

TABLE OF CONTENTS

Introduction.....	2
Amnesty International’s research on discrimination against non-citizens	3
Arbitrary and prolonged detention of asylum seekers and migrant workers in the Bahamas.....	3
Discrimination against Palestinian refugees in their access to economic and social rights in Lebanon	4
Race-related ill-treatment and forcible expulsion of non-citizens in Spain.....	5
Arbitrary arrest, ill treatment and deportation of migrant workers in Thailand	6
Refugees and migrant workers victims of human rights abuses in the conflict in Côte d’Ivoire	7
Conclusion	8
Recommendations.....	8

UN Committee on the Elimination of Racial Discrimination

Written submission to the CERD thematic discussion on non-citizens and racial discrimination

Introduction

Amnesty International welcomes the thematic discussion on non-citizens and racial discrimination being held by the Committee on the Elimination of Racial Discrimination (the Committee). This discussion is taking place at a time when the rights of non-citizens are under severe threat, and the daily reality for a significant proportion of non-citizens around the world is discrimination, exploitation and other abuses of their human rights. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance noted in 2001 that “xenophobia against non-nationals, particularly migrants, refugees and asylum seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices.”¹ Amnesty International believes that in order to enhance the protection of all non-citizens there is now a pressing need for the Committee to adopt a revised, and comprehensive, General Comment on non-citizens.²

In its work, Amnesty International has documented a variety of cases in which non-citizens, including refugees, asylum-seekers, rejected asylum-seekers, documented and undocumented migrants and stateless persons, have faced serious human rights abuses stemming from racial discrimination and prejudice. The right to be free from discrimination is the cornerstone of the enjoyment of other fundamental human rights, and is especially pertinent to the particular situations of vulnerability in which many non-citizens find themselves. Amnesty International is of the view that all non-citizens are entitled at all times to respect for their fundamental human rights, regardless of the particular legal situation in which they find themselves at any point in time. All human beings, whether citizens of the state in which they live or not, have human rights. Although it may be permissible for states in certain circumstances to discriminate between citizens and non-citizens, these exceptional distinctions must serve a

¹ Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Accessed online: <http://www.unhchr.ch/pdf/Durban.pdf>

² General Comment XI (42) of the Committee, which addresses Non-Citizens, currently provides an interpretation of Article 1, Paragraph 2 of the International Convention on the Elimination of All Forms of Racial Discrimination.

legitimate objective and must be proportional to the achievement of that objective.³ Crucially, they must not interfere with the right of the individual to respect for his or her fundamental human rights.

Amnesty International's research on discrimination against non-citizens

Amnesty International has published a number of reports in recent years which have highlighted race-related discrimination against non-citizens around the world. The following case studies have been selected as they reveal that non-citizens, and especially vulnerable non-citizens such as children, women, asylum-seekers and undocumented migrants, are in practice often subject to human rights abuses by state authorities including arbitrary arrest and detention, and abuse of their economic, social and cultural rights. Amnesty International believes that these case studies highlight the need for a more comprehensive articulation of the rights of non-citizens who are subject to racial discrimination. In each case, the state in question is a State party to the Convention on the Elimination of All Forms of Racial Discrimination (the Convention).

Racially discriminatory and xenophobic reporting by the media, often supported or encouraged by politicians, has frequently stereotyped non-citizens as criminals, undesirables and even terrorists. This too has heightened the vulnerability of non-citizens to abuse and human rights violations.

Arbitrary and prolonged detention of asylum seekers and migrant workers in the Bahamas

In 2002 and 2003, Amnesty International documented the prolonged and arbitrary detention of non-citizens, including children, in immigration detention centres in the Bahamas.⁴ Inflammatory media reporting on migrants in the Bahamas, especially Haitian nationals, have contributed to a climate of hostility and discrimination towards non-citizens. Many non-citizens, including asylum-seekers, are routinely arbitrarily detained in the Bahamas and, in addition, the use of detention has the effect of inducing asylum-seekers to abandon their claims. The use of detention to dissuade those who have commenced asylum claims from

³ 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.

⁴ See AI, *Bahamas: Forgotten detainees ? Human rights in detention* (AI Index AMR 14/005/2003)

pursuing them, or to deter future asylum-seekers, is contrary to international refugee law.⁵ International guidelines that emphasise that the detention of asylum-seekers may be used only as an exceptional measure, subject to strict limitations, are not being followed in the Bahamas.

Non-citizens detained in immigration detention such as the Carmichael Immigration Detention Centre, comprised both asylum-seekers and other migrants. The average length of detention reported by those that Amnesty International interviewed varied dramatically according to nationality as well as the availability of funds for repatriation. Long-term, prolonged detention, without recourse to any judicial procedures and with limited or no access to visitors, appears to be the norm for many detainees. Individuals held in prolonged or indefinite detention include those whom the State of nationality refuses to accept back, for example those who are not acknowledged as nationals without proof of nationality, or those for whom the question of where to send them is for some other reason unresolved.

According to Amnesty International's research, the conditions of detention for non-citizens in the Bahamas were extremely poor, and included the inadequate provision of food and drink to detainees, inadequate medical care, the detention of children alongside adults, and allegations of ill treatment and sexual abuse of detainees. Amnesty International thus concluded that these conditions breached international standards on detention and amounted in many cases to cruel, inhuman or degrading treatment.

Discrimination against Palestinian refugees in their access to economic and social rights in Lebanon

Amnesty International is concerned about the human rights situation of more than 400,000 Palestinian refugees living in Lebanon.⁶ There are currently between 10,000 and 40,000

⁵ Article 33 of the Refugee Convention prohibits expulsion or return of a person – directly or indirectly – to a situation where their life or freedom would be threatened. Where detention has the indirect effect of forcing a person to 'choose' to return to their country of origin, such return would amount to a violation of the principle of *non-refoulement*. This has become known as "constructive *refoulement*". Article 31 of the 1951 Convention relating to the Status of Refugees (Refugee Convention) prohibits the imposition of penalties on refugees for being unlawfully in their country of refuge and limits restrictions on freedom of movement to those which are necessary. Guideline 3 of the UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers states that "the detention of asylum-seekers which is applied for purposes other than [the strict bases provided for under the guidelines] for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country."

Palestinian refugees living in Lebanon that are not registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and who are not receiving any assistance from the agency.⁷ In addition, thousands more do not have any form of identification and are not receiving assistance from UNRWA; they are commonly referred to as non-ID Palestinian refugees.⁸

Amnesty International undertook a research visit to Lebanon in May/June 2003, during the course of which delegates visited official and unofficial refugee camps. Amnesty International found that Palestinians in Lebanon are *de jure* and *de facto* discriminated against as compared with other non-citizens with regards to the rights to own and inherit property. In practice, the law on the ownership of real estate in Lebanon by non-Lebanese nationals, which in effect only permits nationals of 'a recognized state' to own property, mainly targets Palestinians as Palestine is not a recognized state and the majority of Palestinian refugees in Lebanon are stateless.⁹ Palestinians in Lebanon are also unable to rebuild or redevelop refugee camps due to government imposed restrictions. During its visit to the camp, Amnesty International noted serious environmental and public health problems. Residents of many camps are unable to renovate the facilities due to government policies which prohibit the provision of certain materials to a number of these camps. Palestinians in Lebanon are also *de jure* and *de facto* discriminated against in relation to other non-citizens with regards to the right to work and the right to social security. Amnesty International concluded that the discrimination levied against Palestinians in relation to the rights to own and inherit property and the right to work creates conditions where Palestinian refugees cannot enjoy an adequate standard of living.

Race-related ill-treatment and forcible expulsion of non-citizens in Spain

In April 2002, Amnesty International noted that "in Spain, your skin colour or facial characteristics can put you at risk of abuse. If you are a migrant without identity documents, you are more likely than a Spanish citizen to be detained and assaulted by police or Civil

⁶ UNRWA Statistics as at 30 June 2003 (<http://www.un.org/unrwa/publications/statis-01.html>).

Amnesty International is providing a submission to the 64th Session of the Committee on the Elimination of Racial Discrimination on the occasion of the examination of Lebanon's 17th periodic report, detailing its concerns on the situation of Palestinian refugees in Lebanon. See AI, *Lebanon: Economic and Social Rights of Palestinian Refugees*, Submission to the Committee on the Elimination of Racial Discrimination, 22 December 2003.

⁷ AI submission to the Committee, *Ibid.*, p. 2.

⁸ AI submission to the Committee, *Ibid.*, p. 3.

⁹ In 2001, the Lebanese parliament passed law 296 amending decree 11614 of 1969, which deals with the ownership of real estate in Lebanon by non-Lebanese nationals. The amended first clause states: It is prohibited to anyone who is not a national of a recognized state, or anyone whose access to property is contrary to the Constitution's provision relating to "*Tawtin* (naturalization)" to acquire real rights of any nature. English translation found in *Palestinian Refugees: Systematic Discrimination and Complete Lack of Interest on the Part of the International Community*, Fédération Internationale des Ligues des Droits de l'Homme (FIDH), p. 13.

Guards. Skin colour or facial characteristics are often reason for asking for your papers. Most race-related ill-treatment by the security forces stems from identity checks. Foreign nationals have been ill-treated by guards and staff in holding facilities or detention centres.”¹⁰ Human rights abuses committed on non-citizens by Spanish public officials as documented by Amnesty International included verbally racist abuse, beatings, arbitrary detention, and mass forcible expulsion.¹¹ Undocumented migrants, including children, were especially vulnerable to race-related human rights abuses. The organisation noted that undocumented women migrants are particularly vulnerable to torture in the form of rape or sexual assault while in custody.

Amnesty International found that the number of race-related allegations of torture or ill-treatment in Spain has been rising, and that they are frequent and widespread. Migrants subject to non-transparent expulsion procedures have not been treated with dignity. Amnesty International is concerned about incidents of ill-treatment and inappropriate use of restraints, as well as about the apparent discriminatory nature of some mass expulsions. The organisation is seriously concerned about the series of expulsions of unaccompanied children from Spanish territories, their lack of legal protection and care, and the physical ill-treatment that they may suffer in the process of such expulsion, either while being detained and in transit, or at the Moroccan border and in the hands of the Moroccan police. There have also been clear and disturbing reports that police officers have failed in their duty to protect foreign nationals from serious racist attacks.

Arbitrary arrest, ill treatment and deportation of migrant workers in Thailand

Amnesty International has recently documented its concerns relating to the situation of non-citizens from neighbouring countries living in Thailand.¹² Whether documented or undocumented, many of these migrant workers are vulnerable to abuses of their fundamental human rights. This vulnerability stems largely from their status as foreign nationals in Thailand which makes them extremely dependent on their employers.¹³ Registered workers are theoretically exempt from arrest and deportation by the Thai authorities but those found without a registration card are vulnerable to arrest. In practice employers often retain the

¹⁰ AI, *Spain: Race-related ill treatment – Appeal cases* (AI Index EUR 41/003/2002). See also AI, *Spain: Crisis of identity- Race related torture and ill treatment by State Agents* (AI Index EUR 41/001/2002).

¹¹ AI has also documented such abuses committed against Spanish citizens of foreign appearance. See AI, *Spain: Crisis of identity- Race related torture and ill treatment by State Agents* (AI Index EUR 41/001/2002).

¹² See AI, *Thailand: Grave developments – Killings and other abuses* (AI Index ASA 39/008/2003) and also AI, *Myanmar: Lack of security in counter-insurgency areas* (AI Index ASA 16/007/2002).

¹³ Under the current Royal Thai Government registration system for migrant workers, if a registered worker leaves her/his employment she/he only has seven days to obtain a new job before becoming subject to deportation.

workers' registration cards and provide them with a copy, which does not always prevent them from being arrested. Moreover police in areas of large concentrations of migrants from Myanmar often arrest both registered and unregistered workers, demanding a bribe before releasing them.

On several occasions during 2002 and 2003, migrant workers from Myanmar who protested against their lack of basic labour rights were arrested and deported from Mae Sot to Myawaddy, a town directly across the border in Kayin State, Myanmar. Some of these workers had registered with the Thai authorities and held valid work permits. Others had not registered and were thus considered to be "illegal immigrants" under Thai law, and at risk of deportation. Migrant workers from Myanmar are routinely arrested in many areas of Thailand and deported to the border, where they often make their way back into Thailand with the help of smugglers.

Amnesty International believes that the Thai Government is not exercising due diligence in protecting the rights of non-citizens; the government's failure to properly investigate crimes against them has contributed to a climate of impunity, especially with regard to violations against vulnerable non-citizens who often lack the means to pursue justice.

Refugees and migrant workers victims of human rights abuses in the conflict in Côte d'Ivoire

Amnesty International has recently expressed serious concerns regarding the situation of non-citizens, especially Liberian refugees but also including other third country nationals, in Côte d'Ivoire who are at risk of grave human rights abuses since the armed uprising against President Laurent Gbagbo in September 2002.¹⁴ Liberian refugees, especially those living in Abidjan, have been victims of harassment, humiliation and sometimes arrest. Members of the security forces and certain segments of the Ivorian population, encouraged by some xenophobic media, consider Liberians to be accomplices of the armed opposition groups that appeared in the west of the country at the end of November 2002. Tens of thousands of migrant workers and their families and displaced persons from other countries in West Africa such as Burkina Faso and Mali – many of whom had been resident in Côte d'Ivoire for generations – were forced out of their homes and had to flee either to safer zones in Côte d'Ivoire or to return to their country of origin.

The situation of tens of thousands of Liberians, who had sought refuge in Côte d'Ivoire after the outbreak of an internal armed conflict in Liberia in 1989, is particularly dramatic for three reasons: they are no longer secure in Côte d'Ivoire, where they are the victims of atrocities committed by the various parties to the conflict, who loot their possessions and ill-treat them, and sometimes forcibly recruit them into their ranks, while at the same time accusing them of supporting their opponents; they cannot return to Liberia, where the situation remains volatile despite the forced departure of President Charles Taylor; and no other neighbouring country

¹⁴ See AI, *No escape : Liberian refugees in Cote d'Ivoire* (AI Index AFR 31/012/2003)

seems disposed to welcome them, because they are often perceived to be trouble-makers. The animosity displayed towards Liberian refugees has surfaced in a climate of xenophobia encouraged by some newspapers and some groups within the regime for years, in the name of "Ivoirité". Liberian refugees in Abidjan stated to Amnesty International that the mere fact of speaking English in Abidjan could put them at risk of harassment or arrest. Many refugees also told Amnesty International that they find it difficult to get access to medical treatment and that they had been turned away from some hospitals. Amnesty International called on the government of Côte d'Ivoire to refrain from violating the rights of refugees and displaced persons and cease all ill-treatment, extortion and intimidation of these people.

Conclusion

Amnesty International is concerned that discriminatory sentiments currently characterise the policy response and actions of far too many governments to the presence on their national territory of non-citizens, be they refugees, asylum seekers, other migrants or stateless persons. As the narratives above have graphically illustrated, individuals who live in territories of which they are not citizens are frequently subject to discrimination and exploitation, and denied access to their fundamental human rights and legal remedies against such abuse. Such race-related abuse is further exacerbated by negative and xenophobic reporting by the media in several countries. Individuals who are vulnerable anyway because they lack a bond of citizenship with their country of residence are thus rendered even more vulnerable by the exercise of discriminatory, racist and even xenophobic policies and actions.

Recommendations

Amnesty International would therefore strongly encourage the Committee to adopt a revised General Comment on non-citizens which would include the following elements:

1. acknowledgment that racism and xenophobia against non-citizens, particularly migrants, refugees and asylum seekers, constitutes one of the main sources of contemporary racism;
2. specific and detailed reference to the right of all non-citizens to be free from any form of racial, ethnic or related discrimination ('racial discrimination');
3. language that ensures that the especial vulnerability to racial discrimination of women and child non-citizens is adequately reflected throughout;
4. particular attention to the rights of undocumented non-citizens under the Convention;
5. recognition of the fundamental right of all non-citizens without discrimination not to be returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment;

and which would underscore the rights and vulnerabilities of non-citizens by urging States parties:

6. to end racial discrimination against stateless persons, making explicit reference to associated non-discrimination obligations under the 1954 Convention relating to the Status of Stateless Persons and the objective of reducing statelessness under the 1961 Convention on the Reduction of Statelessness;
7. to affirm the right of all refugees and asylum seekers to seek and enjoy asylum without discrimination, making explicit reference to associated non-discrimination obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
8. to protect non-citizens from discriminatory and unlawful practices and human rights abuses perpetrated by State agents, including arbitrary detention, race-related ill treatment, and collective or mass expulsion;
9. to review or enact or amend national legislation, as appropriate, to eliminate all forms of racial discrimination against non-citizens;
10. to ensure that national legislation and policies expressly recognise the particular vulnerability of non-citizen women and children;
11. to protect and promote the economic, social and cultural rights of non-citizens, including the right to an adequate standard of living; in particular, to end unlawful and discriminatory practices that deny non-citizens access to employment, property ownership, and public facilities including medical facilities and education systems;
12. to eliminate, including through the enactment of appropriate legislation, the promotion of racial hatred and incitement to discrimination and violence against non-citizens by the media;
13. to guarantee access to effective remedies, including equal access to national courts and the judicial system, for non-citizens who have been subject to discriminatory practices;
14. to ensure that perpetrators of discrimination against non-citizens, be they public officials or other persons, do not enjoy any degree of impunity.