Fédération Internationale des Ligues des Droits de l'Homme

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الفدرالية الدولية لحقوق الانسان

Thematic Debate: Non-Citizens and Racial Discrimination

Report presented by the **FIDH**

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of the Committee on the Elimination of Racial Discrimination

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I. FIDH

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INTRODUCTION

The jurisdiction *rationae personae* and *materiae* of the Committee regarding non-citizens, is to be found in Article 1 of the International Convention for the Elimination of All Forms of Racial Discrimination *(CERD)*, as interpreted by the Committee.

It is true that the scope of the CERD, does not cover the distinctions, exclusions, restrictions or preferences made by States Parties on the ground of the "non-citizenship" (*strictu sensu*) of the persons concerned[1]. However, the scope of this instrument covers the cases of discrimination toward non-citizens which would be based on other grounds.

In particular, the Committee is competent to determine whether the provisions concerning nationality, citizenship or naturalization, discriminate against any particular nationality[2]. In this sense, and as the Committee affirmed in its General Recommendation XI, States parties are required "*to report fully upon legislation on foreigners and its implementation"*[3].

However, the jurisdiction of the Committee as far as non-citizens are concerned, is not limited to these cases. In fact, although States are not forbidden to apply distinctions, exclusions, restrictions or preferences between citizens and non-citizens, the Committee has recognized that "*many of the rights and freedoms mentioned in article 5, are to be enjoyed by <u>all persons</u> living in a given State"* (the underlining is ours)[4]. Furthermore, besides the rights and freedoms mentioned by CERD in Article 5, and as emphasized by the Committee in its Recommendation XI, *"States must not be detracted from their obligations under other covenants regarding the situation of the rights and freedoms enunciated in other instruments"*[5]. This means that the Committee's jurisdiction over non-citizens covers the whole range of possible human rights violations.

On the basis of these preliminary considerations, the FIDH wishes to bring to the attention of the members of the Committee the situation of non-citizens who have been victims of discriminatory treatment in the territory of certain States parties to the CERD.

Our compilation is principally based on reports from fact-finding missions carried out by the FIDH or on information received by our affiliated Leagues. In some cases, these sources have been enriched by United Nations documents or international jurisprudence. The cases raised below, does not intend to be a complete list of the possible situations of discrimination of non-citizens. They should be considered much more, as evidence of the existence of analogue situations in different countries. In particular, regarding migrant workers, migrant women, persons affected by anti-terrorism legislation, refugees, asylum seekers and traveling communities. In a "didactic" aim, we present the cases, by situations ("categories of non-citizens") and by countries. We have also included cases of non-citizens who could not be classified under any specific situation. Finally, we mentioned the case of an entire community that, since deprived of the fundamental rights of citizenship, it can be assimilated to the situation of non-citizens.

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1 CERD, Article 1 para.2.

2 *Ibid*., Article 1 para.3.

3 CERD, General Recommendation XI, Non-citizens (Art. 1), (Forty-second session, 1993), contained in Document *A/46/18*, para.2.

4 CERD, General Recommendation XX, Non-discriminatory implementation of rights and freedoms (Art.5) (Forty-eighth session, 1996),contained in document *A/51/18*, para.3.

5 CERD, General Recommendation XI, Non-citizens (Art. 1), (Forty-second session, 1993), contained in Document *A/46/18*, para.3.

II. MIGRANT WORKERS

The "Durban Declaration" already noted with concern and strongly condemned the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them. It also reaffirmed the responsibility of States to protect the human rights of migrants under their jurisdiction and the responsibility of States to safeguard and protect migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups and stressed the need for their fair, just and equitable treatment in society and in the workplace[6].

Furthermore, the "Programme of Action" which was adopted at the same occasion, requested that States: "take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants, and ensure the full equality of all before the law, including labour law, and further urges States to eliminate barriers, where appropriate, to: participating in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions"[7].

However, following the most updated information, the FIDH notes that the situation of migrant workers in ***Saudi Arabia****,* ***France, Costa Rica and Israel****, among others countries, is still particularly alarming.*

A) *Saudi Arabia*[8]

In this country, migrant workers represent more than 50% of the workforce (there are approximately 6 million foreign workers in Saudi Arabia, the exact number being unknown given the number of undocumented persons). Recently, the tendency is of "saudization", the goal of replacing foreign workers with Saudi nationals. Saudi Arabia maintains a population growth rate of over 3.6% and more than half of the population is under the age of 17. A high number of young Saudis enter the job market every day and unemployment is high. So far, the saudization project has concentrated primarily on expulsing several hundred thousand illegal foreign workers. Yet, replacing these workers with Saudi nationals has proven difficult, as employers are unwilling to pay higher wages and the Saudis are not willing to take lower paying jobs in domestic services or construction. But as long as foreign workers are cheap and unable or unwilling to complain, there will be a demand for them. Their flagrant marginalisation remains to be tackled with. Here, as in other Gulf countries, foreign workers are employed under the sponsorship system: workers come to Saudi Arabia through an invitation of their employers, their residency is subject to the signature of a working contract with an employer, who can be an enterprise, an individual, or even the State, when it concerns a post in the public sector (e.g. a doctor or a nurse). This system creates many grave human rights violations, as migrant workers are totally at the mercy of their employers who behold their passports, limit their freedom of movement, prevent them from changing job and from leaving the place of their work.

(a) *Right to equal treatment before the tribunals and all other organs administering justice (CERD article 5.a)*

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[6] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban Declaration, September 2001.

[7] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Programme of Action, point 29.

[8] Source: "*Migrant Workers in Saudi Arabia*", Report presented by the FIDH and the Egyptian Organisation for Human Rights in March, 2003, for the 62nd session of the Committee on the Elimination of Racial Discrimination.

In General Recommendation XX (article 3), the Committee notes that "many of the rights and freedoms mentioned in article 5, such as the right to equal treatment before tribunals, are to be enjoyed by all persons living in a given state".
In Saudi Arabia, foreign people cannot enjoy this right to equal treatment before tribunals without discrimination. Indeed, if engineers and other professionals can seek redress in Saudi labor courts, which are generally considered fair, the proceedings are conducted entirely in Arabic.

(b) Right to freedom of movement and residence within the border of the State (CERD article 5.d.i)

Foreign sponsored employees are subject to significant restrictions on their freedom of movement: they cannot legally leave the country, travel outside the city of their employment, or change jobs without obtaining the written permission of their sponsors. This system goes as far as for the obtainment of an exit visa. Employers often confiscate workers' passports, leaving them subject to arrest as undocumented aliens. Workers with no passport are required to pay $166 to $220 a year for an Iquama ID, a booklet which costs most workers the equivalent of a month's salary.

(c) *Right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration. (CERD article 5.e. i)*

The sponsorship system, in submitting the employee to the employer's total control, makes it possible for unscrupulous employers to pressure their employees to renounce to their legitimate claims for a salary, or to submit to labor conditions other than those specified in their contracts. Workers may be compelled to do jobs other than the one for which they were hired, or to accept less money than agreed upon. In many circumstances, employers have refused to pay several months, or even years of accumulated salary or other promised benefits. They sometimes stop the transferring of the workers' money to his or her relatives in the home country, which lead to the loss of his or her savings.

(d) *Right to form and join trade unions (CERD article 5.e.ii)*

Saudi Arabia is one of the countries with the poorest record of respect of the right to form a trade union. Until recently, trade unions were prohibited, thus preventing workers from the possibility to improve their working conditions. A step forward was taken by Saudi Arabia when it approved regulations on Workers' Councils (which came into effect in 2002). However, this small improvement is not yet sufficient to meet international labour standards. Workers in Saudi Arabia are now able to defend their rights through committees at the workplace. Yet, foreign workers are expressly excluded: only Saudi citizens can join labor unions (the condition is to be a Saudi of a minimum of 25 years old, and to have worked for no less than 2 years in a given company).

B) ***France***[9]

The main discriminatory practice in this country regarding migrant workers is related to the right to work and free choice of employment, mainly towards non-European citizens.

(a) Right to work, to free choice of employment, to just and favourable conditions of work, to

[9]Source : "Le respect des droits fondamentaux: situation dans l'UE en 2002, rapport conjoint de la FIDH-AE et de la FIDH, avril 2003"

protection against unemployment, to equal pay for equal work, to just and favourable remuneration. (CERD article 5.e. i)

According to the French League of Human Rights, there is a generalisation and a diversification of discriminatory practice regarding employment, especially towards non-European citizens such as people coming from the Maghreb, black Africans and established travelling communities.

This discriminatory practice is to be found in all sectors of activities, particularly when physical appearance seems to play an important role. Among the causes invoked, employers mentioned the fear to provoke dissatisfaction of their customers by employing these people. Sometimes, the refusal to employ them can result from a policy of the Chief Executive Officer or the responsible of Human Resources in the company, or from a policy of quota (threshold) over which these people cannot be employed without provoking conflicts with the customers or the staff. In the public sector, many of the posts are closed to foreigners (*"emplois fermés")*. For example, the permanently-held posts in the public sector (State, hospitals, etc.) are forbidden to non-European Union nationals, thus nearly 5, 2 millions jobs. Other companies engaged in public services (EDF-GDF, Air France, *La Poste*) and commercial or industrial public establishments are equally impeded to recruit statutory officers which are not of French nationality or from the European Union. Overall, totally or partially closed posts represent over seven million, thus approximately 30% of the total employment. These restrictions are foreseen in legislation and regulations, notwithstanding the fact that non-discrimination on grounds of nationality is a constitutional principle in France; it is necessary today to adapt these texts in order to remove the nationality condition. The only deciding criteria should be the level of studies. These measures could enable foreigners to have access to about thirty medical professions (doctors, dentists, midwives, etc.), legal professions (lawyers) and also other occupations (tobacconist's shops, bars, etc).

C) ***Costa Rica***[10]

Costa Rica has traditionally been a country that is receiving immigrants. Thousands of persons seek asylum or refuge in this country as a result of internal problems in their own countries. Since the middle of the nineties, there has been a constant flow of Nicaraguan immigrants into Costa Rica, which is intensified by the economic crisis and the natural disasters in Nicaragua.

(a)Right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration. (CERD article 5.e. i)

According to the migrant population, mainly Nicaraguan immigrants, the Costa Rican government has created discrimination against them, especially in agricultural zones. Notwithstanding the immigration amnesty issued by the Costa Rican government in order to have a quantitative register (which granted more judicial security for the immigrant workers), farmers still prefer to hire undocumented immigrants, not to pay them labour rights. This situation has resulted in an increasing competition between migrants. This can be explained by the low effectiveness of the government and other state institutions in their investigations of the farmers' conduct. Moreover, detention centres for undocumented immigrants have small capacity and do not have adequate sleeping or hygienic conditions, in violation of their fundamental human rights.

[10]Source: "*Situation of Nicaraguan immigrants in Costa Rica",* Comments and reaction to the report of Costa Rica delivered in 2001 to the Committee, Comisión para la Defensa de los Derechos Humanos en Centroamérica (CODEHUCA).

D) ***Israel***[11]

In this country, migrant labour is used deliberately to replace Palestinian workers as part of the policy related to the Israeli-Palestinian conflict. At the same time, the system of employing migrant labour in Israel, mostly from Asia and Eastern Europe, is exploitative and allows systematic violations of the rights of the workers. Therefore, the use of migrant labour in Israel presents two principal problems: to migrant workers, whose rights are systematically violated due to the structure of the migrant labour market; and to Palestinians, both from the Occupied Territories and Israeli citizens, whose lives and livelihoods are strictly ruled by the Israeli occupation, as most Palestinians can no longer travel to and work in Israel, and some Palestinian Israeli citizens have lost their jobs following the second *Intifada*.

Of approximately 300,000 foreign workers brought into Israel, more than 65% (over 200,000) are illegal. The migrant workers are mainly from the Philippines, Thailand, China and other Asian countries, Rumania and other Eastern European countries, and a number of African and Latin American countries. The Chinese migrants, mainly construction workers, are often the worst affected. The situation is similar for migrant workers in the areas of agriculture, catering and domestic help. Due to the recent downturn in the economy, beginning in 2001, it is believed that up to 250,000 Israelis are unemployed, although migrant workers in Israel generally take the low-status or low-paying jobs, many Israelis blame illegal migrant workers for taking jobs from Israelis and contributing to the 11% unemployment rate in Israel.

"*Clandestine immigration*" is also a major problem in Israel. It creates a legal, social and political problem for the Israeli authorities, but also for the associations and NGOs which work with legal and illegal migrant workers because the latter are even more exposed to arbitrary action by their employers and the police. According to Kav La'Oved, the Municipality of Tel Aviv recently found there were nearly 3500 children of parents living clandestinely in Israel. In the North of Tel Aviv (a wealthy residential area), most of the Filipino women are in Israel illegally.

(a) Right to equal treatment before the tribunals and all other organs administering justice (CERD article 5.a)

In Israel, the Courts have a good record in many fields, but are reluctant to intervene on behalf of migrant workers, and in many cases the Labour Courts have given decisions which are plainly contrary to the law. Appeals have been requested before the National Labour Court – or even a review by the Supreme Court – to correct the matter, it is hoped that these instances (and Israeli courts generally) will take a more pro-active stand regarding migrant rights in the future.

(b) Right to freedom of movement and residence within the border of the State (CERD article 5.d.i)

Both legal and illegal migrant workers in Israel are liable for confiscation of passports. The legal or documented migrant workers are put under the total control of their Israeli employers, most of whom hold on to the workers' passports illegally. If the workers complain, they are liable to be dismissed, in which case they immediately lose their work permits and become illegal residents. The police have begun a campaign rewarding people who inform the police of illegal foreign workers. A new police unit has been set up recently to deal with the problem in a more sympathetic manner, but it is too early to determine if it will work.

[11] « Migrant workers in Israel: a contemporary form of slavery », report from a joint mission to Israel investigating the situation of migrant workers », a joint publication by the Euro-Mediterranean Human Rights Network & the FIDH, 2003.

(c) Right to public health, medical care, social security and social services (article 5.e.iv CERD).

The fact that Palestinians could not go and work for reasons of "security" or because of the threat of reprisals by their Israeli employers had major consequences for Palestinians' social protection – notably, there has been a lack of police protection and social security. The same situation occurs for migrant workers. Although "Residents" of Israel are entitled to full health services, migrant workers are not considered to be residents and their work permits gives them a lower status, with access only to limited services. The medical situation of legal migrant workers is much less severe than for illegal migrants, who are not eligible for any primary or secondary medical care and have no access to treatment for chronic diseases such as HIV or cancer. Illegal migrants are also not legally entitled to protection from, or care or compensation afterward from social security in the event of a work-related accident involving loss of working ability, according to the recent modification to Bituach Leumi, or National Insurance Law. The same legislative change stipulates that non-documented pregnant women will be excluded from maternity benefits, meaning they will not be able to give birth in the state hospital unless they pay cash. Although the International Labour Organisation conventions provide for treatment for (legal) migrants that is not inferior to that provided for citizens in the area of national insurance (which covers injury at work, maternity, sickness, disability, advanced age, death … or any other event covered by local laws or regulations), Physicians for Human Rights states that Israel has chosen to opt for providing "special arrangements" for these workers, which they say are contrary to the spirit of equality between local and legally employed workers. The new arrangements introduced in October 2001 are much better, but still inferior, particularly in that the worker is tied to his employer and his insurance policy – and the insurance company may refuse to renew cover. Also, the law obliging the employer of foreign labour to provide accommodation, a work contract and health insurance is not widely respected.

(d) Right to work, to free choice of employment, to just and favourable conditions of work, (...) to just and favourable remuneration (CERD article 5.e. i)

In Israel, because of their situation, the fundamental rights of migrant workers –both legal and illegal- are not respected: they receive no days off (or fewer than agreed in the contract), low wages and poor working conditions, although Israeli labour regulations contain a certain number of rules of general application for all workers (for example 12 days paid holiday per annum, 9 days paid religious holidays among other).Migrant workers earn approximately a half to two-thirds of that paid to Palestinian workers, and even less than that in relation to Israeli workers. Looking at it crudely, from the employer's point of view, a Chinese, for example, costs $10 for 10 hours of work per day, while a Palestinian costs $30 for the same number of hours. Therefore, underpayment to migrant workers is widespread.

In spite of the existence of specific national laws aiming at protecting migrants workers, these rules are almost totally ignored[12]. The following table shows the discrepancy existing between the international Human Rights law, national law obligations toward migrants workers ant the reality[13].

[12] There are rules specific to migrant workers contained in the Foreign Workers (Prohibition of Unlawful Employment and assurance of fair conditions) Law 5751-1991, and Statutory Instruments made under that law, covering in particular the following:
-Provision of medical insurance (the worker having had a medical examination before leaving his or her country)
-contract of employment setting out the terms as to salary, deductions, length of working week etc.
-provision of residential accommodation
-protection of any migrant worker making complaints against his or her employer

[13] Source: Kav LaOved: On the verge of slave labour. Migrant workers trafficking in Israel.

Migrant workers are entitled to:	Is it implemented?
Minimum wages	In most cases, no
Overtime	In most cases, no
Social benefits (annual leave, recuperation fees, etc.)	In most cases, no
Salary reports by employer to an enforcement agency	The Labour Ministry does not require nor receive such reports
Pension-like fund, managed by the Treasury department	The fund does not exist
Work accidents and maternity benefits	The National Insurance Institute recently decided to deny benefits of premium paying to illegally employed workers. Kav LaOved's pressure reversed the decision.
Information leaflets and ombudsman services in the worker's language	Leaflets and complaint reception services were not provided at the time of the mission – though the authorities state that they are now available in 15 languages. Kav LaOved was not allowed to place its own leaflets at the airport.

Also, the FIDH noted that for employers in the service sector, particularly in the field of care-providers for the elderly, sick and disabled, there is, in practice, no effective regulation equivalent to a collective agreement to fix the rights and duties of employers and workers.

Paradoxically, it is only when these workers begin working illegally that this relationship of enslavement disappears. Whatever the conditions in which their work contract is terminated, the majority of migrant workers do not in fact return voluntarily to their country as required by the law, but "escape" and go underground. The illegal migrant is then no longer bound to an employer or obliged to work in one sector of activity: he or she can choose between various jobs and even undertake several small jobs, depending on the wage offered, and they can find undeclared employment without difficulty.

(e)Right to form and join trade unions (CERD article 5.e.ii)

The Histadruth is the Trade Union organization of Israel. Under its own statutes, it can only admit Israeli citizens to full membership. Foreign workers may become members of local branches, and may be covered by special company arrangements, but the great majority of them have no trade union representation at all. Strikes by migrant workers are virtually unknown because they are too afraid of. Histadruth says they are now ready to admit some foreign workers, and they have a small section for Filipino workers, but very few have shown any interest. They say that employers in the construction industry will not follow the law, and foreign employees are reluctant to join – presumably because of possible dangers to their status.

III. MIGRANT WOMEN

Under General Recommendation XXV on gender related dimensions of racial discrimination (2000), the Committee notes that certain forms of racial discrimination may be directed toward women specifically because of their gender, such as abuse of women workers in the informal sector or domestic workers.

A) Saudi Arabia

In Saudi Arabia, migrant women are often subjected to forced confinement, in violation of the right to freedom of movement (*CERD art. 5.d.i*). Female domestic workers are often forbidden to ever leave the house in which they work for the entire duration of their stay in Saudi Arabia, thus living in near total isolation. In addition to being overworked, underpaid, and often held in complete isolation inside the household, female domestic workers are sometimes physically abused and raped by their employers.

Furthermore, it remains extraordinarily rare for a Saudi Sponsor to be criminally prosecuted. In the past few years, the Sri Lanka embassy has referred 10 alleged cases of rape to the police, however no judicial investigation was undertaken regarding these cases[14]. In fact, there are no prosecutions for rape, which represents a violation of women's right to equal treatment before the tribunals and all other organs administering justice (*CERD article 5.a)*.

IV. NON- CITIZENS AND ANTI-TERRORISM MEASURES

A) United Kingdom

The "Antiterrorism Crime and Security Act (2001)"[15] enables the authorities of the State to detain non nationals, without charge and for an indefinitely period of time, on the mere suspicion of having participated in terrorist activities or having links with terrorist groups. This extended power, can be applied when the removal or deportation of the person concerned is not possible (due notably to the principle of "non refoulement") and when the Secretary of State issues a certificate indicating his belief that the person's presence in the UK is a risk to national security since suspected of being an international terrorist.

The detainee is formally free to put an end to his detention by agreeing to leave the UK territory. However, this possibility can hardly been taken into serious consideration when the person would risk his life or physical integrity by returning to his country.

UK police has allegedly arrested 304 persons under the above mentioned Act (as of 2002), and only forty of those arrests have led to charges being brought[16].

In the FIDH opinion, this Act constitutes therefore a violation of the CERD (Article 5)[17] and of the ICCPR (Article 26), since it removes non nationals from the full enjoyment of fundamental rights, such as "the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably, in the enjoyment of (...) the right to equal treatment before tribunals and all other organs administering justice"(CERD Article 5). It is worth recalling that these fundamental rights should not be derogated even when a State has declared a state of emergency[18].

B)Germany[19]

[14] St Petersburg Times, article published on July 23rd, 2002.

[15] *In*: www.hmso.gov.uk/acts/acts2001/20010024.htm.

[16] Joint Report FIDH-AE and FIDH, « Situation dans l'Union européenne en 2002 », Avril 2003.

[17] FIDH Press Release: "The FIDH requests the UN Committee on the elimination of Racial discrimination for urgent procedure on anti-terrorist legislations in the UK, USA and Germany, March 6, 2002.

[18] See: Human Rights Committee, General Comment 29: State of Emergency (Article 4), *CCPR/C/211/Rev.1/Add.11*, para:16 and 8. In October 2002, the Court of appeal on appeal from Special Immigration Appeals Commission (SIAC) affirmed however that it was well recognized in international law that, in some situations, states may distinguish between nationals and non-nationals, especially in time of emergency.(Royal Court of Justice Stand, 25 October 2002, case no C /2002/1710).

[19] Press release "The FIDH requests the UN Committee on the elimination of Racial discrimination for urgent procedure on anti-terrorist legislations in the UK, USA and Germany, 6 March 2002.

Concerns were also raised as far as the consequences on human rights of non-nationals, following the adoption of anti-terrorist legislation in Germany. On the basis of these legislation, immigration and asylum can be refused on mere suspicion of belonging to a terrorist group or having participated to terrorist activities.

The focus on foreigners applying for residency or asylum further exacerbates potential prejudices amongst the German population. Furthermore, the Anti-terrorist legislation could entail an infringement to the *non-refoulement* principle, such as guaranteed by Article 3 of CAT. Such principle has the value of *jus cogens* and is applicable in all circumstances, including the fight against terrorism. Should the German legislation on anti-terrorism not respect this principle, by prevent non-national from the enjoyment of a *jus cogens* rule, it would be considered as a grave violation of the CERD.

C) USA

The Patriot Act (2001) enables the authorities of the State to detain for a long period of time or indefinitely, non national without charge, on the mere suspicion of them having participated in terrorist activities or having links with terrorist groups.[20]. Our reflections as far as the UK "Antiterrorism Crime and Security Act" are concerned, do also apply to the USA Patriot Act.

Moreover, in this Act, the definition of terrorism is vague enough to be broadly interpreted and could in fact be applied to foreigners guilty of minor offences or even to political dissidents. The implementation of the Act led to the arrest of over 1200 individuals (as for 2002), the vast majority of whom were foreigners fitting the Arab-Muslim profile. Over 500 of them were allegedly detained for an unlimited period and although most of them were released or deported for breaches of the immigration laws, the United States Government refused to publish their names and the administration excluded the public from legal hearings that led to their deportation. The USA Patriot Act was accompanied by orders issued by the President and the Attorney-General. On 13 November 2001, the Attorney-General, Mr. John Ashcroft, asked the intelligence agencies to interrogate 5,000 persons who had entered the United States legally, but who were mostly from Arab countries or the Middle East. On the same day, emergency "military commissions", which would apply the rules used for courts martial and try suspects not having United States citizenship, were set up by presidential order, sparking off a debate on the discriminatory nature of the decision. The creation of a new category, that of "enemy combatant", allow anyone suspected of undermining the country's security to be held in prison indefinitely, without access to a lawyer and without any of the guarantees of the United States justice system. These measures are said to have been widely used to justify discrimination within the population[21].

The FIDH is also concerned by the tighter security measures which were recently adopted by the United States on entry of their territory. Biometrically coded identification like fingerprinting and photographing of visitors are from now on required for most of the citizens of the world, however, citizens of 27 countries are exempt from these measure which ask the question of discrimination against some non nationals. In some countries, the fingerprinting requirement has tapped into deeply rooted resentments of the United States. In retaliation, a Brazil's court order decided to subject all American entering Brazil to the same practice[22].

V. ASYLUM SEEKERS, DISPLACED PERSONS AND REFUGEES

[20] *Ibid.*

[21] "Racism, racial discrimination, xenophobia and all forms of discrimination: situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001", Report by Mr. Doudou Diène, Special Rapporteur, *E/CN.4/2003/23*, January 3, 2003.

[22] New York Times, 01.07.04, *World opinion is fragmented on tighter security for visitors*

The Durban's Programme of Action urges States to comply with their obligations under international human rights, refugee and humanitarian law relating to refugees, asylum-seekers and displaced persons, and urges the international community to provide them 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, to share responsibilities»[23]. The FIDH notes with concern that to refugees, asylum-seekers and displaced persons often face discrimination in their host-country and wishes to bring to the attention of the Committee the cases of Lebanon and the United Kingdom which are two cases among others.

A) ***Lebanon***[24]

384,918 Palestinian refugees, that is, 10% of the total Palestinian population, are registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Lebanon. Palestinians therefore constitute a little over 11% of the total population in Lebanon. The majority of them live in 12 refugee camps[25]. However, the Lebanese government and the Palestinian Liberation Organization (PLO) count 450,000 Palestinian refugees actually living in Lebanon. According to the Palestinian Human Rights Organization (PHRO), there is a third category of Palestinian refugees who are not accounted for, that would be another 10,000 Palestinians living in Lebanon without any identification paper[26].

Notwithstanding Lebanon's initial hospitality shown to the Palestinian refugees, the relations between the Palestinian refugees on the one hand, and the Lebanese authorities and population on the other hand, have degraded considerably and tension has grown between them, as is exemplified, among others, by the interventions by the Lebanese Army in refugee camps[27]. These events participate in the continuous degradation of the political, economic, social and legal situation of the Palestinian refugees in this country. One explanation given for this inexorable degradation is the responsibility of the civil war attributed to the Palestinians by certain segments of the Lebanese society. A strong anti-Palestinian sentiment is developing, to the extent that some Lebanese authorities have qualified it as "racism". This feeling originates both from the dead-end of the peace process in the Middle East and from the religious prism, which gives the Palestinian presence on Lebanese soil the character of a definitive implantation, which could threaten the demographical balance of the religious denominations in Lebanon.

Lebanon has developed, towards the Palestinian refugees, discriminatory laws, which themselves constitute a dereliction of its national and international duties, in particular of Articles 2 and 5 of CERD. In other words, Lebanon's disregard of obligations towards the Palestinian refugees is not anymore to be solely found in the violation of national and international texts, but also in the legalization of an openly discriminatory practice, which influences the evolution of the Lebanese domestic law.

B)United Kingdom[28]

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[23] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Programme of Action, September 2001, point: 34.

[24] FIDH Report, "Investigative International Mission: Palestinian Refugees in Lebanon-Systematic Discrimination and Complete Lack of Interest in the Part of the International, March 2003.

[25] Figures provided by the UNRWA, Public Information Office, April 2002.

[26] PHRO, 2002: *A review of the status of Palestinian refugees in Lebanon.*

[27] On September 4, 2002, the Lebanese Army intervened in the refugee camp of Al Jalil (or Wavel) at Ba'alabek, under the pretext of searching one of the installations of the Fateh-revolutionary Command of Abou Nidal. This intervention resulted in four deaths (a Lebanese staff sergeant and 3 Palestinians) and several wounded. Also, in August 2002, the Lebanese Army had had to intervene at the Ain el-Heloue camp, South Lebanon, but without having to enter the camp however, to seize an individual (of Lebanese nationality) who was involved in the murder of three members of the military; this operation took place without having to deplore any casualties.

[28] "Le respect des droits fondamentaux: situation dans l'UE en 2002, rapport conjoint de la FIDH-AE et de la FIDH, avril 2003"

An authorization under the Race Relations (Amendment) Act, signed by Home Office Minister Barbara Roche in April 2001, specified seven ethnic or national groups whom immigration officers were empowered to refuse entry to the UK outright on the basis of their race or nationality.

In June 2002, the Home office announced that it had rescinded the ministerial authorization allowing this discrimination against people from specific named countries. However, the Immigration Service can still rely on authorization (from March 2001) which allows them to continue discriminating in ground of nationality. This includes, if there is "statistical evidence showing a pattern or trend of breach of the immigration laws by person of that nationality" (or intelligence to similar effect), the power to "refuse the person leave to enter before he arrives to the UK". An example of this kind of discrimination can be found in the treatment of Roma people which took place in July 2001 in Prague Airport. According to the NGO Liberty and the European Roma Rights Center (ERRC), the six persons concerned in this case went to Prague airport to catch flights to London in the course of June 2001. All had valid airline ticket and as they were Czech nationals didn't need a visa to travel to the UK. Yet all were singled out for extended questioning apparently by reference of the colour of their skin. They were prevented of from travelling to the UK and the procedure was conducted in full view of attendant media and other passengers. Some but not all were seeking asylum; one elderly woman was planning a short visit to her grand daughter in the UK. Despite that, Mr Justice Burton ruled in October, 10th, 2002, that their treatment was lawful.

VI. TRAVELING COMMUNITIES

(a) Right to education and training (CERD article 5e v)

A) ***France***[29]

According to the French League of Human Rights, non sedentary people are often victims of discrimination. Despite the law Besson of the 31 May 1990, there is still difficulties in children' schooling for the traveling communities. Several mayor are still opposed to the schooling of these children despite the legal obligation for school to receive them even if their stay doesn't exceed half a day and whatever the size of the class is. Unfortunately, these people still don't have the reflex to seize associations working against discrimination, probably due to lack of information of this possibility. This kind of discrimination is directly in contravention with the General Recommendation XXVII of the Committee which recommend among other that States parties to the Convention "take the necessary measures to ensure a process of basic education for Roma children of traveling communities, including by admitting them temporarily to local schools, by temporary classes in their place of encampment, or by using new technologies for distance education"[30].

VII. NON-CITIZENS IN GENERAL

(a) Right to equal treatment before the tribunals and all other organs administering justice (CERD article 5.a)

A) ***Belgium***[31]

[29] "Le respect des droits fondamentaux: situation dans l'UE en 2002, rapport conjoint de la FIDH-AE et de la FIDH, avril 2003".

[30] CERD, General Recommendation 27-Discrimination against Roma (Fifty-seventh session, 2000), 16/08/2000, Point 3 para21.

[31] "Le respect des droits fondamentaux: situation dans l'UE en 2002, rapport conjoint de la FIDH-AE et de la FIDH, avril 2003".

According to the Belgian League of Human Rights, non nationals are victim of a so-called double sentence when charged guilty of an offense. It is a discriminatory measure as in a similar case, two persons found guilty of the same offense are not charged with the same sentence: one is free after having served his sentence because he is Belgian and the other is removed from the country. A double sentence applies thus only to non-citizens, which contravenes to the principle of equality before the law and equal treatment before the tribunals. This kind of discrimination however also exist regarding the service of the sentence: alien cannot benefit from a conditional liberation or a remission of penalty.
Similarly, article 20 of the royal decree which was adopted on the 20 July 2000 advocated a special procedure before the State Council concerning a request of a foreigner regarding a decision relative to entry, stay or removal from the country. While the normal delay is of 60 days after the notification of decision , this delay was reduced by half for .litigation related to foreigners.

B)France[32]

The edict of the 2 November 1945, reaffirmed by the law of 1981, defines categories of "protected foreigners" regarding their private and family life. These foreigners are permanently settled in France and considering the bond they have in this country, they are to be considered as quasi Frenchmen. However, even for this category of person, new repressive laws make them less and less protected. Like in Belgium, the so-called "double sentence" also applies. As said before, this practice is discriminatory as in the same case, two persons charged of the same offence didn't endure the same sanction because of their nationality.

(b) Right to marriage and choice of spouse (CERD article 5d iv)

A) ***Israel*** [33]***:***

On the 31st of July 2003, the Knesset passed the Citizenship and Entry into Israel Law which forbids residents of the Occupied Palestinian Territories married to Israeli citizens or Palestinian residents in Israel to live lawfully in Israel with their companion. This law, which aims at preventing family unification and which also applies retroactively affected ten of thousand of couples. Since 1967, Israelis who married residents of the Occupied Palestinian Territories had to apply for family unification to obtain a legal status for their spouse in Israel. Since September 2000, the issuing of residence permits for Palestinian spouses had been effectively frozen and on 12 May 2002, the Israeli government, by an unanimous decision of the cabinet, decided to freeze all request for family unification.

The law which was passed in July 2003 directly discriminates against spouses from the Occupied Palestinian Territories, thus it contravenes in particular to article 5 (d) (iv) of the Convention on the Elimination of All forms of Racial Discrimination (ratified by Israel in 1979) guaranteeing "the right of everyone , without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of (.....) the right to marriage and choice of spouse."

VIII. NATIONALS ASSIMILATED TO NON-CITIZENS

The Committee has noted, in General Recommendation XX, § 3, that some rights "such as the right to participate in elections, to vote and to stand for election are the rights of citizens". The FIDH

[32]"Le respect des droits fondamentaux: situation dans l'UE en 2002, rapport conjoint de la FIDH-AE et de la FIDH, avril 2003"

[33]Press release , Paris 31 July 2003: *Discriminatory law approved by the Knesset*

considers that the situation of certain groups deprived of these fundamental rights of citizenship can be assimilated to the situation of a non-citizen within those countries, as they are deliberately excluded by the Government and its legislation. For this reason, we have decided to bring this kind of situation to the attention of the Committee.

A) ***Iran***[34]

(a) *Right to equal treatment before the tribunals and all other organs administering justice* (*CERD article 5.a*)

Article 13 of the Iran Constitution gives a special status to three religious minorities named "recognized religious minorities": *"Zoroastrian, Jewish and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own cannon in matters of personal affairs and religious education"*.

As a consequence of articles 12 and 13 of the Constitution, citizens of the Islamic Republic of Iran are officially divided into four categories: Muslims, Zoroastrians, Jews and Christians. Therefore, despite the fact that they constitute the largest religious minority in Iran, the Bahá'ís are a "non-recognized" religious minority without any legal existence, classified as "unprotected infidels" by the authorities. They are not even granted the theoretical right to perform their religion and have been subjected to systematic discrimination for the last 14 years on the basis of their religious beliefs. Its members have repeatedly been offered relief from persecution if they accepted to recant their Faith.

In the same manner, atheists do not have any recognized status. They must declare their faith in one of the four officially recognized religions in order to be able to claim a number of legal rights, such as the possibility to apply for the general examination to enter any university in Iran.

A number of legal provisions contained in the Constitution of the Islamic Republic of Iran, its Penal code as well as its Civil Code explicitly discriminate against all non-Muslim, in contravention to Article 1 of the CERD[35].

As for the Constitution:

(i) Only Muslims are able to take part in the Government of the Islamic Republic of Iran and to conduct public affairs at a high level. According to the Constitution, non-Muslims cannot hold the following key decision-making positions: President of the Islamic Republic of Iran, who must be a Shi'a Muslim (art. 115), Commanders in the Islamic Army (art. 144), judges at any level (art. 163 and law of 1983 on the selection of judges).

(ii) Non-Muslims are not eligible to become members of the Parliament (the Islamic Consultative Assembly) through the general elections. Christians, Jews and Zoroastrians can only run for the specific seats allocated to these minorities by article 64 of the Constitution. As for the non-recognized religious minorities, they are totally excluded from any Parliamentary representation since they can neither vote nor be elected.

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[34] Source: Report Presented By The FIDH and The Iran League for the Defense of Human Rights "*Discrimination Against Religious Minorities In Iran »* 63rd Session Of the CERD, August 2003.

[35] *See*: CERD, General Recommendation XIV, Definition of discrimination (Art. 1, par.1), (Forty-second session, 1993), Contained in document A/48/18, para.2. Furthermore, the Durban Declaration (Point 2° expressly recognized that "racism, xenophobia and related intolerance occur on the grounds of race, color, descent or national or ethnic origin and that victims can, suffer multiple or aggravated forms of discrimination based on other grounds such as sex, language, **religion,** political or other opinion, social origin, property, birth or other status".

(iii) Non-Muslims cannot become members of the very influential Guardian Council.

Regarding the Penal Code, for a number of offences, the punishment differs in function of the religion of the victim and/or the religion of the offender. The fate of Muslim victims and offenders is systematically more favorable than that of non-Muslims, showing that the life and physical integrity of Muslims is given a much higher value than that of non-Muslims. The institutionalized discrimination is particularly blatant for the crimes of adultery, homosexuality, premeditated murder and crimes against a deceased.

Regarding the Civil Code: (i) its provisions on inheritance clearly discriminate against non-Muslims each time a Muslim is involved in the inheritance, encouraging conversion to Islam through the lure of material retribution. (ii) Marriage between a Muslim woman and a non-Muslim man is forbidden by Article 1059 of the Civil Code. However, Muslim men are allowed to marry non-Muslim women, as the man is deemed to be the dominant partner in the couple.

The peculiarity of the persecution faced by the Bahá'ís in Iran is its systematic and particularly organized nature, proven by the emergence in early 1993 of a secret official document giving precise instructions for the slow strangulation of the Bahá'í community. Drafted in 1991 by Iran's Supreme Revolutionary Cultural Council at the request of the Islamic Republic's Supreme Leader and approved by the latter, this memorandum came to light in the 1993 report by the Special Representative to the United Nations Commission on Human Rights. It sets forth specific guidelines for dealing with "*the Bahá'í question*" so that Bahá'í "*progress and development* [be] *blocked*". The memorandum includes the following instructions:

· "*They must be expelled from universities, either in the admission process or during the course of their studies, once it becomes known that they are Bahá'ís.*"
· "*Deny them employment if they identify themselves as Bahá'ís.*"
· "*Deny them any position of influence, such as in the educational sector, etc.*"
· "*A plan must be devised to confront and destroy their cultural roots outside the country.*

(b) Right to freedom of peaceful assembly and association (CERD article 5(d)ix)

The Bahá'ís have been denied for two decades the right to freedom of peaceful assembly. The Bahá'í community has also been ordered to dissolve all its administrative institutions. Bahá'í cemeteries, holy places, historical sites, administrative centers and other assets were seized shortly after the 1979 revolution. The few properties that were not destroyed have not been returned. After the destruction of Bahá'í cemeteries, members of this minority have only been given access to specifically designated areas of wasteland to bury their dead. They are forbidden to mark individual graves or to construct mortuary facilities.

(c) *Right to education and training (CERD article 5.e.v)*

Furthermore, Bahá'ís have been officially barred from attending legally recognized public and private institutions of higher education in Iran for over two decades. In 1987, in response to this demoralizing situation, the Bahá'í community established its own program, the "Bahá'í Institute of Higher Education" (BIHE), created to address, to the extent of its resources, the needs of at least some of the community's young people. The government has been watching the BIHE's activities closely. Since 1998, the authorities have strived to intimidate those involved and to suppress the program. Faculty members have been arrested and pressured to sign statements attesting the end of the BIHE and their cooperation with it; materials, including textbooks, computers and documentary records have been seized. On 19 July 2002, while the BIHE was holding its qualification examinations across the country, the Iranian Revolutionary Guards entered eight of the fourteen premises where examinations were being held in two cities. In Shiraz, they videotaped the proceedings, interviewed several of the students and confiscated the examination papers of 25 students. In Mashhad, the Revolutionary Guards confiscated all of the examination papers as well as Bahá'í books.

(d) Right to own property alone as well as in association with others (CERD article 5(d)v

The government has also been seeking to systematically weaken the economic base of individuals. Since the Islamic revolution, the authorities have violated the right of the Bahá'ís to own property as well as their right to housing. They have confiscated large numbers of private and professional properties belonging to Bahá'ís, a phenomenon that has increased in recent months in several cities.The courts routinely uphold such confiscations. In such cases, some court decrees have justified the confiscations by the fact that the owner was an "*active member of the misguided Bahá'í sect*". In a recent case, a Bahá'í appealed to the Islamic Revolutionary Court for the return of his confiscated property. The Court upheld the decision of a lower court on the grounds that the owner had held Bahá'í classes in this home and that many volumes of Bahá'í books had been found there.

(e) *Right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.* (*CERD article 5.e. i)*

1) Denial of employment and unemployment benefits

In the early 1980s, more than 10,000 Bahá'ís were dismissed from various positions, in particular in governmental and educational institutions. Some of them were even required to reimburse salaries received before their dismissal. Many remain unemployed and receive no unemployment benefits. Today, employment opportunities are still limited for Bahá'ís. In many cases, even when Bahá'ís manage to find employment in the private sector, the authorities force their employer to fire them. When Bahá'ís are able to start a private business, attempts are made to block their activities.

2) Denial of pensions

The Bahá'ís dismissed because of their religious beliefs were deprived of their pensions and some others were requested to pay back pensions previously granted. In four recent cases where Bahá'ís have been denied access to their rightfully earned pensions, documentary evidence prove that these benefits were denied solely on the basis of religious belief. Those documents explicitly state: "*Payment of pension to those individuals connected with the Bahá'í sect is illegal*" [or an "*unlawful act*"].

(f) *Right to inherit* (*CERD article 5.d.i)*

The right of Bahá'ís to inherit is also denied. A recent court decision dispossesses a Bahá'í from inheritance on the following ground:"*…the religion of the deceased has been stated as Bahá'í. Since the religious minorities, according to the constitution of the Islamic Republic of Iran, are only Christian, Jewish and Zoroastrian, and Bahá'ísm is a misguided sect and is not recognized as a religion or as a religious minority, the issue of the probate of the will as the sole beneficiary of the deceased is not religiously allowed, and is against the law.*"