

Joint oral statement by Amnesty International, Friends World Committee for Consultation (Quakers), International Catholic Migration Commission and Jesuit Refugee Service to the 60th session of the UN Commission on Human Rights

Delivered by Rachel Brett, Quaker UN Office, Geneva, on Thursday 8 April 2004

Item 14: Specific Groups and Individuals

Rights of Non-Citizens

Amnesty International, Friends World Committee for Consultation (Quakers), International Catholic Migration Commission and the Jesuit Refugee Service, consider that the category of “non-citizens” is a broad one; which includes groups such as refugees, asylum-seekers, rejected asylum-seekers, documented and undocumented migrants, and stateless persons.

What these diverse groupings of individuals have in common is that they do not possess the nationality of the State in which they are, or their nationality of that State is disputed. Their lack of – or disputed – nationality makes these individuals particularly vulnerable to discrimination and other serious abuses of their human rights, sometimes on multiple grounds. This vulnerability is often heightened in situations such as conflict and extreme poverty, or by gender and age.

The international legal framework for the protection of the rights of non-citizens draws on a range of international human rights instruments that are distinct but inter-related. The Sub-Commission on the Promotion and Protection of Human Rights has recently completed a study on the rights of non-citizens,¹ at the suggestion of the Committee on the Elimination of Racial Discrimination, which has provided important groundwork on these legal regimes. Our organisations believe that there is a need for this mandate to be extended to address in more detail issues raised within the study, and to further clarify States’ human rights obligations in respect of non nationals. Three key areas in this regard are statelessness, detention, and the enjoyment of social and economic rights.

Statelessness

During his address to the 60th Session of the Commission, the UN High Commissioner for Refugees noted that “In this world of sovereign states there is another group of people with no Government of their own to speak out on their behalf and to defend their rights; those who are stateless or whose citizenship is disputed.” He ended his statement with a call on the Commission to lay emphasis on the problem of statelessness and disputed citizenship. Article 15 of the Universal Declaration of Human Rights states unambiguously that “Everyone has the right to a nationality.” Yet millions of people around the world are today denied this basic right.² As long ago as 1949 the UN Secretary-General, in making recommendations on the need for a Convention determining the legal status of stateless persons, identified the following areas as requiring the attention of the international community: juridical status; social and economic rights

¹ E/CN.4/Sub.2/2003/23

² See the Final Report Concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection, Steps taken by States to Reduce Statelessness and to meet the Protection Needs of Stateless Persons, UNHCR Department of International Protection, March 2004.

including the right to engage in gainful employment and welfare rights, and rights associated with stay and free movement including travel documents, entry, sojourn, renewal of status and expulsion.³ Yet, fifty-four years later the international community continues to pay insufficient attention to the problem of statelessness. In addition, despite the fact that the two Conventions on Statelessness have been adopted, they have been ratified by a mere 55 (1954 Convention on the Reduction of Statelessness) and 27 (1961 Convention relating to the Status of Stateless Persons) States, respectively.⁴

So invisible is the problem that even the approximate number of stateless people is not known. What is known is that many stateless people face daily obstacles to the enjoyment of their human rights because they do not come within the State protection system.

Responses to statelessness should not be restricted to *de jure* statelessness, but should include measures to address the situation of *de facto* stateless persons who, though they may formally have a nationality, nevertheless do not enjoy such basic attributes of nationality as the right to enter, reside in, or return to their State. Whether or not an individual can effectively enjoy their individual human rights should be the starting point when identifying the problem of statelessness.

While the problem of statelessness is particularly acute in some countries, virtually all states are affected by issues within their territory that relate to statelessness. Individuals may be born stateless or become stateless in the territory of another State. Stateless people are often forced to move from country to country because they are denied the right to reside in any State. When a State tries to deport or otherwise remove them from its territory, their lack of nationality may mean that they spend months or years in detention. In some instances, they are removed to a third country even though that country may not recognize their right to enter and reside, putting them at further risk of detention or onward deportation.

Detention

The prohibition against arbitrary detention in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights applies equally to all, including non nationals such as rejected asylum seekers. Nevertheless, arbitrary detention is particularly prevalent in the case of non nationals. Guidance on the arbitrary character of the detention of immigrants and asylum-seekers can be found in the Working Group on Arbitrary Detention's Deliberation No. 5.⁵ In addition to the prohibition on arbitrary detention, Article 10 of the ICCPR also requires that all persons deprived of their liberty be treated with humanity and with respect for their inherent dignity. In our view, such a requirement obliges States to address the issue of conditions of detention, not least the long-term effect of detention of unspecified and potentially unlimited duration on the mental and physical health of detainees, particularly children and other vulnerable individuals, and its use by States where individuals cannot be returned to their country of origin or as a tool effectively to compel people to leave the territory in which they are detained.

³ Recommendations submitted by the Secretary-General to the Economic and Social Council, in A Study of Statelessness, United Nations, Department of Social Affairs, reprinted by the Office of the High Commissioner for Refugees, Division of International Protection, August 1949

⁴ As of 1 March 2004.

⁵ On this issue the Working Group states, *inter alia*, that "a maximum period should be set by law and the custody may in no case be unlimited or of excessive length." E/CN.4/2000/4, annex II

Violations of economic, social and cultural rights

While the denial of access to their civil and political rights is also a problem often faced by non-citizens, the failure of States to respect the social and economic rights of individuals under their jurisdiction who are not their nationals is no less serious.⁶ In this regard, it is as well to remember that the first international instruments where social and economic rights can be found in binding form are the Conventions relating to the status of refugees and of stateless persons. Subsequently, the Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Racial Discrimination have strengthened recognition of these rights in respect of non-nationals.⁷

Although we recognise that it is permissible for States in certain circumstances to distinguish between citizens and non-citizens with regard to the limitations on certain rights, these are exceptional and must serve a legitimate objective and be proportional to the achievement of that objective.⁸ Crucially, they must not interfere with the individual's right to respect for his or her fundamental human rights.

So, while there exists a margin for States to distinguish between citizens and non-citizens, this cannot interfere with the obligation not to discriminate between individuals or groups on the basis of, *inter alia*, national origin or descent. A recent advisory opinion of the Inter-American Court of Human Rights (Advisory Opinion 18) on the juridical status and rights of undocumented migrants elucidates this point, holding that “the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*” and that “the general obligation to respect and guarantee human rights binds States, regardless of any circumstance or consideration, including the migratory status of a person”.

Recommendations

In light of the concerns raised here we urge the Commission to:

- Call on States to respect and protect the fundamental human rights of all non-nationals;
- Call on States who have not already done so to ratify the 1954 Convention on the Reduction of Statelessness and the 1961 Convention relating to the Status of Stateless Persons and to establish domestic mechanisms to identify stateless persons and to seek the assistance of the United Nations High Commissioner for Refugees in this regard;
- Request all Special Procedures to pay specific attention to the issues of the rights of non-nationals and to questions of statelessness or disputed nationality and the particular problems in relation to these issues within their mandates;
- Request the Sub-Commission to follow up on the study on the Rights of Non-Citizens with further work, including but not limited to addressing the age and gender aspects of the issue

⁶ It is also important to note that non-discrimination in the enjoyment of economic, social and cultural rights is explicitly provided for in article 5 of the Convention on the Elimination of All Forms of Racial Discrimination.

⁷ It is expected that with the recent entry into force on 1 July 2003 of the Convention on the Protection of the Rights of all Migrant Workers and All Members of their Families the rights of non-nationals will further be protected.

⁸ See Committee on the Elimination of Racial Discrimination, General Comment XIV, para. 2 and Human Rights Committee, General Comment No. 18, para. 13. See also Joan Fitzpatrick, ‘The Human Rights of Migrants’, in Aleinikoff, T. A. and Chetail, V., eds., *Migration and International Legal Norms* (T.M.C. Asser Press: the Hague, 2003), pp. 169 – 184.

and also addressing statelessness and situations of disputed nationality, detention and the economic, social and cultural rights of non-citizens.
