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IV. CONCLUDING OBSERVATIONS

CERD

- Sudan, CERD, A/49/18 (1994) 68 at para. 476.

Support is expressed for all efforts to end the continuing conflict with the aim of restoring the rule of law and respect for human rights, particularly with regard to the elimination of all forms of racial discrimination. In that connection, concrete steps should be taken to encourage the voluntary return of all refugees and persons displaced in the conflict.

- Russian Federation, CERD, A/51/18 (1996) 25 at para. 145.

The situation in Ingushetia and North Ossetia is a matter of deep concern. Large numbers of Ingush exiles are being denied by the North Ossetian authorities the right to return freely to their regions of origin, in particular the Prigoradnyi district, in spite of the Law on Rehabilitation of Repressed Peoples.

- Burundi, CERD, A/52/18 (1997) 73 at para. 578.

While the appeal sent to Burundi refugees in neighbouring countries to return to Burundi is welcomed, the lack of information on measures taken to ensure their repatriation and their safe return is regretted. Reports state that their right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group or institution, under article 5 (b) of the Convention, is not always guaranteed.

- Lebanon, CERD, A/53/18 (1998) 42 at para. 184.

The State party should take all appropriate measures, including those of a legal nature, to fully guarantee access to work and equitable conditions of employment to all foreign workers, including Palestinians. The practice of some employers of withholding passports of foreign workers should be prohibited.

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- Croatia, CERD, A/53/18 (1998) 59 at paras. 315 and 321.

Paragraph 315

Concern is expressed at the serious difficulties and violence encountered by returnees and displaced persons, particularly ethnic Serbs, in returning to areas of origin, or by refugees when claiming their right to have property restored to them or to receive compensation upon return to their place of origin.

Paragraph 321

Adequate measures should be introduced to ensure and monitor the implementation in practice of the newly introduced national programme for return. In addition, the State party is urged to take steps to ensure the right to security of person and protection against violence or bodily harm of returnees.

- Latvia, CERD, A/54/18 (1999) 39 at paras. 396 and 398.

Paragraph 396

Concern is expressed that persons who do not qualify for citizenship and are not registered as residents, including those leaving the country temporarily, may not be protected against racial discrimination in their exercise of rights under article 5 (d) (i) and (ii) and 5 (e) of the Convention.

Paragraph 398

With respect to article 5 (d) (i), concern is expressed that passports for non-citizens are being issued at an unreasonably slow pace. As the old passports are no longer valid for travel, persons who have not obtained a new passport are effectively prevented from leaving the country or, once departed, are prevented from returning.

- Georgia, CERD, A/56/18 (2001) 24 at para. 96.

The commitment undertaken by the State party to repatriate Meskhetians who had been expelled from southern Georgia to the Central Asian Republics of the Soviet Union is noted. It is recommended that the State party take the necessary measures to facilitate the return of Meskhetians and the acquisition of citizenship by them.

- Ukraine, CERD, A/56/18 (2001) 61 at para. 366.

The continuing efforts by the State party to resettle and rehabilitate the Crimean Tartars, who were deported decades earlier, is commended.

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- Liberia, CERD, A/56/18 (2001) 70 at para. 437.

Concern is expressed about the vulnerable situation of the large number of refugees who have fled the State party for neighbouring countries, and that little seems to have been put into place to ensure their repatriation and reintegration. In addition, the reports of discrimination against Sierra Leonean refugees are disturbing.

ICCPR

- Belarus, ICCPR, A/47/40 (1992) 124 at paras. 560 and 561.

Paragraph 560

Concern is expressed over the fact that certain drafts, pending before the legislature, are not fully in conformity with the provisions of the Covenant, particularly in respect of freedom of movement. Problems in this regard relate, in particular, to grounds on which passports may be issued and to clauses dealing with exit visas, particularly in respect of holders of State secrets - which are incompatible with article 12, paragraph 3, of the Covenant.

Paragraph 561

Existing provisions limiting or restricting freedom of movement, including the requirement for exit visas and the clause relating to holders of State secrets, should be eliminated from pending legislation to bring it fully into conformity with article 12, paragraph 3, of the Covenant.

- Mongolia, ICCPR, A/47/40 (1992) 134 at para. 601.

In regard to a number of fundamental rights recognized in the Covenant, some requirements and limitations presently in force in Mongolian law are so broad and numerous as to severely restrict the effective exercise of such rights in actual practice. This is true, for example, in regard to the criteria for declaring a state of emergency; the criteria for refusing an application for an exit visa or passport; the requirement of prior permission for the holding of public meetings and the criteria for refusing such meetings; and the requirement that political parties be registered and the criteria for refusing registration. Additionally, the absence of adequate mechanisms to appeal against administrative decisions creates an uncertainty as to whether such fundamental rights as freedom of association, freedom of assembly and freedom of movement are fully enjoyed in actual practice.

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- Islamic Republic of Iran, ICCPR, A/48/40 vol. I (1993) 44 at para. 261.

Legal provisions allowing for the possibility of banishing individuals, preventing them from residing in the place of their choice, or compelling them to reside in a given locality, are not considered to be compatible with article 12 of the Covenant.

- Dominican Republic, ICCPR, A/48/40 vol. I (1993) 95 at para. 460.

While many Haitian workers have been prevented from leaving their place of work, there have also been incidents of mass expulsions from the country. In this regard, the Committee considers that Presidential Decree No. 233-91, which resulted in the mass deportation of Haitian workers under 16 and over 60 years of age, represents a serious violation of several articles of the Covenant.

- Hungary, ICCPR, A/48/40 vol. I (1993) 128 at para. 662.

The use of excessive force by the police, especially against foreigners residing in Hungary and asylum-seekers held in detention, is of concern. Further concern is expressed over the grounds on which access to passports and travel abroad can be restricted, particularly the provision relating to holders of State secrets.

- Jordan, ICCPR, A/49/40 vol. I (1994) 41 at para. 232.

It is regretted that, although some improvement has been achieved as regards the status of women, the State party has not embarked on all the necessary reforms to combat the factors still impeding equality between men and women. It is noted with concern that the Constitution does not guarantee the principle of non-discrimination on the basis of sex, and that there are still gender disparities in law or practice with regard to such issues as status within the family, inheritance rights, the right to leave the country, the acquisition of Jordanian nationality, access to work and participation in public life.

- Azerbaijan, ICCPR, A/49/40 vol. I (1994) 50 at para. 300.

The obstacles which have thus far prevented the implementation of article 12 of the Covenant are disturbing. Passport applications seem to have been rejected without proper justification. The visa requirement for some categories of persons wishing to leave the country is an unacceptable restriction on the liberty of movement and the requirement of a visa to return to Azerbaijan is contrary to article 12 of the Covenant.

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- Ukraine, ICCPR, A/50/40 vol. I (1995) 57 at paras. 320 and 330.

Paragraph 320

Continuing obstacles to freedom of movement in Ukraine and, particularly the legal provisions which allow for the rejection of passport applications from holders of State secrets, are disturbing. The requirement of exit visas and the persistence of the internal passport are unacceptable and incompatible with article 12 of the Covenant.

Paragraph 330

Existing provisions limiting or restricting the exercise of the right to freedom of movement, including the internal passport requirements, as well as the legal provisions relating to holders of State secrets, should be reviewed to bring the legislation into full conformity with article 12 of the Covenant.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at paras. 381 and 398.

Paragraph 381

It is of concern that the most important legal restriction on the right to leave the country is still cast in terms of a State secret. This does not correspond with the requirements of article 12, paragraph 3, of the Covenant and the Committee deplors, in that regard, the resistance to date in bringing the legislation into conformity with the Covenant. It is further regretted that all individuals who have not yet performed their national service are excluded in principle from enjoying their right to leave the country.

Paragraph 398

Further steps should be taken to bring the law concerning the right to leave the country in full line with the State party's obligations under article 12, paragraphs 2 and 3, of the Covenant and, in particular, to remove restrictions to knowledge of State secrets.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at para. 304.

The Government of Nigeria should ensure that individuals, including members of non-governmental organizations, are not prevented from leaving Nigeria to attend the Committee's sessions.

- Gabon, ICCPR, A/52/40 vol. I (1997) 24 at paras. 132 and 142.

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Paragraph 132

With regard to the rights of non-Gabonese citizens and refugees living in Gabon, the legal impediments to their freedom of movement within the country, as well as the requirement of an exit visa for foreign workers, which run counter to the provisions in article 12 of the Covenant, are of concern.

Paragraph 142

Existing provisions, such as article 1, paragraph 3, of the Constitution limiting or restricting the exercise of the right to freedom of movement for non-Gabonese citizens, including the requirement of exit visas, should be reviewed to bring the legislation fully into conformity with article 12 of the Covenant.

- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at paras. 348 and 352.

Paragraph 348

Legal and *de facto* discrimination continue to be a matter of concern, including nationality laws and the law which may restrict the right to leave the country for spouses in the absence of the consent of their husband. These provisions are incompatible with articles 3 and 23 of the Covenant.

Paragraph 352

The difficulties faced by many foreign workers in Lebanon, whose passports were confiscated by their employers, are of concern. This practice, which the Government has conceded must be addressed more satisfactorily, is not compatible with article 12 of the Covenant. Effective measures should be taken to protect the rights of these foreign workers by preventing such confiscation and by providing an accessible and effective means for the recovery of passports.

- Iraq, ICCPR, A/53/40 vol. I (1998) 18 at para. 103.

Reports regarding the arbitrary restrictions imposed by the authorities on the right to freedom of movement within Iraq and freedom to leave the territory of the State party, which is in breach of Iraq's obligations under article 12 of the Covenant are noted with concern. Measures should be taken to ensure that article 12 is complied with and, among other things, that administrative costs for the issue of passports be reduced.

- Sudan, ICCPR, A/53/40 vol. I (1998) 22 at para. 125.

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Concern is expressed over the fact that visas for foreign travel may be arbitrarily refused, in contravention of article 12 of the Covenant, that immigration officers may arbitrarily require women to show that a male relative consents to their leaving the Sudan, and that lists of names drawn up by various executive agencies without meeting any defined legal criteria are apparently used to restrict the freedom of movement of persons, including to leave the country. Therefore, any limitations on the freedom of movement must be established by law and be compatible with the provisions of the Covenant. The grounds for restricting a person's freedom of movement, including to leave the country, must comply with the Covenant and should be communicated to the individual promptly after such action is taken and should furthermore be open to prompt judicial review in all cases, including that of national security.

- Belarus, ICCPR, A/53/40 vol. I (1998) 26 at para. 148.

The number of unreasonable restrictions imposed by the Republic of Belarus Act on the freedom of citizens to leave the country, some of them being vaguely defined and open to wide interpretation by the authorities and therefore susceptible to abuse, such as possession of State secrets, refusal to discharge obligations, or ongoing proceedings in case of a civil suit is of concern. Therefore, measures should be taken to ensure that article 12 of the Covenant is fully complied with.

- Lithuania, ICCPR, A/53/40 vol. I (1998) 30 at para. 172.

It is of concern that the right of foreign nationals to freedom of movement may be restricted on grounds not compatible with the Covenant and that restrictions on the right to leave Lithuania are imposed on persons who, because of their employment, may have information relating to State secrets. Furthermore, that restrictions are imposed on the freedom of movement of asylum-seekers with temporary refugee status and that the failure to observe those restrictions may result in the rejection of the claim for asylum are of concern. Moreover, concern is expressed that the law appears to protect against expulsion or deportation in cases where persons may be exposed to "persecution" but not where there is a threat to their right to life or of inhuman and degrading treatment or punishment. Therefore, provisions which restrict freedom of movement in a manner incompatible with article 12 of the Covenant should be repealed. Provision should be made to ensure that persons are not deported to States where they may face a real risk of violation of their rights under articles 6 and 7 of the Covenant.

- Zimbabwe, ICCPR, A/53/40 vol. I (1998) 35 at para. 228.

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Appropriate efforts should be undertaken to ensure that all persons are able to move out of the country freely and without undue delay obtaining the necessary documents.

- Israel, ICCPR, A/53/40 vol. I (1998) 45 at para. 318.

While acknowledging the security concerns that have led to restrictions on movement, the continued impediments imposed on movement, which affect mostly Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank, and which have grave consequences affecting nearly all areas of Palestinian life, are noted with regret. Israel is urged to respect the right to freedom of movement provided for under article 12, including the right to return to one's country.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 160.

Article 26 of the Immigration Control and Refugee Recognition Act provides that only those foreigners who leave the country with a permit to re-enter are allowed to return to Japan without losing their resident status and that the granting of such permits is entirely within the discretion of the Minister of Justice. Under this law, foreigners who are second- or third-generation permanent residents in Japan and whose life activities are based in Japan may be deprived of their right to leave and re-enter the country. This provision is incompatible with article 12, paragraphs 2 and 4, of the Covenant. The words "one's own country" are not synonymous with "country of one's own nationality". The State party is strongly urged to remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan.

- Austria, ICCPR, A/54/40 vol. I (1999) 42 at para. 188.

Certain features of Austria's law and procedure concerning asylum seekers and immigrants raise concerns. These concerns relate to (i) apparently insufficient legal guarantees to prevent deportation in cases where there is a risk of treatment that would violate article 7; (ii) the treatment of persons against whom there is a deportation decision but who remain in the country, raising issues under articles 7, 10 and 16; and (iii) sanctions against passenger carriers and other pre-frontier arrangements that may affect the rights of any person to leave any country, including his or her own (article 12, paragraph 2 of the Covenant).

- Mexico, ICCPR, A/54/40 vol. I (1999) 61 at para. 325.

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Restrictions on the access and activities of persons entering Mexico to investigate human rights violations, particularly the fact that residence permits have been cancelled and visas refused, should be lifted.

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at paras. 114 and 115.

Paragraph 114

It is not clear under which laws exile may be imposed or withdrawn or how the right to obtain a passport and, where applicable, an exit visa can be enforced by individuals.

Paragraph 115

The State party should ensure that its laws are in conformity with article 12 of the Covenant, that the laws are transparent and that effective remedies are available to enforce the rights protected by article 12.

- Cameroon, ICCPR, A/55/40 vol. I (2000) 36 at para. 218.

Criteria for the seizure of passports should be examined so as to ensure that they are compatible with the freedom of everyone to leave his own country under article 12, paragraphs 2 and 3, of the Covenant.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 477-479.

Paragraph 477

The treatment of the Bedoons (included in the category of stateless persons) in Kuwait, who number several thousand, is of grave concern. In view of the fact that many of these people are born in Kuwait or have been living in Kuwaiti territory for decades, and some are in the service of the Government, the sweeping statement of the delegation characterizing the Bedoons generally as “illegal residents” is of grave concern. That many Bedoons long resident in Kuwait who left the country during the Iraqi occupation in 1990/91 are not permitted to return to Kuwait is of concern.

Paragraph 478

The State party must ensure that all persons in its territory and subject to its jurisdiction, including Bedoons, enjoy Covenant rights without discrimination (art. 26). The right to remain in one’s own country and to return to it must be scrupulously respected (art. 12).

Paragraph 479

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Allegations that Bedoons have been offered a five-year residence permit in exchange for renouncing any claims for naturalization and that the State party seeks to deport Bedoons to countries with which the person concerned has no effective links are not refuted and are of concern.

- Gabon, ICCPR, A/56/40 vol. I (2001) 41 at para. 75(16).

As regards the rights of non-Gabonese citizens and refugees living in Gabon, foreign workers are still required to have exit visas, in contravention of article 12 of the Covenant. The State party must do away with this requirement.

- Dominican Republic, ICCPR, A/56/40 vol. I (2001) 54 at paras. 78(16) and 78(18).

Paragraph 78(16)

The continuing reports of mass expulsions of ethnic Haitians, even when such persons are nationals of the Dominican Republic, are of grave concern. Mass expulsions of non-nationals are in breach of the Covenant since no account is taken of the situation of individuals for whom the Dominican Republic is their own country in the light of article 12, paragraph 4, nor of cases where expulsion may be contrary to article 7 given the risk of subsequent cruel, inhuman or degrading treatment, nor yet of cases where the legality of an individual's presence in the country is in dispute and must be settled in proceedings that satisfy the requirements of article 13. The State party should guarantee the right of every Dominican national not to be expelled from the country and ensure that all persons facing deportation proceedings are covered by the safeguards established in the Covenant.

Paragraph 78(18)

The abuse of the legal notion of "transient aliens" is of concern. According to information in the Committee's possession, such persons may be born in the Dominican Republic to parents who were also born there but are still not considered to be nationals of the Dominican Republic. The State party should regulate the situation of everyone living in the country and grant the rights recognized by article 12 of the Covenant.

- Croatia, ICCPR, A/56/40 vol. I (2001) 65 at para. 80(15).

While recent efforts to simplify procedures and remove obstacles in the way of those wishing to return to Croatia, in particular displaced persons of Serbian ethnicity, are noted, the number of cases which are still outstanding and the length of time these persons are having to wait for resolution of their cases is of concern. The State party should ensure that no difficulties are put in the way of persons who left Croatia as a result of the armed conflict, in exercising their right, under article 12, paragraph 4, of the Covenant to return to their own country. The deployment of sufficient resources

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towards providing those persons, who have a right under the Covenant to return to Croatia, with accommodation must be a priority with the State party as it is essential to render enjoyment of this right meaningful.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at para. 81(21).

The promulgation of Ordinance No. 1016 of 13 November 1999, which facilitates the travel, departure and return of citizens is noted. It remains of concern that many Syrians living abroad, as well as their children, have been denied a Syrian passport. This situation, which deprives them of the right to return to their own country, is incompatible with article 12, paragraph 4. The denial of a passport to children of exiled Syrians constitutes a violation of articles 24 and 26 of the Covenant. Moreover, the fact that many designated categories of nationals are still required to obtain an exit visa each time they wish to leave the country is a matter of concern and constitutes a violation of article 12, paragraph 2 of the Covenant. The State party should facilitate the return to the country of Syrian citizens wishing to do so and should eliminate the exit visa requirement as a general rule and require it only in individual cases that can be justified in relation to the Covenant.

- Monaco, ICCPR, A/56/40 vol. I (2001) 89 at para. 84(18).

That criminal legislation continues to provide for exile is of concern (article 12). These provisions, which are totally incompatible with article 12, paragraph 4 of the Covenant, should be repealed.

- Democratic People’s Republic of Korea, ICCPR, A/56/40 vol. I (2001) 98 at paras. 86(20) and 86(23).

Paragraph 86(20)

The requirement under the Immigration Law of administrative permission to travel abroad, and the requirement for foreigners to obtain exit visas to leave the country are incompatible with the provisions of article 12, paragraph 2 of the Covenant. The State party should eliminate the requirement of administrative permission and exit visa as a general rule and require them only in individual cases that can be justified in the light of the Covenant.

Paragraph 86(23)

Various provisions of the Press Law, and their frequent invocation, are difficult to reconcile with the provisions of article 19 of the Covenant. The notion of “threat to the State security” may be used in such ways as to restrict freedom of expression. It is also of concern that the permanent presence, in the territory of foreign media representatives is confined to journalists from three countries, and foreign newspapers and publications are not readily available to the public at large. Moreover, the

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State party's journalists may not travel abroad freely. The State party should specify the reasons that have led to the prohibition of certain publications, and should refrain from measures that restrict the availability of foreign newspapers to the public. The State party is requested to relax restrictions on the travel abroad by journalists, and to avoid any use of the notion of "threat to the State security" that would repress freedom of expression contrary to article 19.

ICESCR

- United Kingdom of Great Britain and Northern Ireland, ICESCR, E/1995/22 (1994) 52 at para. 290.

It is of concern that, in the case of Hai Ho-Tak, conflicting explanations have been received of the reasons for the separation of the child from his parents and as to which authorities are in a position to resolve the problem. These explanations are unconvincing. Unduly broad bureaucratic reasons have been used as a justification for a measure which is not compatible with the rights recognized in article 10. The suggestion that the child's parents should apply for a one-way permit would not appear to be an adequate solution, given the very lengthy delay that would result. The Government should reconsider its response to this case. It is also noted that no compelling reason has been offered by the Government for its refusal to provide a statutory right of appeal in immigration cases which involve exceptional circumstances of a humanitarian nature and it is urged that this principle should also be reconsidered.

- Dominican Republic, ICESCR, E/1997/22 (1996) 44 at para. 229.

It is noted with concern that large-scale emigration of Dominicans has been going on for many years and has had and will continue to have a harmful effect on the Dominican economy, since a large number of emigrants are skilled workers. The State party will have to take measures in the educational and socio-economic fields to stem the outflow of skilled workers.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICESCR, E/1997/22 (1996) 58 at para. 347.

The growing number of split families in Hong Kong is of deep concern. The Government has an obligation to ensure that the criteria applied in deciding on those eligible for legal migration into Hong Kong are consistent with the provisions of the Covenant.

- Israel, ICESCR, E/1999/22 (1998) 43 at paras. 239 and 262.

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Paragraph 239

It is noted with concern that the Law of Return, which allows any Jew from anywhere in the world to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements which make it almost impossible to return to their land of birth.

Paragraph 262

A review of re-entry policies for Palestinians who wish to re-establish their domicile in their homeland should be undertaken, with a view to bringing such policies level with the Law of Return as applied to Jews.

CRC

- France, CRC, CRC/C/29 (1994) 17 at para. 93.

The situation of unaccompanied children who arrive "unexpectedly in France to obtain refugee status" is of concern. The lack of a comprehensive system of protection involving the social and/or judicial authorities which would apply to those children while they are subject to the jurisdiction of the State party, as well as in the process of returning to their country of origin, is also of concern.

- Fiji, CRC, CRC/C/79 (1998) 18 at para. 117.

Current legislation does not effectively protect children against illicit transfer and non-return and this is a matter of concern.

- Bhutan, CRC, CRC/C/108 (2001) 85 at paras. 474 and 475.

Paragraph 474

Noting that the verification process of refugees in camps in Nepal has commenced, concern is expressed about the slow rate of this process and the serious and negative impact this has on the rights of children residing in these camps, particularly given that repatriation will begin only once all refugees have been verified.

Paragraph 475

In accordance with the principles of the best interests of the child, the right to a nationality and to the preservation of identity (articles 3, 7 and 8 of the Convention), and with a view to reaching a just and durable solution to the situation of refugees in camps in Nepal, the State party should:

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- (a) Make greater efforts to expedite the verification process and consider the possibility of repatriating individuals within a reasonable time following individual verification;
- (b) Consider a mechanism to allow individuals to appeal against decisions;
- (c) Ensure that returnees are repatriated and resettled, in safety and dignity, to their place of origin or choice;
- (d) Consider acceding to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, and the conventions on statelessness; and
- (e) In the best interests of the children, consider seeking assistance from UNHCR.