



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fourth session

SUMMARY RECORD OF THE 1624th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 1 March 2004, at 3 p.m.

Chairman: Mr. YUTZIS

later: Mr. SICILIANOS
(Vice-Chairman)

later: Mr. YUTZIS

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The meeting was called to order at 3.05 p.m.

THEMATIC DISCUSSION ON NON-CITIZENS AND RACIAL DISCRIMINATION
(agenda item 4) (continued)

1. The CHAIRMAN invited States parties, intergovernmental and non-governmental organizations to express their views on the subject of non-citizens and racial discrimination in the course of an informal meeting. The aim of the meeting was to promote intellectual debate on the issue, to raise awareness of the current plight of people in that situation, to help solve the problems that non-citizens face on a daily basis and to encourage fruitful, diverse dialogue.
2. Mr. WEISSBRODT (Special Rapporteur on the rights of non-citizens, Sub-Commission for the Promotion and Protection of Human Rights) said that his research showed that, according to the essential core of international human rights law, all persons, by virtue of their humanity, enjoyed fundamental rights and that they should be treated equally, whether they were citizens or non-citizens. Despite significant progress, however, there was still a substantial gap between those legal principles and the real situation facing non-citizens in many parts of the world.
3. Since general recommendation XI issued in 1993, the Committee's interpretations of the Convention with regard to non-citizens had evolved considerably, as indicated in its concluding observations to reports from States parties and its opinions on individual communications.
4. The Committee had judiciously taken into account the Human Rights Committee's general comment No. 15 of 1986, which provided an inclusive list of the rights of non-citizens. The Committee might also, in interpreting article 5 of its Convention, refer to the Human Rights Committee's recommendation that States parties should make sure that non-citizens enjoyed equal protection and recognition before the law, and the Committee on Economic, Social and Cultural Rights' recommendation that States parties should guarantee equal enjoyment of the right to adequate housing for both citizens and non-citizens, and equal access to social services that ensured a minimum standard of living for non-citizens.
5. He hoped that the Committee, after hearing from all the speakers present, would draft a revised and updated general recommendation on the rights of non-citizens that encompassed its own general recommendation XI, its experience in reviewing States parties' reports and issuing concluding observations and recommendations since 1993, its relevant opinions on individual cases, information about best practice in States parties and the general evolution of human rights law. The Committee should be particularly attentive to achieving an inclusive and comprehensive approach to the rights of non-citizens.
6. Mr. DIÈNE (Special Rapporteur on racism) said that the new face of discrimination was that of non-citizens, who were present in increasing numbers. Non-citizens were extremely vulnerable in the area of human rights protection. There was even a tendency in some countries, particularly in Europe, to call into question the right to some social benefits, such as health, to which non-citizens had previously been entitled.
7. Non-citizens were similarly vulnerable from the perspective of cultural identity. Whilst it was quite legitimate for host countries to require non-citizens to integrate into society, it was increasingly the case, particularly after the events of 11 September 2001, that non-citizens'

cultural and religious identities were being denied, which amounted to covert discrimination. Non-citizens had become a device used by some political parties, for which the demonization of non-citizens had been directly linked to the protection of regular citizens. Whilst it was therefore necessary to update current human rights instruments, it was also imperative that new mechanisms be introduced to tackle the dangers and risks faced by non-citizens.

8. Ms. RODRÍGUEZ (Special Rapporteur on the human rights of migrants) said that many immigrants, particularly illegal immigrants, were exposed to legal apartheid. Asylum-seekers and other migrants were often detained for unspecified reasons and in deplorable conditions, as detailed in her report to the Human Rights Commission (E/CN.4/2003/85). Migrants were in a particularly vulnerable position on account of the fact that they were not living in their countries of origin and frequently experienced difficulties with different languages, customs and cultures. Domestic employees were often the victims of racist and xenophobic attacks and worked in conditions similar to slavery or forced labour.

9. Despite the Committee's efforts with general recommendation XI and despite other international guidelines to protect the rights of non-citizens, the current situation regarding migrants' rights and freedoms, especially those of illegal immigrants, was appalling. The vast majority of allegations of violations of the human rights of migrants she received concerned acts of violence motivated by racism, racial discrimination and xenophobia against immigrants, or discrimination in the enforcement of national legislation and international guidelines on human rights. The current tendency evident in some mass media and political rhetoric to establish a link between the increase in immigration, particularly illegal immigration, and crime figures was of great concern, as it promoted negative stereotypes and incited racist sentiment in transit and host countries. Immigration policies in general were becoming increasingly repressive, resulting in a growing number of restrictions on immigrants' rights and, at times, situations that were legally speaking inadmissible.

10. The Durban Declaration and Programme of Action had explicitly recognized migrants and refugees as victims of racism, racial discrimination, xenophobia and related intolerance. She therefore hoped that by enacting and strengthening effective legislative measures against racism and racial discrimination, Governments would make a significant contribution to guaranteed protection for migrants. She agreed with Mr. Weissbrodt that the Committee should draft a revised and updated general recommendation on the protection of the rights of non-citizens.

11. Mr. BIERWIRTH (Office of the United Nations High Commissioner for Refugees) said that the Committee's initiative to hold the thematic discussion was timely, as UNHCR remained concerned at the multifaceted expressions of racism, xenophobia and discrimination in many parts of the world.

12. UNHCR supported the Committee's approach of introducing topic-oriented, comprehensive general recommendations. It would be desirable, however, to mainstream refugees into the future general recommendation, thus avoiding the need for a specific chapter on refugees, or at least limiting it to very specific issues. The Committee should offer a definition of the term "non-citizens" in order to avoid misconceptions, particularly in the Latin-American context. It would be preferable also to include an introduction, placing the Committee's interpretative guidance on the obligations of the Convention within a broader factual and legal context, and to establish explicit linkages to the existing international legal framework, in

particular to human rights and to humanitarian and refugee law. Emphasis should be placed on States parties' obligations to respect the principle of non-refoulement and their commitments to prevent and reduce statelessness.

13. The key challenge to be addressed was a proper differentiation between racial discrimination and legitimate distinction between citizens and non-citizens, as that underlay all further interpretative and standard-setting efforts. Guiding parameters should include a predetermined legitimate objective for differentiation, if any, a preference for the softest and least intrusive measures and respect for the principle of proportionality.

14. The Committee should explicitly underline that no differentiation was possible on the basis of citizenship, when the physical protection of individuals was involved, in particular their protection against crime. Effective protection required sensitive approaches, in order to ensure that those who were without or awaiting status or who were undocumented might develop sufficient trust to approach the authorities for protection. Regarding social rights, the Committee should offer guidance on intra-governmental confidentiality rules and other measures, in order to ensure that non-citizens felt able to take advantage of available facilities.

15. Mr. GOLDSTON (Open Society Justice Initiative) said that non-citizens were doubly vulnerable because many often belonged to racial or ethnic minorities, which made it difficult to distinguish between racial discrimination and discrimination on grounds of citizenship. The prohibition of racial discrimination was more clearly developed and more widely disseminated than international provisions protecting non-citizens. Perpetrators of discrimination could therefore exploit the ambiguity between race and nationality to explain away racial discrimination whenever victims happened to be non-citizens.

16. Despite its prohibition in international law, racial discrimination was often evident in the granting or denial of citizenship, which frequently resulted in statelessness for racial and ethnic minorities. Similarly, despite constraints in international law preventing State authorities from withdrawing citizenship once granted, racial and ethnic minorities across the world had been stripped of their nationality and rendered stateless.

17. The Committee should ensure that its general recommendation, inter alia, reaffirmed that non-citizens enjoyed full and equal rights under the Convention, forbade States from employing citizen-based distinctions as a surrogate for racial discrimination and made it clear that the term "non-citizens" included all persons who were not nationals, or who could not establish nationality, of the state on whose territory they lived, including persons who had never crossed an international border.

18. Mr. MAZMANOV (International Society of Meskhetian Turks) said that the Meskhetian Turks had been deported to Uzbekistan in 1944 by Stalin. In 1989, fleeing a pogrom, they had settled in various regions in Russia, 15,000 of them in Krasnodar Krai. The authorities had taken the decision not to grant them Russian citizenship in 1991 when the Soviet Union collapsed, which was illegal, since the Meskhetian Turks were legally present in Russia at that time. They had been persecuted by the authorities, the police and in the press and had not been granted any rights, including legal protection. They called on the Committee to take urgent action to resolve their difficulties, as the Russian authorities had ignored all such demands to date.

19. Mr. DZHIBLADZE (Center for Development of Democracy and Human Rights) said that the case of the Meskhetians in Krasnodar Krai was an example of how racial discrimination and discrimination based on citizenship status were mutually reinforcing. Analysis of the situation in Krasnodar Krai, where discriminatory practices pursued systematically by the State were accompanied by racially motivated violence and intimidation that went unchecked by the authorities, would serve to reveal the gaps and weaknesses in existing international protection mechanisms concerning non-citizens.

20. The situation of the Meskhetians in Krasnodar Krai had deteriorated rather than improved since the Committee had expressed its concern about their plight in March 2003 (CERD/C/62/CO/7), and was teetering on the brink of violence and mass expulsions. He therefore urged the Committee to give serious consideration to the appeal submitted by Russian non-governmental organizations (NGOs) requesting the Committee's involvement on the basis of the Committee's early warning and urgent action procedure.

21. He recalled that the Meskhetian Turks had been subjected to persistent and systematic racial discrimination and harassment in Krasnodar Krai over the previous 15 years. They had been denied residence registration and the social services and civil rights which that registration facilitated. Hate campaigns had been instigated in the Government-controlled regional and local media. In 2003, local authorities had tried to force Meskhetians to adopt the status of short-term visitors to Russia and accept "migration cards" which certified that status. They had also confiscated the Meskhetians' old Soviet passports, which were in many cases the only identification papers they had.

22. The initiative by the Government of the United States of America to grant refugee status to some of the Meskhetians from Krasnodar Krai had become a pretext for the Russian authorities not to take measures to improve their situation or fulfil the recommendations of the Committee, but the initiative should not be allowed to replace regularization of the Meskhetians' status in Russia.

23. He urged the Committee to adopt a decision expressing its serious concern and making recommendations for action to the Government of the Russian Federation and to request urgent submission of a special report by the Russian Government concerning the measures it had taken to prevent racial discrimination in Krasnodar Krai. He asked that a member of the Committee be designated to act as focal point and that the Committee consult with the Organization for Security and Cooperation in Europe's High Commissioner on National Minorities about measures taken to alleviate the plight of the Meskhetian Turks in Krasnodar Krai.

24. Mr. Sicilianos (Vice-Chairman) took the chair.

25. Ms. PIERRE (Movimiento de Mujeres Domenico-Haitianas) said that as the daughter of a Haitian immigrant, she wished to inform the Committee about the plight of children of Haitian immigrants in the Dominican Republic, who were denied citizenship rights in direct contravention of the law and were consequently deprived of access to education and health services. The authorities had increased the administrative requirements for registering a birth. Haitian immigrants were required to provide medical certificates, which were not given to them, and had to provide a passport and a voting card, making it impossible for Haitian immigrants to gain citizenship for their children. The decision of an electoral board had prevented births from

being registered by a third party. The authorities had also begun requiring Haitian immigrants to be tested for HIV and hepatitis B before granting residence permits. Many people were returned to Haiti if they tested positive. In one case, a woman had been distraught after being told that she had tested positive for HIV, before a re-test had shown that she was not, in fact, infected. The General Immigration Directorate had claimed that testing was carried out in order to determine how many people were living with HIV in the Dominican Republic; however, other citizens were not subject to the same requirements when registering the birth of their children. Such measures were in contravention of national law and constituted human rights violations.

26. Mr. SHIBBLAK (Oxford University Refugee Studies Centre) said that the conclusions of a study that he had carried out on stateless persons in the Arab region had shown that around 8 million people were deprived of citizenship there; half of all Palestinian refugees were stateless. The main causes of statelessness in the region were armed conflict and racial tensions, as well as the dissolution of certain States. For example, in 1948 Israel had changed the status of Palestinians from citizens to foreign residents; even those who had remained on Israeli territory had been unable to obtain citizenship. The same strategy had been applied in relation to the inhabitants of the Gaza Strip and the West Bank in 1967. Statelessness was one of the major challenges with which the next generation of Palestinians were confronted. Other groups, such as the Kurds in Iraq or the Bedouins in the Gulf region, were stateless for other reasons. In some cases, people had suddenly found themselves deprived of their citizenship for purely political reasons. Since nationality could only be conferred by paternity, the phenomenon was perpetuated by mixed marriages. Most of the legislation on nationality that was applied in the region had been devised in colonial times and had not kept pace with developments in citizenship law. The discrepancy between international and domestic law, and between legislation and reality, was massive.

27. Mr. CERDA (Argentina) said that he had submitted a written document that summarized Argentina's views on non-citizenship. The Argentine Government had enacted new legislation on immigration, which was closely linked to the question of non-citizenship. Due account would be given to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to the Durban recommendations; special importance was attached to the rights of refugees, and to national and linguistic minorities.

28. Mr. SKOVGAARD HANSEN (Denmark) informed the meeting that Denmark had forwarded two documents to the Committee, the first of which detailed recent Danish policy relating to the issue of non-citizenship, and the second of which provided information about the economic situation of foreign nationals residing in Denmark. He noted that the initiatives of the Danish Government aimed at eliminating racial discrimination against non-citizens residing in Denmark included both legislative and non-legislative measures.

29. Mr. Yutzis resumed the chair.

30. Ms. DROEGE (Human Rights Watch, International Commission of Jurists, International Catholic Migration Commission and Quaker United Nations Office) said that there was a considerable discrepancy between the guarantees provided to non-citizens under international

law and the reality with which they were confronted everywhere in the world. Moreover, there was a danger that discriminatory practices were becoming increasingly entrenched in national laws and policies. Counter-terrorism measures taken by many countries had had a particularly discriminatory effect on non-citizens.

31. The jurisprudence of various international human rights bodies had established that non-citizens enjoyed human rights on the same footing as citizens: States therefore had a duty to respect, protect, ensure and promote the civil, political, economic, social and cultural rights of non-citizens. In particular, States had a duty to guarantee the prohibition of discrimination against non-citizens. Any distinction between citizens and non-citizens must rest on objective, rational, necessary and justified criteria in order to avoid arbitrary misuse by States of article 1, paragraph 2, of the Convention. Non-citizens should not necessarily be excluded from enjoyment of the political rights, such as voting rights, for which non-citizens were conventionally deemed not to be eligible.

32. States also had a duty to prevent discrimination among non-citizens on the basis of nationality or religious beliefs, particularly when religious communities were closely identified with particular countries, ethnic groups or races. Legal provisions of States concerning nationality, citizenship or naturalization must not be discriminatory. Counter-terrorism or other measures that distinguished, excluded, restricted or created preferences between particular groups of non-citizens on the basis of the country of their citizenship or origin constituted violations of article 2 and article 5 of the Convention, unless they were justified under the narrow conditions set by international law.

33. States had a duty to protect non-citizens from discriminatory and unlawful practices and human rights abuses perpetrated by State agents, including arbitrary detention or race-related ill-treatment or torture, to investigate and punish violent crimes of a racist or xenophobic nature, and to recognize any racist or xenophobic motivation for a crime in the course of investigation and trial procedures.

34. Under international law, non-citizens, regardless of their legal status, enjoyed the same rights as citizens in the administration of justice; those rights included the right to equality before the courts, the right to a fair trial, and the right to effective legal remedy and reparation. Non-citizens who were detained had the right to consular protection under the Vienna Convention on Consular Relations. All non-citizens, regardless of legal status, enjoyed the right not to be removed or returned to a country where they were at risk of being subjected to torture or ill-treatment. Asylum-seekers and refugees should not be returned to countries where their lives or freedoms would be at risk.

35. The broad category of non-citizens should not be allowed to mask the diversity of the population groups that it embraced. She therefore wished to draw the Committee's attention to the particular vulnerabilities of five categories, namely migrant workers, stateless persons, refugees and asylum-seekers, women, and non-citizen children. Each group had its own needs and entitlements, but the common denominator was that all were victims of racial discrimination.

36. Ms. OBEROI (Amnesty International) said that her organization had made a written submission to the Committee setting out a number of its concerns with regard to State practices that compromised the rights of non-citizens. She hoped that the outcome of the thematic discussion would reflect the need for concrete guidance to be given to States on their obligations under the Convention.

37. The right to be free of discrimination was key to the enjoyment of other fundamental human rights, and was particularly pertinent to the vulnerable situations in which many non-citizens found themselves. Any legitimate and proportional distinctions between citizens and non-citizens must be strictly limited and must not interfere with the right of the individual to respect for his or her fundamental human rights, which Amnesty International believed that all non-citizens were entitled to regardless of their legal situation.

38. There was a widening gap between international standards on non-discrimination and the reality facing many migrants, rejected asylum-seekers, stateless persons and other non-citizens. The rights of non-citizens had historically been marginalized in the human rights debate, and there was a pressing need for a revised and comprehensive general comment on non-citizens and racial discrimination, which would focus greater attention on the duty of States to respect the rights of non-citizens, guide States parties as to how they should implement their obligations, and equip advocates and non-citizens themselves to seek adequate and effective remedies against human rights abuses.

39. A revised general comment should acknowledge that racism and xenophobia against non-citizens constituted one of the main sources of contemporary racism. It should make specific and detailed reference to the right of all non-citizens to be free of any form of racial discrimination. It should include language throughout that reflected the particular vulnerability of non-citizen women and children. It should accord particular attention to the rights under the Convention of undocumented non-citizens. Lastly, it should recognize the fundamental right to non-refoulement.

40. Ms. GENCIANOS (Migrants Rights International) said that migrant workers and their families represented a vulnerable group of non-citizens who were often victims of racial discrimination. Incidences of racially-motivated violence against migrants had increased since the terrorist attacks of 11 September 2001. Migrants, due to their status as non-citizens in their host countries, were often used as scapegoats for societal ills, negatively stereotyped and unjustifiably linked with criminality. Low-skilled migrant workers were forced to work for long hours, live in poor conditions and remain separated from their families for long periods of time. They were often deprived of equal pay and access to health and social security, despite the fact that they were entitled to the full respect and recognition of their basic human rights, and to live free of racial discrimination and xenophobia.

41. Migrants Rights International would like the Committee to look into the situation of non-citizens, particularly migrant workers and their families, when considering the periodic reports of States parties, and to examine the measures taken by States parties in response to their commitment to the Durban Declaration and Programme of Action. Migrants Rights International supported the mandate of the Special Rapporteur on the rights of non-citizens and would continue to work with the United Nations treaty monitoring bodies to promote respect for the rights of all migrants.

42. Mr. GRUNBERG (ACOR SOS Racisme) said that the situation for non-citizens in Switzerland was particularly concerning due to Swiss asylum regulations and laws on foreign residents. The situation of non-European non-citizens was the main cause for concern as the Government had introduced new legislation, stipulating that non-Europeans could be refused the opportunity to obtain residence permits. There were approximately 200,000 non-citizens in Switzerland who could not send their children to school, had poor or no access to social services and health care and could be deported from the country at any time. The legislative changes that had been made would only serve to worsen the situation. ACOR SOS Racisme hoped that the afternoon of thematic discussion on non-citizens and the revised general recommendation on the rights of non-citizens would serve to heighten awareness of the problems of non-citizens across the world.

43. Ms. ZHADNOK (Latvian Human Rights Committee) said that, following the restoration of Latvia's independence in 1991, the Latvian authorities had refused to grant citizenship to people who had settled in the country after June 1940. Such people were officially known as Latvian non-citizens, and did not fall under the legal categories of either foreigners or stateless persons. There were approximately 60 legislative differences between the rights of Latvian citizens and those of non-citizens, including rights pertaining to employment and involvement in political life. The same naturalization procedures were applied to non-citizens and foreigners alike. Such procedures were ineffective and slow.

44. The majority of foreign citizens residing in Latvia were permanent residents in the country but were not granted citizenship when independence was declared. Latvian legislation did not differentiate between those "homemade foreigners" and immigrants entering the country after 1 July 1992. There were also approximately 4,000 "homemade illegals" whose residence registration had officially been withdrawn. Many of them were being detained as illegal immigrants, but could not be deported from Latvia as they were not citizens of any other country. The situation of mass statelessness in Latvia was particularly concerning, and could not be improved without the assistance of international human rights institutions.

45. The Latvian Human Rights Committee would like the Committee to recommend that States parties to the Convention should provide the possibility of naturalization for all persons lawfully and habitually resident on their territory; facilitate the acquisition of citizenship for persons born on the territory of the State and provide automatic acquisition of citizenship to children of non-citizens; take account of the habitual residence of the applicant when deciding whether to grant citizenship in the case of State succession; grant all non-citizens resident on their territory for five years the right to vote and stand for municipal elections; and avoid the creation of any new artificial legal groups of permanent residence whose status was not regulated by international treaties in force.

46. Mr. POLESTSUK (Legal Information Centre for Human Rights, Estonia) said that 20 per cent of the Estonian population were non-citizens, the majority of whom were stateless former Soviet citizens. The Government had taken positive measures to grant non-citizens access to pensions and social services. Non-citizens in Estonia tended to have the same level of education as citizens, although they were underrepresented among university and college students. The unemployment rate among stateless persons was almost double the rate among Estonian citizens. Persons who had not received Estonian citizenship by virtue of restitution and had become stateless had no special status and few privileges in the field of

migration law. Former Soviet military servicemen and their families could only be granted temporary residence permits and stateless former Soviet servicemen were not eligible for naturalization. A simplified naturalization process had been introduced for certain categories of aliens, such as the disabled and stateless children under 15 years of age. However, the general naturalization requirements were considered by the majority of stateless persons to be humiliating and too difficult to meet.

47. The Legal Information Centre for Human Rights wished to recommend granting permanent residence to all non-citizens resident in Estonia since the Soviet period; giving all former Soviet military servicemen and their families the right to apply for a permanent residence permit; monitoring the influence of official linguistic requirements on employment and education opportunities for non-citizens; promoting the social, economic, legal and political integration of non-citizens and other minorities; and simplifying the naturalization requirements applied to non-citizens resident in Estonia since the Soviet period.

48. Mr. OBEMBO (Anti-Racism Information Service) said that many countries had introduced new anti-terrorism legislation in the wake of the terrorist attacks on 11 September 2001. Such legislation increased police and prosecution powers and was having a considerable effect on the rights of non-citizens. Many of the new provisions threatened guaranteed rights and freedoms, such as the right to free speech, the right to be secured from unreasonable searches and seizures and to have searches conducted only when there was reason to believe that a crime had been committed, and the right to due process of law in criminal proceedings.

49. In order to ensure the protection of non-nationals it was essential for an up-to-date definition of the term “non-citizen” to be established. Although discrimination against non-citizens was limited under international law, new anti-terrorism legislation focusing on freedom of movement was having devastating effects on non-citizens. The majority of such legislation did not contain safeguards to protect individuals, and in particular non-citizens, against arbitrariness or abuse, as provided for by international law. The Committee should remind States parties to consider the provisions of international human rights instruments when introducing new anti-terrorism legislation. All activities that could trigger mandatory detention of non-citizens should be clearly and narrowly delineated; independent judicial review of the grounds for detention should be permitted; Governments should meet a burden of proof corresponding to the deprivation of liberty entailed; and administrative detention should be limited to a reasonable and finite period.

50. Ms. SALAZAR (International Federation of Human Rights) said that the International Federation of Human Rights had noted an increasing tendency by States to create more and more types of non-citizens with an array of differentiated rights within their own territory. Discrimination against migrant workers, migrant women, persons affected by anti-terrorist legislation, refugees, asylum-seekers and travelling communities was particularly concerning. Also of concern were cases of entire communities which, although nationals of a given State, were deprived of their fundamental rights of citizenship. In situations of public emergency or exception, non-citizens were susceptible to human rights violations, particularly within the framework of the anti-terrorism struggle, in which judicial and procedural rights were being systematically violated.

51. Many economic, social and cultural rights were the object of discriminatory application, particularly those regarding labour, education, housing and health. Rights of citizenship varied from country to country and, although an international minimum standard had been set by the Committee in its general recommendation XX, it was not always respected, and some States purposely deprived certain groups of those rights, granting them no standing or representation in their Government, and making them non-citizens de facto.

52. The new general recommendation should: give a specific definition of the term “non-citizen” that should be illustrative rather than exhaustive; stress the criteria for distinctions between citizens and non-citizens; and serve as a legal basis to increase the protection of the fundamental rights of non-citizens, condemning any discriminatory acts carried out against them by States.

53. Mr. KAAAN (European Roma Rights Center) said that the dramatic collapse of the major Communist federations had led to hundreds of thousands of people becoming stateless. Roma had been particularly affected by this in the new States of Croatia, the Czech Republic and Slovenia. Anti-foreigner sentiment in Europe had led to Romany refugees, migrants and long-term residents in a variety of countries being targeted by exclusionary policies. There appeared to be a disharmony between the European Union regulations on the prohibition of discrimination and the United Nations standards in that sphere, particularly regarding non-citizens. New European Union regulations left non-citizens dangerously exposed to arbitrary treatment on several grounds, including race.

54. Mr. BALDWIN (Minority Rights Group International) said that a new immigration act had come into force in Fiji in November 2003, which had led to discrimination against certain unregistered indigenous groups and indo-Fijians. There was no legitimate objective for such discrimination, and it was wholly inconsistent with the Fijian Bill of Rights.

55. Minority Rights Group International was concerned about the treatment of Haitian minorities in the Dominican Republic, and the harassment of human rights defenders in the country. In Europe, the situation of the Roma and non-citizens in the Baltic States was particularly worrying. Many new States used succession as an opportunity to discriminate against ethnic and linguistic groups on the grounds of citizenship. Citizenship had also become a key concern among human rights groups in Africa, particularly in regard to the successive generations of Kenyan Nubians, who had lived without full recognition of their Kenyan citizenship and as non-citizens had never acquired land title, which was fundamental to their well-being.

56. There were close links between the rights of non-citizens and those of minority groups. Non-citizens were always minorities in the countries in which they lived. Minorities were sometimes granted citizenship on condition of assimilation, which undermined the legal regime in place for the protection of minority rights.

57. Ms. VILLAREAL (Mexico Sin Fronteras) said that Mexican non-citizens had to fight for their freedom under unfair and unequal conditions. Despite having ratified treaties to protect the human rights of migrants, Mexico had not eliminated criminal sanctions against unauthorized

entry or residence in the country. Immigration laws provided for the detention of non-citizens for the duration of immigration processes. Detention in such cases was allowed for up to 90 days in all cases, and in some could be extended indefinitely.

58. Non-citizens in Mexico were subjected to distinctive rules before the law that were not reasonable or proportionate and were in violation of their rights. Activities that were considered legal for nationals were often considered illegal for non-citizens, an example of which was table-dancing. Non-nationals found working as table-dancers without authorization were deported as it was classed as an illicit activity, despite being legal for nationals. Non-citizens encountered limitations when trying to protect their rights, and were frequently detained when approaching authorities to ask for justice, for example when reporting a crime. Of particular concern was the fact that the Immigration Authorities excluded irregular non-citizens from their right to be compensated by the State when their human rights were violated.

59. Mr. CLARKE, speaking from personal experience on the situation in Zambia, said that he was a British journalist who had been a permanent resident of Zambia for more than 40 years. He had been married for 35 years, and his wife, four children and four grandchildren were Zambian citizens. Recently, he had been issued a deportation order to leave the country on the grounds that he had published a newspaper article that was critical of the Government. However, that order was under judicial review and he was awaiting a ruling on its legality. His case was part of a larger pattern in which the Zambian Government used deportation as a political weapon against both foreign residents and Zambian citizens. His lawyer, Mr. Beyani, would add his own comments.

60. Mr. BEYANI said that Mr. Clarke's case was an illustration of the problems faced by non-citizens in Zambia. He drew the Committee's attention to the fact that the summary deportation of a permanent resident, ostensibly on the grounds of his national origin and his exercise of the freedom of expression, was punishable by law. It constituted a form of exclusion that impaired his human rights under articles 1 and 5 of the Convention and contravened the Committee's general recommendations XIV and XXIV. The case was part of a pattern of deportations on the basis of racial and ethnic origin that had been ordered by successive Zambian Governments since 1994 and used as a tool to silence and punish political opposition. There had been two such cases in which persons had been deported to Malawi and that of the former president of Zambia, who had narrowly escaped a deportation order aimed at preventing him from participating in the 1996 elections. The right to political participation was defined by ethnic affiliation and membership in a political elite. Although the African Commission on Human and Peoples' Rights had held such a policy to be unlawful, regrettably the practice had continued. He requested that the Committee should consider invoking its review procedure with respect to Zambia's reporting obligations under the Convention.

61. Ms. ONISKO (Palestinian Human Rights Organization) said that Palestinian refugees in Lebanon faced discrimination in nearly every aspect of their lives. Such discrimination was incorporated in Lebanese domestic legislation and was practised by Lebanese authorities and civil society, in violation of the human rights of Palestinians as provided for by the Convention and by other international human rights instruments, including the Casablanca Protocol of the League of Arab States, which required all States parties to grant Palestinians the same rights as

citizens except for nationality. Palestinians in Lebanon suffered numerous forms of discrimination, including exclusion from many professions, exclusion from basic health services, formal exclusion from property ownership, and restrictions on their movements within and outside of Lebanon.

62. Lebanon had yet to implement any of the recommendations made by the Committee in its concluding observations of March 1998 (CERD/C/304/Add.49). The Palestinian Human Rights Organization urged the Lebanese Government to respect its obligations under the international human rights Conventions to which it was a State party.

63. Mr. TIMSANA (Centre for Protection of Minorities and against Racism and Discrimination in Bhutan) said that he was a Bhutanese citizen who, like many other ethnic Nepalese in southern Bhutan, had been arbitrarily stripped of his citizenship and forced to leave the country on the basis of his ethnic origin, which differed from the Ngalong majority ethnic ruling group. A series of policies introduced by the Government in the 1980s had specifically discriminated against ethnic Nepalese in Bhutan. Those had included the introduction of retroactive and unreasonably restrictive requirements for citizenship, the removal of the Nepalese language from school curricula and the forcing of ethnic Nepalese citizens to sign so-called voluntary migration forms. After a number of southern Bhutanese demonstrators had been imprisoned and some tortured by the army, large numbers of ethnic Nepalese citizens had been forced to flee their homes and more than 100,000 were currently living in refugee camps in south-east Nepal. The refugees wished to be able to return to Bhutan as full citizens and with full guarantees for their human rights. He therefore urged the Committee to encourage Bhutan to ratify the Convention on the Elimination of Racial Discrimination and to restore full citizenship rights to the southern Bhutanese.

64. Ms. DZHURAEVA (Tadjikistan Foundation) said that a number of regional conflicts and a four-year civil war in Tadjikistan following its independence had given rise to numerous flows of refugees, 300,000 of whom had taken refuge in Russia. However, such refugees did not receive aid and were denied legal status in Russia. After a truce had been called in 1996, they had been demoted from refugee to illegal immigrant status. The Tadjik immigrants were the subject of numerous types of discrimination in Russia, including unreasonably stringent requirements for residence permits and Russian citizenship, poor working conditions and pay, arbitrary seizure of their identification papers, mass deportation and the murder of some of their members.

65. Mr. YU (Northern Ireland Council for Ethnic Minorities) said he hoped that the Committee would use the opportunity afforded by the thematic discussion to revise and improve its general recommendation XI on non-citizens, taking into account the Durban Declaration and Programme of Action and the situation, in the aftermath of the events of 11 September 2001, of national security and immigration in numerous countries, which deprived non-citizens of protection for their human rights.

66. There were many examples in Northern Ireland of a lack of respect for the rights of non-citizens, beginning with the fact that immigration detainees in Northern Ireland were kept, in violation of numerous human rights instruments, in the same facilities as convicted criminals and paramilitary prisoners. Domestic legislation had been enacted in 2002 that withdrew support for asylum-seekers, forcing many of them onto the black market, which was among the most

exploitative forms of cheap labour. The unequal treatment afforded migrant workers in Northern Ireland mirrored that of other countries in the European Union, where degrading treatment, racial harassment and violence against migrants, asylum-seekers and refugees had intensified.

67. He suggested that the Committee should amend its reporting procedure to require States parties to include a section on non-citizens in their periodic reports. The Committee should revise and improve its general recommendation XI on non-citizens in order to ensure that article 1 (2) of the Convention was properly interpreted and should take special measures to address the gross violations of human rights against non-citizens that occurred in States parties to the Convention. Lastly, it should adopt the conclusions and recommendations of the final report of the Special Rapporteur on the rights of non-citizens.

68. Ms. NAW, speaking from personal experience on the situation in Thailand, said that she was a member of the Karen tribe, who had been born on the Thai side of the Thailand/Burma border. She was a stateless person and had grown up in a refugee camp on that border, where her parents had fled from human rights abuses in Burma in the 1970s. As a non-citizen, she had no freedom of movement, no access to higher education and no access to lawyers or to legal assistance. Such discriminatory acts by the Thai Government were specifically targeted at non-citizens of various ethnic origins, namely, the Karen, Karenni, Shen and Mon peoples, many of whom were treated not as refugees, but as illegal immigrants. Such immigrants had little protection and were vulnerable to trafficking and to abuse by their employers. They received very low salaries and, if arrested, were deported.

69. Even those members of ethnic groups who had lived in Thailand their entire lives and should be considered Thai citizens had no freedom of movement outside their provinces. They did not have access to higher education and their rights were constantly being violated. The Thai Government was clearly discriminating against particular ethnic groups in violation of international human rights instruments, including the Convention on the Elimination of Racial Discrimination, to which Thailand was a party.

70. She requested that the Committee should launch an in-depth study into such human rights abuses in Thailand and urge the Thai Government to allow the children of refugees and migrant workers born in Thailand the option of citizenship by right.

71. Mr. MARTÍNEZ (Mexico) said that the Government of Mexico would give due consideration to the comments made by the representative of Sin Fronteras and would take appropriate action. He reaffirmed that Mexico was committed to improving the situation of human rights in the country. The current Government had opened itself up to international scrutiny and had signed a technical cooperation agreement with the Office of the United Nations High Commissioner for Human Rights, which had just completed a survey of the human rights situation in Mexico. The recommendations of no less than 17 bodies and mechanisms, including those of the Special Rapporteur on the human rights of migrants, would serve as the basis for the preparation of Mexico's National Human Rights Programme.

72. The Inter-American Court of Human Rights had recently approved Advisory Opinion OC-18, which, while it had regional effects, was closely related to and based on international standards. The Court had found that the lawful status of a person in a State was not

a precondition for that State to respect and guarantee the principle of equality and non-discrimination, since that principle was of a fundamental character and all States must guarantee it to their citizens and to all foreign persons in their territory.

73. He was pleased to know that Argentina planned to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and urged all States that had not yet done so to ratify that Convention.

74. The CHAIRMAN said that the Committee was coming to the end of its third thematic discussion, in which a wealth of information had been provided by non-governmental organizations (NGOs) and by some direct victims. He thanked all the participants for their contributions and pledged that the Committee would work diligently to examine the points raised both orally and in writing. Such contributions would serve as a springboard for the re-examination by the Committee of its own interpretation of the Convention.

The meeting rose at 6.05 p.m.