

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/1354/Add.5
22 February 1980

Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Thirty-sixth session
Agenda item 24

QUESTION OF INTERNATIONAL LEGAL PROTECTION OF THE
HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT CITIZENS
OF THE COUNTRY IN WHICH THEY LIVE

Report of the Secretary-General

Addendum

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COMMENTS RECEIVED FROM GOVERNMENTS

GERMANY, FEDERAL REPUBLIC OF

[18 February 1980]
[Original: ENGLISH]

1. The rights mentioned in article 8 (IV) of the draft declaration on the human rights of individuals who are not citizens of the country in which they live have been guaranteed in the Federal Republic of Germany by virtue of article 12 (right to health and medical attention), article 9 (right to social security), article 11 (right to an adequate standard of living, social assistance) and article 10 (1) (education of children) in conjunction with article 2 (2) of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966 (law of 23 November 1973, Federal Law Gazette II, p. 1569) to all individuals irrespective of their national origin since the said Covenant came into force on 3 January 1976.
2. If the draft declaration is intended to concretize these social rights with regard to individuals who are not citizens of the country in which they live, its terminology should adhere to that of the International Covenant on Economic, Social and Cultural Rights. At present there are such discrepancies as "physical and mental health"/"public health", "medical service" and "medical attention"/"medical care", "adequate standard of living"/"social services", and "care and education"/"education".
3. Furthermore, the terms "minimum requirements" and "undue strain ... on the resources of the State" in article 8 are too general in character.
4. The national realization of the aforementioned social rights is, as far as social assistance is concerned, already guaranteed in the Federal Republic of Germany.
5. Pursuant to article 120 of the Federal Social Services Law (Bundessozialhilfegesetz), as published on 13 February 1976 (Federal Law Gazette I, p. 289), non-Germans requiring assistance must be granted support, medical aid and the like.
6. Homeless aliens as defined in the Law of 25 April 1951 relating to the Status of Homeless Aliens in the Federal Republic of Germany (Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet, Federal Law Gazette I, p. 269) are entitled under article 19 of the said law to the same public relief benefits as German citizens.
7. In accordance with article 23 of the Convention relating to the Status of Refugees of 28 July 1951 (law of 1 September 1953, Federal Law Gazette II, p. 559), refugees lawfully staying in the territory of a contracting State are accorded the same treatment with respect to public relief and assistance as is accorded to the nationals of that State.
8. Pursuant to article 1 of the Law of 12 April 1976 on the Convention of relating to the Status of Stateless Persons, 28 September 1954 (Federal Law Gazette II, p. 473) in conjunction with article 23 of the Convention, stateless persons who are simultaneously refugees and are lawfully staying in the territory of a contracting State are accorded the same treatment with respect to public relief and assistance as is accorded to nationals of that State. Stateless persons requiring assistance are entitled to social assistance under Article 120 of the Federal Social Services Law.

9. In accordance with article 1 of the European Convention on Social and Medical Assistance of 11 December 1953 (law of 15 May 1956, Federal Law Gazette II, p. 563), each of the contracting parties undertakes to ensure that nationals of the other contracting parties who are lawfully present in its territory are entitled to the same treatment as nationals with respect to social and medical assistance.

10. Anyone who is unlawfully present in the territory may - until he is expelled - also receive social assistance under article 120 of the Federal Social Services Law. In addition, bilateral agreements have been concluded with Switzerland and Austria which provide for reciprocity in the granting of social assistance.

11. The revised Youth Welfare Law (Gesetz für Jugendwohlfahrt), as published on 25 April 1977 (Federal Law Gazette I, pp. 633, 795), does not expressly guarantee to children who are not citizens of the country in which they live the right to education for their physical, mental and social benefit. However, certain assistance granted to nationals can be extended to alien and stateless children. Positive obligations to provide educational assistance are contained in certain international agreements. Pursuant to article 16 of the draft revised Youth Services Law (Jugendhilfegesetz) as of 31 October 1977, the only case in which aliens are not entitled to assistance is when they move into the area covered by the said law specifically to take advantage of such assistance.

12. German law does not expressly provide for the right to health. However, aliens in need of assistance are guaranteed medical attention under article 120 of the Federal Social Services Law in the form of medical aid (article 37 of the said law) and aid against tuberculosis (article 48 ff).

RWANDA

[23 January 1980]

[Original: FRENCH]

1. In the opinion of the Government of Rwanda, the draft declaration should emphasize the causes of the constant increase in the number of migrant workers. In the preamble of the draft declaration it is stated that the problem of persons known as "non-citizens" is caused by the improvement in communications between States and by the development of friendly relations. This may be perfectly true but for its part the Rwandese Government finds that this social problem originates from socio-political and economic factors, which may include a change of political régime, a new political trend in a particular country, racial segregation, tribalism, regionalism, the level of economic activity of a particular country, the consequences of the colonial yoke, etc.

2. The Rwandese Government finds that some articles are somewhat vague and imprecise. This is the case, in particular, with article 1 of the draft declaration, which reads: "For the purposes of this Declaration, the term 'non-citizen' shall apply to any individual who lawfully resides in a State of which he is not a national". In the opinion of the Rwandese Government, this is tantamount to saying that the provisions of this draft declaration apply to diplomatic or consular agents, including chancellery officials, whereas in fact the provisions governing such personnel are set out in the 1961 Vienna Convention on the functions and immunities

of diplomatic representatives. The Rwandese Government therefore considers that the most appropriate definition would be the following: "The term 'non-citizen' within the meaning of the present Declaration shall apply to any individual who resides in a State of which he is not a national, with the exception of members of the diplomatic corps and their families".

3. In relation to article 4 (iv), which enunciates the right of a non-citizen to leave the country and return to his own country, the Rwandese Government considers that for the sake of State security this right should be accompanied by preventive provisions, since non-citizens who have left their country of origin after having caused or sown the seeds of serious disturbances there may abuse this right and return to that country after any upheavals that may take place.

4. In connexion with article 7, paragraph 3, which provides that collective expulsion of non-citizens is prohibited, the Rwandese Government considers that this provision would seem to limit State sovereignty. By this it means that for political reasons brought about by non-citizens the State authorities might not be able to order the collective expulsion of those non-citizens. Since this provision is not entirely clear, the Rwandese Government feels that it would be desirable to specify or spell out in detail the circumstances in which collective expulsion would be permitted or prohibited.

5. Since, for reasons of general interest and under national laws in force, those developing countries which are struggling to achieve economic independence may be prompted to nationalize assets with or without expropriation, the Rwandese Government considers that paragraphs 1 and 2 of article 9 should be brought into line with each other. Paragraph 1 provides that "No non-citizen shall be subjected to arbitrary confiscation of his lawful acquired assets"; in our opinion, the article should simply read: "Any non-citizen whose assets are expropriated in whole or in part in accordance with national laws in force shall have the right to just compensation".

6. Lastly, the Rwandese Government wishes to point out that Economic and Social Council has passed over in silence one of the most fundamental human rights, namely, the right of every non-citizen to work, and the means of guaranteeing this right.