labour Organization (ILO) conventions and recommendations (for example, as to collective bargaining, discrimination, workers' compensation, social security, working conditions and environment, abolition of forced labour and child labour) generally protect the rights of all workers irrespective of citizenship. There are several ILO conventions and recommendations that specifically protect migrant workers and their families, including the Equality of Treatment (Social Security) Convention, 1962 (No. 118) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Certain rights are guaranteed regardless of the legality of the migrant's presence in the territory, e.g. equal remuneration and minimum wage with respect to past employment and maintenance of social security benefits (Migration for Employment Convention (Revised), 1949 (No. 97, art. 6)). Other rights are extended only to those lawfully within a territory, e.g. rights to equal opportunities and vocational training.[51]

16. An additional source of protection for non-citizens charged with criminal offences is found in the Vienna Convention on Consular Relations. Article 36 of that Convention provides that detained non-citizens shall have the right to contact consular officials and that the receiving State must notify foreign detainees of this right. This procedure is not always followed - even in death penalty cases and even after the International Court of Justice has given provisional remedies.[52]

III. EXCEPTIONS TO THE GENERAL APPROACH OF EQUALITY FOR NON-CITIZENS

17. Any approach to combating discrimination against non-citizens should take into account the varying State interests at stake in regard to categories of rights (e.g. political rights, right to education, social security, other economic rights, etc.) with respect to the various kinds of non-citizens having distinct relationships to the country in which they are residing (e.g. permanent residents, migrant workers, temporary residents, tourists, undocumented workers, etc.) and in proportion to the legitimacy of State interests or rationales for distinctions between citizens and non-citizens or among non-citizens (e.g. issues of national reciprocity, promoting development, etc.).

18. While all human beings are entitled to equality in dignity and rights, the International Covenant on Civil and Political Rights permits States to draw distinctions between citizens and non-citizens with respect to two categories of rights: political rights explicitly guaranteed to citizens and freedom of movement. Article 25 of the Covenant establishes that "every citizen" shall have the right to participate in public affairs, to vote and hold office, and to have access to public service.[53] Article 12 (4) states that no one shall by arbitrarily deprived of the right to enter "his own country". The Human Rights Committee has broadly interpreted "his own country" to give rights to stateless persons who are resident in a particular State and others with a long-term relationship with the country, but who are not citizens.[54] In addition, article 12 (1) of the Covenant grants "the right to liberty of movement and freedom to choose [one's] residence" only to persons who are "lawfully within the territory of a State", that is, apparently permitting restrictions on undocumented workers.[55] The Covenant provides the right to certain procedural protections in expulsion proceedings (art. 13) only to non-citizens "lawfully within the territory" of a State party.[56]

19. Article 2 (3) of the International Covenant on Economic, Social and Cultural Rights creates a third specific exception to the general rule of equality for developing countries: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." As an exception to the general rule of equality, it should be noted that article 2 (3) must be narrowly construed, may be relied upon only by developing countries, and only with respect to economic rights.[57] States may not draw distinctions between citizens and non-citizens as to social and cultural rights.

20. The International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination in article 1, paragraph 1, which states:

> "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

21. However, in the same article the Convention indicates that States may make distinctions between non-citizens and citizens as long as they treat all non-citizens similarly:

> "this Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens".

Article 1, paragraph 2, is further defined in article 1, paragraph 3, which states that:

> "Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalization, *provided that such provisions do not discriminate against any particular nationality*" (emphasis added).

22. The Convention, however, does not pre-empt the rights of non-citizens enumerated in other international instruments. In its General Recommendation XI on non-citizens, CERD stated that article 1, paragraph 2

> "must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights".

In its concluding observations and comments on several States parties' reports CERD has reflected its continuing concern about various forms of discrimination against non-citizens, including discriminatory requirements for entry and residence and for citizenship.[58]

23. As indicated above, some distinctions against non-citizens or discrimination based on nationality would be permissible if the discrimination is based upon objective and reasonable justifications. The European Court of Human Rights has found permissible a distinction between European "citizens " and individuals of non-European nationality in regard to deportation because "member States of the European Union form a special legal order, which has … established its own citizenship."[59] Adopting an approach toward discrimination taken earlier by the European Court of Human Rights,[60] the Inter-American Court of Human Rights found non-discriminatory a proposed amendment to the naturalization provisions of the Constitution of Costa Rica that established preferential naturalization rules for "nationals of the other Central American countries, Spaniards and Ibero-Americans", because they "share much closer historical, cultural and spiritual bonds with the people of Costa Rica"[61] and will "more easily and more rapidly assimilated within the national community".[62] The Court explained that "no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things".[63] The Human Rights Committee has followed the same approach in declaring that although a regional economic agreement "might constitute an objective and reasonable ground for differentiation, no general rule can be drawn therefrom …".[64]

IV. COMMON PROBLEMS ARISING WITH REGARD TO THE RIGHTS OF NON-CITIZENS

24. One of the most common problems human rights treaty bodies have encountered in reviewing States parties' reports is that some national constitutions guarantee rights to "citizens" whereas international human rights law would - with the exception of the rights of public participation, of movement, and of economic rights in developing countries - provide rights to all persons.[65] Other constitutions inappropriately distinguish between the rights granted to persons who obtained their citizenship by birth and other citizens.[66] Furthermore, the mere statement of the general principle of non-discrimination in a constitution is not a sufficient response to the requirements of human rights law.[67]

25. The nationality and immigration laws of several countries discriminate between the capacity of male and female citizens to marry and live with their non-citizen spouses. For example, the Government of Mauritius adopted an immigration law which provided that if a Mauritian woman married a man from another country, the husband must apply for residence in Mauritius and that permission may be refused. If, however, a Mauritian man married a foreign

woman, the foreign woman was entitled automatically to residence in Mauritius. The Human Rights Committee held that Mauritius had violated the International Covenant on Civil and Political Rights by discriminating between men and women without adequate justification and by failing to respect the family's right to live together.[68]

26. The Special Rapporteur on the human rights of migrants focused in her 2003 report[69] particularly on the detention of migrants and conditions of confinement. The Special Rapporteur expressed concern about the detention of asylum-seekers, prolonged detention periods, the arbitrary nature of detention decisions, detention on the basis of unspecified allegations relating to terrorism or national security, detention of trafficking victims, detention of migrant children, absence of legal assistance and judicial review procedures, detention with ordinary criminals, solitary confinement, methods of restraint threatening physical integrity,[70] confinement in inappropriate facilities, overcrowding and poor hygienic conditions, lack of medical care, lack of education for young detainees and other problems.

27. All individuals, including non-citizens, must be protected from arbitrary detention.[71] States are obligated to respect the human rights of detainees, including legal protections, whether or not they are in the territory of the State in question.[72] So-called "international zones" administered by States to detain non-citizens, and where such non-citizens are denied legal or social assistance, are a legal fiction and a State cannot thereby avoid its international human rights responsibilities by claiming that such areas have extraterritorial status.[73] States may arrest or detain non-citizens against whom action is being taken with a view to deportation or extradition, regardless of whether such detention is reasonably considered necessary, for example, to prevent those non-citizens from committing offences or fleeing.[74] States may not, however, consciously facilitate the detention of non-citizens in a planned operation for the expulsion of non-citizens by encouraging them to report to authorities on the basis of a pretext.[75] Conditions in refugee shelters and conditions of detention faced by undocumented migrants and asylum-seekers should meet international standards.[76]

28. States and international organizations must ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race or national or ethnic origin, and 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.[77] Non-citizens suspected of terrorism should not be expelled without allowing them a legal opportunity to challenge their expulsion.[78] Expulsions of non-citizens should not be carried out without taking into account possible risks to their lives and physical integrity in the countries of destination.[79]

29. There is significant scope for States to enforce their immigration policies and to require departure of unlawfully present persons.[80] That discretion is, however, not unlimited and may not be exercised arbitrarily. A State might require, under its laws, the departure of persons who remain in its territory longer than the time allowed by limited-duration permits. Immigrants and asylum-seekers, even those who are in a country illegally and whose claims are not considered valid by the authorities, should not be treated as criminals.[81]

30. States must avoid different standards of treatment with regard to citizens and non-citizens that might lead to racial segregation and the unequal enjoyment of economic, social and cultural rights.[82] For example, States should take effective measures to ensure that housing agencies and

private landlords refrain from engaging in discriminatory practices.[83] CERD has also frequently expressed concern that non-citizens who serve as domestic workers are subjected to debt bondage, other illegal employment practices, passport deprivation, illegal confinement, rape and physical assault.[84] Non-citizens are often the target of trafficking. Adequate assistance and support, including formal protection, aid, and education, should be provided to victims of trafficking.[85]

V. CONCLUSIONS AND RECOMMENDATIONS

31. Continued discriminatory treatment of non-citizens in contravention of relevant international human rights instruments demonstrates the need for clear, comprehensive standards governing the rights of non-citizens, their implementation by States, and more effective monitoring of compliance.

32. Since the seven principal human rights treaties deal with many of the problems encountered by non-citizens, States should pursue universal ratification and implementation of those treaties - particularly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. States, as appropriate, should also ratify and implement such other relevant treaties as the Protocol relating to the Status of Refugees, ILO Conventions Nos. 97, 118, 143, etc.; the Conventions on the Reduction of Statelessness and relating to the Status of Stateless Persons; the Vienna Convention on Consular Relations and optional Protocols, Protocols Nos. 4 and 7 to the European Convention on Human Rights; and the European Framework Convention for the Protection of National Minorities.

33. Since problems relating to the treatment of non-citizens arise under each of the seven principal human rights treaties, it would be desirable for the treaty bodies jointly to prepare general comments/recommendations that would establish a consistent, structured approach to the protection of the rights of non-citizens. At a minimum, treaty bodies that have adopted specific standards should consider updating them and those bodies that have yet to issue interpretive guidance relating to non-citizens should do so. In addition, treaty bodies should intensify their dialogues with States parties in regard to the rights accorded to, and the actual situation faced by, non-citizens within their respective spheres of concern.

34. Since the CERD has indicated its desire to work with the Special Rapporteur on the rights of non-citizens in preparing a revised general recommendation on the rights of non-citizens, the Sub-Commission should authorize the Special Rapporteur to cooperate with the Committee until the revised general recommendation has been issued.

35. More generally, the Sub-Commission may wish to consider continuing the work of the Special Rapporteur on the rights of non-citizens or to appoint a new Special Rapporteur to permit continued reporting and other efforts on human rights problems facing non-citizens and on developments in the international legal protections for non-citizens.

36. In any case, the final report of the Special Rapporteur on the rights of non-citizens, his working paper, preliminary report, progress report, addenda and questionnaire replies should be compiled and updated in a single report, printed in all the official languages and given the widest possible distribution.

37. The committee to be established under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families will also have an important role in protecting the rights set forth in this report and may find the present summary of the rights of non-citizens to be useful.

38. The Special Rapporteur on the human rights of migrants has an important role in continuing her review of the situation facing migrants throughout the world, visiting countries of particular concern, receiving communications about human rights problems and reporting to the Commission on Human Rights.

39. The Sub-Commission has authorized several studies and working papers that will continue scrutiny of some aspects of the rights of non-citizens, for example, on (a) terrorism and human rights; (b) discrimination in the administration of justice; (c) the right of restitution or return of property of dispossessed refugees; (d) administration of justice through military tribunals; (e) regulation of citizenship by successor States; and (f) rights of women married to foreigners.

40. In regard to those studies, working papers, and the other efforts of the United Nations to protect the rights of non-citizens, cooperation should be fostered with the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration, the OSCE High Commissioner on National Minorities and relevant non-governmental organizations - all of which provided extremely useful input for this study - as well as the European Commission against Racism and Intolerance.

41. States should be encouraged to abide by the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country In Which They Live.

42. States should take actions to counter any tendency to target, stigmatize, stereotype, or profile on the basis of race members of particular population groups, such as non-citizens - by officials as well as in the media and society at large.[86] States should ensure that all officials dealing with so-called "irregular migrants" receive special training, including training in human rights,[87] and do not engage in discriminatory behaviour.[88] Use of racist or xenophobic propaganda by political parties vis-à-vis non-citizens should be discouraged.[89] Complaints made against such officials, notably those concerning discriminatory or racist behaviour, should be subject to independent and effective scrutiny.

43. States are urged to comply with their obligations under international human rights, labour, refugee and humanitarian law relating to refugees, asylum-seekers and other non-citizens.[90] The international community is urged to provide such persons with protection and assistance in an equitable manner and with due regard to their needs in different parts of the world, in keeping with principles of international solidarity, burden-sharing and international cooperation.[91]

Notes

[1] Report of the Secretary-General on world demographic trends (E/CN.9/2003/5), para. 53. This figure of 175 million is indicative of the number of individuals who may be affected, but may include persons who have become naturalized citizens of their new countries, but may not include individuals whose nationalities have not been recognized in their countries of origin.

[2] Ion Diaconu, Chairman, Committee on the Elimination of Racial Discrimination, letter of 21 March 2003; CERD/C/62/Misc.17/Rev.3.

[3] Ibid.

[4] E/CN.4/Sub.2/1999/7 and Add.1.

[5] E/CN.4/Sub.2/2001/20 and Add.1.

[6] E/CN.4/Sub.2/2002/25 and Add.1-3.

[7] Argentina, Belize, Bulgaria, Cyprus, Denmark, Estonia, Germany, Greece, Guatemala, India, Ireland, Jamaica, Lebanon, Madagascar, Mexico, Morocco, Nicaragua, Oman, Russian Federation, Spain, Thailand and Venezuela.

[8] Population Division of the Department for Economic and Social Affairs of the Secretariat, UNAIDS, Office of the United Nations High Commissioner for Refugees, United Nations Population Fund, International Labour Organization, International Organization for Migration, Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

[9] Anti-Slavery International, Centre on Housing Rights and Evictions, Lutheran Immigration and Refugee Service, International Save the Children Alliance.

[10] The Special Rapporteur is grateful to Shervon Cassim, Mary Rumsey and Bret Thiele for their assistance in preparing this report.

[11] The Universal Declaration of Human Rights recognizes this principle in article 2 (1) *"[e]veryone* is entitled to all the rights and freedoms set forth in this Declaration, *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" (emphasis added). This provision applies to "everyone" and thus includes non-citizens. The use of the words "such as" indicates that this list is not exhaustive and makes clear that the operative phrase is: "without distinction of *any kind*". Although this list omits nationality, "this omission is not fatal … because the list clearly is intended to be illustrative and not comprehensive". Richard B. Lillich, *The Human Rights of Aliens in Contemporary International Law* 43, 1984. Professor Lillich also noted that "nationality would appear to fall into the category of 'distinction of any kind'". Similar non-discrimination principles with respect to non-citizens can be found in the Charter of the United Nations; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural

Rights; the Convention on the Rights of the Child; the International Convention on the Protection of All Migrant Workers and Members of Their Families; the African (Banjul) Charter on Human and Peoples' Rights (African Charter); the American Convention on Human Rights (American Convention); the European Convention on Human Rights; the European Framework Convention for the Protection of National Minorities and many other instruments as well as authoritative interpretations of those instruments.

[12] See Committee on the Elimination of Racial Discrimination, general recommendation XIV, para. 2: "The Committee observes that a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4 [relating to special measures], of the Convention. In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin." The Human Rights Committee has similarly observed that differences in treatment may be permissible under the Covenant "if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant". General comment No. 18, para. 13.

[13] See Joan Fitzpatrick, The Human Rights of Migrants, Conference on International Legal Norms and Migration (Geneva, 23-25 May, 2002), at http://heiwww.unige.ch/conf/psio_230502/files/fitzpatrick.doc. See, e.g., European Court of Human Rights, *Series A*: *Judgements and Decisions*, vol. 138, *Belilos v. Switzerland, judgement of 21 June 1988*.

[14] Human Rights Committee, general comment No. 15 on the position of aliens under the Covenant, 1986, paras. 1-2.

[15] General comment No. 15 expands upon the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, General Assembly resolution 40/144 of 13 December 1985, annex, which was prepared in response to a previous Sub-Commission study, Baroness Elles, *International Provisions Protecting the Human Rights of Non-Citizens* (United Nations publication, Sales No. E.80.XIV.2). As indicated in general comment No. 15, States should permit non-citizens to be considered as belonging to national minorities. See E/CN.4/Sub.2/2003/23/Add.2, para. 43.

[16] States should seek to reduce the number of stateless persons, with priority for children, inter alia by encouraging parents to apply for citizenship on their behalf. See concluding observations of the Committee on the Rights of the Child: Lithuania (CRC/C/15/Add.146), 2001 para. 23. States should regularize the status of stateless persons, especially those who have been precluded from applying for residence permits or citizenship, for example by simplifying procedures for applying for residence permits and through campaigns to make it clear that stateless persons would not risk expulsion when

identifying themselves to authorities. E/CN.4/Sub.2/2003/23/Add.2, para. 29. Stateless persons should not be involuntarily repatriated to the countries of origin of their ancestors. E/CN.4/Sub.2/2002/25/Add.1, para. 15.

[17] See E/CN.4/Sub.2/2002/25/Add.1, paras. 7-9; Asbjørn Eide, "*Citizenship and international law with specific reference to human rights law: status, evolution and challenges*", 2001; Asbjørn Eide, *Working paper on citizenship and the minority rights of non-citizens* (E/CN.4/Sub.2/AC.5/1999/WP.3) 1999; see also E/CN.4/Sub.2/2002/25/Add.1, paras. 55, 58. Efforts by States to end discrimination in their nationality laws between children born in and out of wedlock are welcome. Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland (CRC/C/15/Add.188), 2002, para. 22.

[18] See E/CN.4/Sub.2/2002/25/Add.1, paras. 14, 50, 51, 63, 66.

[19] See E/CN.4/Sub.2/2003/23/Add.1, para. 46. Intercountry adoptions must allow adopting parents to transfer their nationality to adopted children, who must be allowed to own or inherit land or benefit from health, education, and social service subsidies. See concluding observations of the Committee on the Rights of the Child: Palau, (CRC/C/15/Add.149), 2001, para. 40.

[20] See Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (revised edition) (United Nations publication, Sales No. E.02.XX.6), UNICEF, New York, 2002.

[21] E/CN.4/Sub.2/2003/23/Add.1, para. 49.

[22] See Report of the Experts of the Council of Europe on the Citizenship Laws of the Czech Republic and Slovakia and their Implementation, 2 April 1996, DIR/JUR (96) 4, para. 164. Non-citizens enjoy the right to respect for their private and family life. Where a non-citizen has real family ties to a State from which he or she is ordered deported and such deportation would place those ties in jeopardy, expulsion is justifiable only if it is pursuant to a legitimate objective and the resulting interference with the non-citizen's family life is proportionate to achieving that objective. *Berrehab v. Netherlands*, op. cit.; see also E/CN.4/Sub.2/2002/25/Add.2, paras. 10, 11. The public interest often balanced against the right to respect for family life is the State's interest in maintaining public order and arises when non-citizens are convicted of criminal offences. Hence, if the deportation of a non-citizen who is found to be of little danger to public order will result in a serious impediment to family life, such deportation could constitute a breach of the right to family life. See European Court of Human Rights, *Boultif v. Switzerland*, application No. 54273/00, 2 August 2001; E/CN.4/Sub.2/2003/23/Add.2, para. 11.

[23] See P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention* note 26 in E/CN.4/Sub.2/2002/25 (2nd ed.), 1990, pp. 496-497.

[24] See European Court of Human Rights, *X. v. Federal Republic of Germany*, application No. 3745/68, Coll. 31, 1970.

[25] See Report of the experts of the Council of Europe on the citizenship laws of the Czech Republic and Slovakia and their Implementation and replies of the Governments of the Czech Republic and Slovakia, DIR/JUR (96) 4, Strasbourg, 2 April 1996, para. 164; see also European Framework Convention for the Protection of National Minorities, but see E/CN.4/Sub.2/2003/23/Add. 2, paras. 27, 36.

[26] See, e.g., Convention relating to the Status of Refugees; Protocol relating to the Status of Refugees; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Covenant on Civil and Political Rights; European Convention on Human Rights.

[27] European Court of Human Rights, *Conka v. Belgium*, application No. 51564/99, 5 February 2002. Mass expulsions on the basis of nationality, religion, ethnic, racial or other considerations constitute human rights violations. See African Commission on Human and Peoples' Rights, *Fédération internationale des Ligues des droits de l'homme v. Angola*, communication No. 159/96 (not dated), and *Rencontre africaine pour la défense des droits de l'homme v. Zambia*, communication No. 71/92 (not dated).

[28] See E/CN.4/Sub.2/2003/23/Add.2, paras. 13, 36; see also African Commission on Human and Peoples' Rights *Organisation mondiale contre la torture v. Rwanda*, communications Nos. 27/89, 46/91 and 99/93 (not dated).

[29] E/CN.4/Sub.2/2002/25/Add.1, para. 11.

[30] There is a further discussion of the rights extended to refugees in E/CN.4/Sub.2/2001/20, paras. 85-94.

[31] See also Executive Committee of the Programme of the United Nations High Commissioner for Refugees, conclusion No. 82 (XLVIII) on safeguarding asylum, 1997.

[32] E/CN.4/Sub.2/2003/23/Add.2, para. 22.

[33] E/CN.4/Sub.2/2003/23/Add.2, para. 30; see Human Rights Committee, *A v. Australia*, communication No. 560/1993 (CCPR/C/59/D/560/1993).

[34] E/CN.4/Sub.2/2003/23/Add.2, para. 37.

[35] Ibid., para. 24.

[36] Ibid., para. 24.

[37] Ibid., para. 27.

[38] Ibid., para. 27.

[39] Ibid., para. 30.

[40] Ibid., para. 34.

[41] Ibid., para. 38.

[42] Ibid., para. 30.

[43] Ibid., para. 35, see also E/CN.4/Sub.2/2003/23/Add.1, para. 19.

[44] Ibid., para. 34.

[45] African Charter on Human and Peoples' Rights; African Charter on the Rights and Welfare of the Child.

[46] European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Nos. 1, 2, 3, 4 and 5; and the European Social Charter.

[47] American Convention on Human Rights, Convention on Territorial Asylum of the Organization of American States, OAS Convention on Diplomatic Asylum, United Nations Declaration on Territorial Asylum.

[48] Concluding observations of the Committee of the Rights of the Child: Iceland (CRC/C/15/Add.203), 2003, para. 23. At minimum, children of asylum-seekers should not be separated from their parents during detention. Concluding observations of the Committee on the Rights of the Child: Lebanon (CRC/C/15/Add.169), 2002, para. 52, cited in E/CN.4/Sub.2/2002/25/Add.1, para. 67.

[49] Concluding observations of the Committee of the Rights of the Child: Czech Republic (CRC/C/15/Add.201), 2003, para. 56, *cited in* E/CN.4/Sub.2/2003/23/Add.1, para. 48.

[50] E/CN.4/Sub.2/2003/23/Add.1, para. 19.

[51] ILO Migrant Workers Recommendation, 1975 (No. 51), para. 8.

[52] International Court of Justice, *Vienna Convention on Consular Relations* (*Paraguay v. United States*) (1998), Order of 9 April 1998; *LaGrand Case* (*Germany v. United States*) (1999-2001), Order of 3 March 1999; Supreme Court of the United States, *Breard v. Greene*, 523 U.S. 371 (1998); *Federal Republic of Germany v. United States*, 526 U.S. 111 (1999); see also Inter-American Court of Human Rights, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99, 1 October 1999 Series A, No. 16.

[53] The use of a "guest worker" approach to immigration, however, by States that affects the ability of non-citizens to organize themselves and defend their common interests and affects the emergence of a social, intellectual and economic elite of immigrant background should be of concern. E/CN.4/Sub.2/2003/23/Add.2, para. 22. The right to participate in public life at the local level should be granted to long-term non-citizen residents of a State. Ibid., paras. 22, 46. Accordingly, political parties are encouraged to take into account the interests of resident non-citizens. Further, States should ensure that legislation on granting of citizenship is applied in a fair and non-discriminatory manner to all applicants regardless of race, ethnic or national origin. Ibid., para. 47.

[54] See E/CN.4/Sub.2/2003/23/Add.1, para. 33.

[55] Regional human rights instruments draw similar distinctions for non-citizens. The American Convention on Human Rights extends the freedom of movement and residence (art. 22 (1)) and procedural protections in expulsion proceedings (art. 22 (6)). Article 2 (1) of Protocol No. 4 to the European Convention guarantees the right to liberty of movement and freedom to choose a place of residence to "everyone lawfully within the territory" of a State party. Protocol No. 7 to the European Convention extends procedural safeguards in expulsion proceedings to aliens "lawfully resident" within the territory of a State party. Persons do not have the right to enter or to reside in countries of which they are not citizens, European Court of Human Rights, *Boultif v. Switzerland*, application No. 54273/00, 2 August 2002. Prohibition by States of the right of certain non-citizens, in particular circumstances, to stay or settle in certain municipalities might, however, constitute a violation of the right of migrant workers and their families to protection and assistance. E/CN.4/Sub.2/2003/23/Add.2, paras. 17, 28. Generally, restrictions on non-citizens' freedom of movement, including a system of quotas for allocation to certain parts of a country, the inability to appeal allocation decisions, and the need for approval to change municipalities without risking a reduction or termination in social assistance are discouraged. Ibid., para. 28. The granting of residence and work permits to non-citizens should not be based on the perceived capacity of non-citizens to integrate themselves into the society of a State. Ibid., para. 36.

[56] Residence permits of long-term resident non-citizens should be withdrawn only under exceptional and clearly-defined circumstances and adequate recourse to appeal such decisions should be made available. E/CN.4/Sub.2/2003/23/Add.2, para. 36. Undocumented juvenile non-citizens may enjoy greater protection under the Convention on the Rights of the Child, article 2 of which extends guarantees to every child "within the jurisdiction" of a State party.

[57] Measures taken by States to protect their citizens and economies from non-citizens should not be taken to the detriment of the enjoyment of human rights. *Fédération internationale des Ligues des droits de l'homme v. Angola*, op. cit.; see Carmen Tiburcio, *The Human Rights of Aliens under International and Comparative Law*, (The Hague and Boston: M. Nijhoft, 2001), pp. 145-147. As the exception in article 2 (3) relates only to the obligation to fulfil economic rights, developing countries would still possess obligations to respect and protect economic rights, for example, to avoid discrimination on the basis of citizenship status. See the response of the Centre on Housing Rights and Evictions to the questionnaire, p. 1.

[58] CERD/C/62/Misc.17/Rev.3, p. 2; (Switzerland) A/57/18, paras. 251, 255; ibid., para. 100 (Croatia); ibid., para. 193 (Qatar); ibid., para. 464 (Yemen); A/56/18, para. 334 (Sri Lanka). Simplification of naturalization procedures for children and disabled persons is encouraged. E/CN.4/Sub.2/2003/23/Add.1, para. 13. Requirements for naturalization that might create a lack of motivation to apply for citizenship, such as language tests, are discouraged. Ibid. States must regularize the status of former citizens of their predecessor State who now reside within their jurisdiction. Ibid., paras. 13, 16. States must ensure that citizenship legislation is implemented in a non-discriminatory manner, and that non-citizens who wish to apply for citizenship do not experience administrative difficulties in complying with the specific requirements contained in the law. Ibid., para. 23. Furthermore, a State must not require a non-citizen who applies for citizenship to change his name to one that is traditionally associated with that State. Ibid., para. 9.

[59] European Court of Human Rights, *C. v. Belgium*, judgement of 7 August 1996, *Reports 1996-III*, 1996. A Moroccan citizen lived in Belgium for 37 years until his deportation was ordered due to convictions for criminal damage, possession of drugs, and conspiracy. He claimed discrimination on grounds of race and nationality in violation of article 14 of the European Convention because "his deportation amounted to less favourable treatment than was accorded to criminals who, as nationals of a member State of the European Union, were protected against such a measure in Belgium". Ibid., para. 37. The Court found no violation of article 14 because such preferential treatment was "based on an objective and reasonable justification, given that the member States of the European Union form a special legal order, which has … established its own citizenship." Ibid., para. 38.

[60] European Court of Human Rights, *Series A: Judgements and Decisions,* vol. 6, *Case relating to Certain Aspects on the Laws of the Use of Languages in Education in Belgium* (Belgian Linguistic case), Judgement of 23 July 1968.

[61] Advisory Opinion on the Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica (OC- 4/84), para. 60.

[62] Ibid.

[63] Ibid., para. 57.

[64] See, e.g., communication No. 964/2000 (CCPR/C/74/D/965/2000), 2002, *cited in* E/CN.4/Sub.2/2003/23/Add.1, paras. 27-29.

[65] Concluding observations of the Committee on the Elimination of Racial Discrimination: Croatia, A/48/18, para. 496, 1993.

[66] Concluding observations of the Committee on the Elimination of Racial Discrimination: Nigeria, ibid., para. 310, 1993.

[67] See, e.g., concluding observations of the Committee on the Elimination of Racial Discrimination: Qatar, A/57/18, para. 191, 2002.

[68] Communication No. R.9/35, A/36/40, annex XIII, 1981. Changes of residency requirements and revocation of temporary residence permits of non-citizen women who experience domestic violence should not be undertaken without a full assessment of the impact on these women. See Report of the Committee on the Elimination of Discrimination against Women, twenty-seventh session, A/57/38 (Part II), para. 348, 2002. The Convention on the Elimination of All Forms of Discrimination against Women also promotes gender equality in the context of the reception of asylum-seekers.

[69] E/CN.4/2003/85.

[70] See, e.g., concluding observations of the Human Rights Committee: Switzerland, A/57/40, vol. I, para. 76 (13).

[71] European Court of Human Rights *Conka v. Belgium*, op. cit.

[72] E/CN.4/Sub.2/2003/23/Add.2, para. 67.

[73] European Court of Human Rights, *Amuur v. France*, *Reports 1996-III*, judgement of 25 June 1996, para. 43.

[74] European Court of Human Rights, *Conka v. Belgium*, op. cit.; *Chahal v. United Kingdom*, *Reports* 1996-V, 1996.

[75] C*onka v. Belgium*, op. cit.

[76] E/CN.4/Sub.2/2003/23/Add.1, para. 9.

[77] Ibid., para. 15.

[78] Ibid., para. 22. Indeed, before expelling a non-citizen, States should provide effective safeguards and remedies. E/CN.4/Sub.2/2002/25/Add.1, para. 32.

[79] Ibid.; see also European Court of Human Rights, *D. v. United Kingdom*, *Reports 1997-III* judgement of 2 May 1997; CCPR/C/57/D/586/1994, para. 12.

[80] E/CN.4/Sub.2/2002/25/Add.1, para. 28.

[81] E/CN.4/Sub.2/2003/23/Add.2, paras. 23, 25.

[82] E/CN.4/Sub.2/2002/25/Add.1, para. 8.

[83] Ibid., para. 5.

[84] Concluding observations of the Committee on the Elimination of Racial Discrimination: Kuwait, A/48/18, paras. 359-381, 1993.

[85] E/CN.4/Sub.2/2003/23/Add.2, para. 37; see also United Nations High Commissioner for Human Rights, Principles and Guidelines on Human Rights and Trafficking (E/2002/68/Add.1).

[86] E/CN.4/Sub.2/2002/25/Add.1, para. 16.

[87] E/CN.4/Sub.2/2003/23/Add.2, para. 38.

[88] Ibid.

[89] Ibid., para. 32.

[90] Durban Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12), Chap. I, para. 34.

[91] Ibid.
