THE AFRICAN CHARTER AND THE RIGHT TO A NATIONALITY

Report of a meeting held in Banjul, The Gambia
14 May 2010

Citizenship Rights in Africa Initiative (CRAI)

The Citizenship Rights in Africa Initiative (CRAI) campaign aims at raising awareness of unequal access to, and arbitrary deprivation of citizenship as a major human rights problem and one of the principal causes of displacement and unrest in Africa. This initiative seeks to call on governments to adopt policies that are more progressive towards inclusive citizenship and advocates the adoption of a protocol to the African Charter on the right to a nationality. www.citizenshiprightsafrica.org

The Institute for Human Rights & Development in Africa (IHRDA)

IHRDA is a pan African human rights organisation working to strengthen human rights protection in Africa. IHRDA's mandate is to increase the effectiveness and accessibility of the human rights protection mechanisms of the African Union, since the most critical challenge to the effectiveness of the African human rights system is a lack of awareness concerning its procedures. IHRDA has undertaken to promote respect for human rights on the continent by strengthening the human rights institutions in Africa, ensuring compliance with the existing norms and making the system widely accessible to victims of human rights violations and other actors of civil society. www.ihrda.org

The Open Society Institute (OSI) & Soros Foundations Network

The Open Society Institute (OSI) works to build vibrant and tolerant democracies whose governments are accountable to their citizens. To achieve its mission, OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. At a local level, OSI implements a range of initiatives to advance justice, education, public health, and independent media. OSI builds alliances across borders and continents on issues such as corruption and freedom of information. We place a high priority on protecting and improving the lives of people in marginalised communities. OSI meets its mandate in Africa through four (4) regional foundations which provide grants towards fulfilling OSI's mandate, as well as through thematic programmes working across Africa, and bringing varied expertise and dimensions towards addressing key issues on the continent. www.soros.org

AfriMAP, the Africa Governance Monitoring and Advocacy Project works with national civil society organisations to conduct systematic audits of government performance in three areas: the justice sector and the rule of law; political participation and democracy; and effective delivery of public services. The programme also focuses on broadening partnerships and alliances both at the network level, as well as inter-state institutions and organs. www.afrimap.org

OSI's AU Advocacy Programme undertakes initiatives within the foundation which may facilitate increased access to the AU and its organs as well as provide guidance and leadership on advocacy activities targeted at the Continental level. The Programme plays a role of advisor to the foundations and their partners on issues related to the AU in line with OSI's strategies and priorities. The programme promotes local/domestic knowledge and understanding of AU policies and standards.

The Open Society Justice Initiative pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. www.justiceinitiative.org

THE AFRICAN CHARTER AND THE RIGHT TO A NATIONALITY

On 14 May, the Citizenship Rights in Africa Initiative (CRAI), and three programmes of the Open Society Institute (AfriMAP, AU Advocacy Programme and Justice Initiative), in collaboration with Institute for Human Rights and Development in Africa (IHRDA) hosted a discussion in Banjul, the Gambia, on the right to a nationality in Africa and its impact on the enjoyment of other rights established by the African Charter on Human and Peoples' Rights. The discussion was held on the margins of the 47th Ordinary Session of the African Commission on Human and Peoples' Rights.

More than 60 people attended the session, including three commissioners, four member states and a large number of NGOs.

The **meeting was chaired by Ibrahima Kane**, director of OSI's AU Advocacy Programme.

Sheila Keetharuth, executive director of IHRDA, gave welcoming remarks in which she highlighted the international provisions on the right to a nationality, its inextricable link with the enjoyment of other rights, and the work of IHRDA with the African Committee of Experts on the Rights and Welfare of the Child as well as in bringing communications before the ACHPR, on this issue (presentation is attached as annex 1).

Mme Soyata Maiga, member of the African Commission and special rapporteur on the rights of women in Africa, also representing the chair of the Commission, gave an opening address, emphasising the interest of the Commission in the meeting and its outcomes and pledging the support of the Commission for additional work on the right to a nationality. She in turn highlighted the struggles of citizenship on the continent and related difficulties. She acknowledged the lacunae with the Charter and the need for holistic continental provisions on the right to citizenship (annex 2).

Bronwen Manby of AfriMAP then gave an overview of two publications on citizenship law in Africa that provide a comprehensive overview of the provisions of African citizenship laws and also tell the story of citizenship crises in different countries on the continent: *Citizenship Laws in Africa: A comparative study*, published by the Open Society Institute, and *Struggles for Citizenship in Africa*, published by Zed Books, both 2009. Among the issues highlighted were the continuing gender discrimination in more than half of African states, and the existence of provisions that explicitly discriminate on grounds of race, ethnicity or religion in almost one dozen countries. Discrimination in practice is even more common, and is made possible by the lack of due process protections in relation to the right to nationality. Yet unfortunately, the African Charter, unlike similar international instruments, does not include an explicit provision on the right to a nationality; though the Commission has implied such a right within the terms of Article 5 on the right to dignity and recognition of legal status. On the positive side, African countries are increasingly reforming their law to allow dual nationality, allowing cross border populations and those of mixed parentage in particular to be loyal citizens of two countries. The presentation and the full text of both reports are available on the AfriMAP website, www.afrimap.org.

Personal Testimonies: These opening presentations were followed by testimonies from different African countries where citizenship rights have created particular challenges.

> **Abdou Houabou Bah** from Côte d'Ivoire gave powerful testimony on behalf of, as he put it, thousands of Ivorians who are victims of the implementation of 'Ivoirité', a

concept of Ivorian identity that the government has manipulated along ethnic grounds in recent years. A qualified magistrate, he was denied a posting to work in his chosen field, simply on the grounds of his family name. His career and indeed his life had been destroyed, like that of thousands of others, because of the issue of ethnicity and citizenship.

Ibrahim Said representing the Nubian Council of Elders from Kenya presented the case of the Nubians in Kenya, who were forcibly recruited from Sudan to fight in the British army and later settled in Kenya. Their land has been taken away, and their right to Kenyan nationality is constantly under question as they face undue obstacles when seeking national identity documents. He explained how the community had been impoverished over the years. He himself had only been able to find employment with the Central Bank on the third attempt, when he had added an additional name to his own, indicating that he could be from the Luo community.

Souleymane Sagna, a Senegalese activist who has worked over many years with Mauritanian refugees in Senegal, gave evidence based on recent interviews in Mauritania with those who had been able to return to their country. Although the Mauritanian government has invited those expelled in 1989-1990 to return, and signed a tripartite agreement with the government of Senegal and UNHCR to facilitate return, they still face critical difficulties in obtaining identification papers and proof of their Mauritanian nationality, with consequences for the reclamation of their property and their access to public services in Mauritania.

Traoré Drissa, president of the *Movement Ivoirien des Droits de l'Homme* (MIDH) highlighted the central role that the lack of a right to nationality had played in the civil war in Côte d'Ivoire, especially once Alassane Ouattara decided to form a political party and run for president. Although the civil war has formally ended, the problems of nationality have not, and registration for the elections is fraught with problems, so that two lists have been created: the 'white list' of those whose nationality is fully recognised, and the 'grey list' of those whose nationality is still in doubt. It is difficult to hold national elections in Côte d'Ivoire with the nationality issue remaining unresolved.

Marcel Wetsh'okonda Koso from the Democratic Republic of Congo described how nationality had also been one of the main causes of the cycle of violence and conflicts in that country. The basis of DRC's citizenship law since independence has been founded on the basis of ethnicity, initially at least in part to exclude the former colonisers from Congolese nationality. Since then, however, the law has also been used to exclude Congolese Tutsi from citizenship, and revisions to the law have at different times arbitrarily changed the dates on which an ethnic group had to be present in the Congo in order to prevent them from claiming nationality. This issue was at the centre of the wars that broke out in 1996 and 1998. In addition, challenges to a person's Congolese nationality, or (given that dual nationality is not allowed in law) allegations that a person holds another nationality, have been used to attempt to exclude individuals from politics – again, just as in Côte d'Ivoire. However, as it has been discovered that many influential politicians have dual nationality, the use of such challenges is perhaps in the past. A draft law allowing for dual nationality is under discussion.

Patrick Okoth, representing the State Law Office in Kenya and member of the national delegation to the African Commission session, spoke from the panel on the Kenyan experience, especially in relation to the drafting of a proposed new constitution which will greatly improve

respect for the right to nationality in Kenya, in particular by removing gender discrimination from the law. He also indicated that the Kenyan government was working to resolve the status of the Nubian community.

Commissioner Maiga responded to the presentations, noting that the Commission's case law had been progressive on the right to a nationality, but more was needed, including the possible drafting of a protocol to the African Charter on the right to a nationality.

Commissioner Mumba Malila, vice-chair of the African Commission, also responded on behalf of the Commission, noting that the absence of an explicit provision on nationality did limit their work – but that the Commission should nonetheless work hard to rectify this omission in its jurisprudence and other work.

Interventions from the floor: From the floor of the meeting, representatives of **Ethiopia, Sudan** and **Burkina Faso** responded to the presentations, in the case of Ethiopia and Sudan noting that recent reforms had removed or reduced gender discrimination. Sudan noted that the upcoming referendum on independence of the south of the country presented particular challenges. Burkina Faso highlighted the generous provisions of the Burkinabé *Code de la famille*, where nationality rules are set out, and also the steps that the country has taken to attempt to provide nationality to refugees from Côte d'Ivoire.

Other interventions from the floor touched on the right to due process in issues related to nationality, the work of IHRDA on the right to nationality for all children, based on Article 6 of the African Charter on the Rights and Welfare of the Child, and the crisis related to alleged dual nationality in Zimbabwe.

Ibrahima Kane, from the chair, recalled the way in which the African Commission had decided to address the question of the rights of women in Africa, by establishing a working group to draft a protocol to the African Charter on Human and Peoples' Rights and submitting that text to the Commission of the African Union for discussion and adoption by member states of the AU. He proposed that the meeting endorse this approach, and request the Commission to adopt a resolution during its current session setting out the international and African law on the issue and establishing a working group to draft a protocol to the African Charter on the right to a nationality. He emphasised that the question of a right to a nationality should be central to the January 2011 AU summit, which is themed on shared values of the African Union. The meeting adopted his proposals by consensus.

Annex 1: Welcoming remarks by Sheila Keetharuth, executive director, Institute for Human Rights and Development in Africa

Madam Chairperson of the African Commission on Human and Peoples Rights
Distinguished Commissioners
Distinguished State Representatives
Friends from the NGO Community

We are very pleased to welcome you to these discussions on the right to a nationality in Africa and its impact on the enjoyment of other rights established by the African Charter on Human and Peoples' Rights. This discussion is organized by The Citizenship Rights in Africa Initiative (CRAI), Open Society Institute's AfriMAP, AU Advocacy Programme and Justice Initiative, in collaboration with Institute for Human Rights and Development in Africa (IHRDA). It is indeed an opportune moment for such a significant topic to be addressed, on the margins of the 47th Ordinary Session of the African Commission being held in Banjul.

While we do not want to travel further down the lanes of history, it would be sufficient at this point to mention that first international attempt to ensure that all persons have a nationality can be found in Article 1 of the Hague Convention of 1930, under the auspices of the Assembly of the League of Nations: *"It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality"*.

This is an Interesting provision at a specific time, basing itself on a country's sovereignty. Then, we have a further development, as proclaimed by Article 15 of the 1948 Universal Declaration of Human Rights: *"Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality"*.

Not only does it provide people with a sense of identity but it also gives entitlements to an array of civil and political rights. Many of us take for granted the rights that citizenship confers on us: the right to education, the right to health and medical care, the right to work and employment, and to vote and to take part in the political life. Such rights are denied to individuals who cannot prove a legal connection to a country.

In Africa, hundreds of thousands of people find themselves faced with citizenship and nationality problems. Children cannot be registered at birth and therefore cannot go to school like others. Later on, access to universities becomes another stumbling block in their development. The same situation prevails with employment. They are not able to be treated at state-owned hospitals when they get ill. Getting an identity card, a passport or other travel document is impossible. Their right to movement in curtailed in that if they leave a country, there is a great possibility that they cannot come back. They are denied their political rights to vote or stand for office. Policies of denial can fuel conflicts and endemic discrimination.
While the African Commission on Human and Peoples' Rights does not contain an explicit article on the right to nationality, it has, through its jurisprudence, implied this right in its interpretation of Article 5 of the African Charter which talks about the right to the "respect of the dignity inherent in a human being and to the recognition of his legal status." Fortunately, Article 6 of the African Charter on Rights and Welfare of the Child does provide for the right to nationality. Thus, we see that there are gaps in what is obtained at continental level as for as nationality and citizenship goes.

IHRDA, which has been working on nationality and citizenship- related topics since its very creation in 1998, and to this very day, through its involvement with Mauritanian cases which were brought before the African Commission , is indeed very thrilled to be associated with this endeavour spearheaded CRAI, AfriMAP, AU Advocacy Programme and Justice Initiative. It is time for all of us on the African continent to tackle citizenship, nationality and statelessness issues, which go to the very core of human rights. Together, let us find solutions, and let us take firm actions to resolve these concerns and while doing so, let us not forget the human dimension involved.

I thank you for your attention.

Sheila B. Keetharuth
Executive Director
IHRDA

Annex 2: Opening address by Commissioner Soyata Maiga

[to follow]