

Forced Displacement, Citizenship and Statelessness In Africa

Report of a Civil Society Consultation on African Union Mechanisms and the Protection of Refugees, Internally Displaced Persons and Citizenship Rights



Co-hosted by
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the International Refugee Rights Initiative, and
the Open Society Justice Initiative &
the Africa Governance Monitoring and Advocacy Programme
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**Citizenship Rights in
Africa Initiative**



**International Refugee
Rights Initiative**



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BACKGROUND TO THE PAPER

This following paper is based on consultations held in Kampala, Uganda on 19-20 October 2009. The consultation was made possible through the support of the Open Society Institute, the Open Society Institute for East Africa and the Open Society Institute for Southern Africa. This report was written by Paula Biraaro of the International Refugee Rights Initiative and edited by Olivia Bueno, Associate Director and Deirdre Clancy, Co-Director of the International Refugee Rights Initiative.

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ACRONYMS AND ABBREVIATIONS

AFRIMAP	Africa Governance Monitoring and Advocacy Project
AU	African Union
ACHPR	African Charter on Human and Peoples' Rights
CRAI	Citizenship Rights in Africa Initiative
CSOs	Civil Society Organisations
EAC	East African Community
ECOWAS	Economic Market for West African States
ICGLR	International Conference on the Great Lakes Region
IDPs	Internally Displaced Persons
IRRI	International Refugee Rights Initiative
NGO	Non-Governmental Organisation
RECs	Regional Economic Communities
OSIEA	Open Society Justice Initiative in East Africa
OSJI	Open Society Justice Initiative
UDHR	Universal Declaration of Human Rights
UN	United Nations

EXECUTIVE SUMMARY

The following report provides a narrative account of a consultation that took place in Kampala, Uganda in October 2009. At the consultation, African civil society organisations and experts¹ convened to discuss how civil society could promote the enforcement of regional mechanisms for the protection of persons without effective state protection, including refugees, internally displaced persons and the stateless. The new African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) was recognised as a milestone in the creation of legal mechanisms relating to displacement in Africa. It was noted that with respect, then, to the rights of the displaced the major challenge was implementation of these standards. With regard to stateless persons, there was a notable lack of standards. It was also noted that statelessness and discrimination in the grant of nationality can be both a cause and a consequence of forced displacement in Africa.

Despite the progress in creating new standards relating to displacement, the question raised was whether this was translating into an improvement in the quality of protection available on the ground. It was noted that in order to truly address the needs and ensure the rights of vulnerable populations the root causes of displacement needed to be addressed.² From the outset of the discussion, the participants unanimously identified the prevalent root causes of displacement that African governments needed to address, including:

1. Conflicts, particularly internal conflicts;
2. Poor governance and underdevelopment;
3. Human rights violations;
4. Discrimination in the grant of nationality status and land accessibility;
5. Climate change and threat of natural disasters; and
6. Mass expulsions.

The consultation explored the fact that these root causes are often intertwined. It was suggested, therefore that an integrated approach was needed to address both the causes and consequences of conflict and displacement on the continent.

It was recognised that the standard setting measures initiated by the African Union (AU), under whose auspices the Convention for the Protection and Assistance to Internally Displaced Persons has been adopted, portray the general political will and climate existing to forge ahead with the protection of IDPs in Africa. This is a positive step, but the next step would be to establish and promote regional and national frameworks to mitigate or eliminate root causes of internal displacement as well as provide for durable solutions. The AU has already made headway by providing for the establishment of the Conference of State Parties institutions to cooperate with the African Commission on Human and Peoples' Rights (ACHPR) and its Special Rapporteur for Refugees, Returnees, IDPs and Asylum Seekers to monitor and review the implementation of the objectives under the Convention.

Further, still on the issue of displacement; the Participants emphasized that development and implementation of refugee policies was affected by nonexistent, restrictive, obsolete or inconsistent refugee legislation present in a majority of African states.³ There is an urgent need to establish

¹ The consultation included participants from Botswana, Burundi, Cote d'Ivoire, Democratic Republic of Congo, Kenya, Nigeria, Rwanda, Senegal, Tanzania, Uganda, and Zambia.

² K. Kamanga, "Existing mechanisms for the protection of refugees: prospects and possibilities," presented at the consultation on African Union Mechanisms and the Protection of Refugees, Internally Displaced Persons and Citizenship Rights, 19-20 October 2009.

³ Currently, countries like South Africa, Tanzania, Zimbabwe, Uganda and Kenya have developed comprehensive legislation

comprehensive sets of domestic refugee laws to govern all aspects of refugee protection in accordance with the relevant international and regional instruments. It was suggested that the ACHPR should intervene with governments to ensure that they adhere to their obligations.⁴

While addressing the much debated topic on citizenship and nationality, it was acknowledged that effective citizenship is a doorway to accessing other rights, including for refugees and the internally displaced. Removed from their home, displacement leads to a disjuncture between territory and nationality and fundamentally alters people's relation to the state. The fundamental premise on which refugee status is configured is to ensure that those who do not enjoy the rights of citizenship in their countries of origin as a result of persecution are given a surrogate but temporary form of protection until such a time as they can meaningfully reassert the bonds of citizenship. Meanwhile, those who are internally displaced are evidence of the lack of protection offered to them by their government. The inability to form or to assert the bond of citizenship leaves individuals stateless, alienated and at a greater risk of human rights violations during and after forced displacement.⁵

But statelessness affects millions of people in Africa who are themselves neither refugees nor internally displaced. Often these populations are the descendants of people who migrated many decades ago; or they are members of cross-border ethnic groups regarded with suspicion by both states they are present in; or they are affected by problems of state succession in which issues of membership of the new states are not properly resolved. Governments have often manipulated questions of citizenship to marginalise individuals or groups they regard as political threats.

Thus, it was stated that the non-discriminatory right to citizenship needs to be promoted as a mechanism both to prevent and to respond to displacement on the continent. Further, regional processes of integration could offer alternative identities and bases for citizenship through regional economic communities like the East African Community (EAC) and the Economic Community of West African States (ECOWAS).

To wrap up the discussion; the consultation adopted a series of recommendations in a final communiqué, included below.

on refugee issues.

⁴ Under the 1951 Convention on the Status of Refugees; 1967 Protocol and the 1969 O.A.U. Convention on Refugee Protection.

⁵ Dr. L. Hovil, "The link between citizenship and forced displacement: a view from the Great Lakes Region." presented at the consultation on African Union Mechanisms and the Protection of Refugees, Internally Displaced Persons and Citizenship Rights, 19-20 October 2009.

RECOMMENDATIONS OF THE CIVIL SOCIETY MEETING ON AFRICAN UNION MECHANISMS AND THE PROTECTION OF REFUGEE, IDP AND CITIZENSHIP RIGHTS

The session addressed the following recommendations to the Heads of State attending the special summit:

Root causes of displacement

1. African governments should take urgent measures to address the root causes of displacement, including poor governance, underdevelopment, human rights violations, climate change and lack of preparedness for natural catastrophes.
2. Conflict remains the principal direct cause of displacement in Africa. Most conflicts are rooted in power struggles between the elites of various ethnic communities. To address these, it is imperative that African governments pursue inclusive policies to ensure equality of opportunity and equitable development for all irrespective of ethnic identities. Ethnicity should not be the basis for the grant or refusal of any right.
3. The threat of natural disasters associated with climate change must also be urgently addressed. While all Africans stand to lose, refugees, IDPs and stateless persons are particularly vulnerable to the consequences of climate change. Early warning and preparedness strategies must be put in place.
4. Inequitable management of rights to land is another critical issue at the root of forced displacement. States should take steps to ensure that access to land is not based on ethnicity or race but is open to all on an equitable basis. In addition, alternative modes of sustaining livelihoods need to be created in order to remove pressure on land.
5. Africa's leaders and people should work towards the expression of a new vision of nationality and belonging that overcomes the divisions of the colonial past and rigid insistence on an intrinsic link between ethnicity and the right to land and to nationality. A vision which creates a forward-looking definition in law and policy that welcomes as members of the national community all who have a contribution to make to its development.

Mass expulsions

6. African states should respect the provisions of Article 12(5) of the African Charter on Human and Peoples' Rights prohibiting mass expulsions, which are a major cause of displacement and of statelessness.

Draft Convention on IDPs

7. We welcome African leaders' commitment to addressing the crisis of forced displacement in Africa through the adoption of the Draft African Union Convention for the Protection and Assistance to Internally Displaced Persons (AU IDP Convention) and urge its rapid ratification and implementation.
8. States should immediately show their commitment to its provisions by putting in place mechanisms that will advise and monitor government compliance with the Convention and ensure that it is implemented at regional and national levels. This might include reinforcement of the capacity of existing mechanisms such as the African Commission on Human and Peoples' Rights and the Committee of Experts on the Rights and Welfare of the Child.
9. We welcome in particular Article 9 of the Draft AU IDP Convention (which addresses displacement caused by development projects), and urge that states ensure that projects which may cause displacement in the name of development are debated fully with the participation of

all and that such projects are only implemented if beneficial to the affected communities.

Enforcement of existing international and African standards

10. African states' national laws, practices and systems related to forced displacement, citizenship and statelessness should be brought into line with existing international and regional conventions.
11. In particular, African states should ratify and implement the 1954 UN Convention relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness. Few have done so to date.
12. Enforcement of international obligations should be strengthened through domestic and regional courts, the African Commission and African Court on Human and Peoples' Rights (and the African Court of Justice and Human Rights when it comes into force) and other mechanisms such as the African Peer Review Mechanism.

Statelessness

13. African states should grant nationality to their own peoples in an inclusive way, without discrimination on grounds of race, ethnicity, national origin, gender, political opinion or similar category. In particular, nationality laws should give men and women equal rights in relation to the right to pass nationality to their spouses and children.
14. The AU should prioritise the challenges of statelessness and establish mechanisms to address statelessness, in particular with regards to:
 - ethnic groups living in border regions,
 - nomadic populations,
 - speakers of minority languages,
 - the descendants of long-term migrant populations,
 - people of mixed-race or mixed-ethnicity parentage, especially where only the mother and not the father is a national of the country of residence.
15. Stateless people should be treated as one of the vulnerable groups in Africa and afforded protection as such.
16. The right to a nationality should be enshrined in Africa's constitutions and national laws.
17. A person's nationality may not be taken away except on the basis of objective criteria following due process of law and may never be taken away if the person would therefore become stateless.
18. African states should enshrine these principles in a treaty on nationality and statelessness in Africa and urgently put in place a process to develop such a treaty.

Protection measures at national level

19. African states that ratify the Convention on IDPs should domesticate it into national laws, policies and plans of action and institutional and funding mechanisms to ensuring implementation.
20. National legislation should explicitly outline measures for protection and assistance of displaced persons with special needs such as separated and unaccompanied children, female and child headed households, expectant mothers, the elderly and persons with a disability for purposes of ensuring that the most vulnerable groups are targeted.
21. As a first step, state governments should establish an effective system of registration, screening and documentation of IDPs, refugees and returnees for authentication and early identification of such vulnerable groups. Documentation granted to IDPs and refugees should

facilitate their free movement.

22. The urgency of effective responses to the threats posed by natural disasters, climate change and other threats to our environmental security and as a cause of displacement cannot be overstated. Responses are inadequate. Governments need to move beyond early warning to rapid response in order to mitigate environmental threats and the resultant humanitarian disasters.
23. As governments respond to the challenges presented by large scale displacement, including the management of the environmental impact of large scale migrations, it was noted that policies which force concentration of refugees and IDPs in particular areas, restricting freedom of movement, may exacerbate negative environmental impacts and should be approached with caution and may be in contradiction of other fundamental rights.
24. We welcome the recognition in the draft Convention of the importance of involvement of host communities in integration programmes for displaced persons. Host communities should be made aware of the plight of the displaced at an early stage in order to avoid tensions and potential conflict between the two groups.
25. States should take measures to ensure the equitable right of access to land for persons who have been displaced and are returning home.
26. States have an obligation to urgently address xenophobic violence against migrants and refugees, taking appropriate action within the law against those who perpetrate crimes against foreigners.

Solidarity

27. African states should show solidarity with other states that are confronted by natural disasters or the massive displacement of populations.

Birth registration

28. African states should put in place comprehensive laws and effective systems for birth registration to ensure an explicit and unqualified right to an identity, nationality, and citizenship. In creating these systems, states should be sensitive to the value and traditional role of oral systems of identification. This will lead to the fulfilment and enjoyment of fundamental rights and freedoms accorded to citizens.

Regional integration and citizenship

29. African states should accelerate the process of creating regional citizenships and seize the opportunities presented by regional economic integration as creating potential pathways for accessing citizenship rights.
30. African states should take steps to ensure that all their nationals, irrespective of status, can vote in national elections, including those who may be incarcerated or living abroad.
31. African states should grant the right to vote to nationals of other member states of regional communities (especially in local elections).
32. African states should facilitate the access of their own citizens and others in their territories to regional citizenships and facilitate the recognition of travel documents granted on that basis.

The following recommendations were directed to our colleagues in civil society

33. Civil society should be pro-active and engage the state at an early stage to ensure implementation of the convention and to promote refugee, IDP and citizenship rights in national

legislative and policy frameworks.

34. Legal frameworks and policies formulated to protect the rights of IDPs, refugees and returnees should be participatory and inclusive of all stakeholders as a durable solution, sustainability and ownership of the entire process. An all African Civil Society Conference should be organized to draft a comprehensive policy towards the protection and promotion of the rights of IDPs, refugees and returnees.
35. Civil society engagement on statelessness and a right to a nationality needs to be increased and targeted effectively.
36. Civil society should work collaboratively. Civil society needs to form strategic partnerships in order to be more effective in advocacy, in particular, engagement with national, sub-regional and regional parliamentarian and the media in order to advance causes of national concern.
37. Civil society should engage with, and work to reinforce, existing African regional mechanisms including the African Union Commission, the ACHPR and the Committee of Experts on the Rights and Welfare of the Child.

BACKGROUND TO THE CONSULTATION

Unlike refugees, who fall under the protection of international instruments such as the 1951 United Nations Convention relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, there was no comparable continental legal instrument to safeguard the rights of IDPs prior to 2009. IDPs, however, face similar protection problems related to being forced from their homes. Many may be unable to receive or replace identity documents lost in flight. They may also face difficulty in reclaiming land and other property left behind. In addition, because they typically remain close to the conflict zones that they have fled they may face increased insecurity and physical protection challenges. Their own governments, unable or unwilling to protect them from the causes of flight (or even the cause of that flight), may be similarly unable or unwilling to protect them in the areas to which they are displaced or to facilitate and encourage the delivery of humanitarian assistance.

The scale of internal displacement in recent years has outstripped the scale of refugee flows. There are an estimated 11.6 million IDPs in Africa, as compared to 2.6 million refugees. Africa also bears a significant portion of the global IDP population, hosting an estimated 45% of IDPs worldwide.

In recognition of the challenges facing the forcibly displaced, the international community began to seek to clarify legal standards relating to their treatment in the 1990s. The scale of the problem required a comprehensive legal framework designed to codify the standards of protection, provide for protection and assistance, and serve as a legal basis for coordinating various regional and international actors and agencies involved in providing protection and assistance to IDPs. This process resulted in the adoption of the UN Guiding Principles on Internal Displacement in 1998. The Guiding Principles, while not a binding legal document, draw on existing legal principles to clarify standards of treatment for IDPs. Although the Guiding Principles have served as a strong basis for awareness raising and advocacy, African states were the first to recognise and act on the need for legally binding treaty standards. This led to the adoption of the first legally binding international instrument related specifically to the situation of the internally displaced in the form of the Protocol for the Protection and Assistance to Internally Displaced Persons by the International Conference on the Great Lakes Region.

Building on these standards, African ministers adopted a draft African Union Convention on the Protection and Assistance for Internally Displaced Persons in Africa on 11 November 2008. The ground-breaking draft was endorsed at the Special Summit of African Heads of State and Government on 22-23 October 2009 in Kampala, Uganda.

Recognising the historic importance of the adoption of the Convention, a number of civil society organisations recognised took advantage of the occasion to facilitate a debate amongst civil society and experts on the causes and prevention of forced displacement, citizenship rights and statelessness in Africa. It was recognised that concerted civil society action would have an important role to play in promoting the implementation of existing standards relating to the situation of the internally displaced and refugees, as well as in the development of increased understanding, awareness of, and development of international standards for addressing, issues of exclusion and statelessness on the continent. The consultation drew participants with expertise in forced migration, conflict studies, displacement, citizenship law and policy⁶ from Uganda, Kenya, Tanzania, Rwanda, Burundi, Democratic Republic of Congo, Botswana, Zambia, South Africa, Ethiopia, Eritrea, Nigeria, Cote d'Ivoire and Senegal. At the end of the consultation while working in different working groups, participants had the task of addressing their recommendations in a draft communiqué to the heads of

⁶ See participants' list and agenda in appendices III and IV.

state attending the special summit.

FORCED DISPLACEMENT, CITIZENSHIP AND STATELESSNESS IN AFRICA: THE CONSULTATION

The session opened with a welcome by the International Refugee Rights Initiative's Co-Director Dismas Nkunda who highlighted the fact that the participants had come together at a historic moment, one at which the AU was taking an important step to create new binding legal standards to apply to a group of vulnerable people who often lack effective state protection - IDPs. In this context, the group had come together to discuss how civil society could promote the implementation of the Convention and the more effective protection of this group.

The occasion would also be taken to address the needs of a population who is not the subject of an international convention or summit, but whose situation makes them particularly vulnerable to human rights violations and forced displacement (whether internal or across borders) and which can ignite social conflict - those who lack the protection of effective citizenship. In some cases, these are people who are stateless, or whose right to nationality is questioned or denied. In others, these are persons who are excluded or offered only limited rights – or second class citizenship by their home states. It was envisaged that through the presentations and discussions by the participants, information would be disseminated with the purpose of portraying the efforts made; whether taken individually or organisationally, and the way forward concerning forced displacement, citizenship and statelessness problems.

Existing Mechanisms for the Protection of Displaced Persons

The first panel focused on existing mechanisms which had been developed in Africa on the rights and protection of the displaced, covering both the rights of refugees and internally displaced persons.

Existing Mechanisms for the Protection of Refugees: Prospects and Possibilities

The initial presentation was put forward by Dr. Khoti Kamanga of the Centre for the Study of Forced Migration at the University of Dar es Salaam in Tanzania and focused on existing mechanisms of refugee protection. Looking at the global context, Dr. Kamanga noted that there had been a sharp drop in global refugee numbers. But he questioned whether this was a reflection of an improvement on the ground? What about the root causes? Had they been addressed?

Dr. Kamanga elucidated that to date, experts were focusing on the securitisation of asylum. This, he argued, was the fallout in the preoccupation with migration. There is much more focus on the management of migration, including through attention to the issues of smuggling and trafficking.

Although the global displacement numbers are declining, the figures are still considerable in spite of the fact that Africa continues to host a considerable portion of the world's displaced. Dr. Kamanga noted that despite the prevalence of the problem on the continent, most African states had not adopted refugee specific policies. The practice, however, has become increasingly restrictive. Not all countries have refugee specific legislation, for example Kenya did not have any such legislation until 2006, despite the presence of hundreds of thousands of refugees. It was noted that where recent laws have been adopted, they tend not to be fully consistent with international law.

Dr. Kamanga also reflected that the 1969 OAU Convention governing the specific aspects of refugee problems in Africa was quite progressive at the time in the sense that it had moved away from the individualistic approach to refugee protection embodied in the 1951 UN Convention. It also recognised

displacement based on "foreign occupation," which was particularly relevant to the situation in Africa at the time. It was an important instrument and was useful for the continent at the time, but it has become a bit dated and the continent has to think about how it can develop additional mechanisms which are suited to contemporary challenges. For example, climate change is increasingly likely to cause displacement. Indeed, some estimate that by 2050 as many as 200 million people might be affected by climate change. New mechanisms, Dr. Kamanga argued, would be needed to address this challenge.

Dr. Kamanga concluded that the participants should not lose sight of the plight of refugees and asylum seekers. There was a tendency, he said, to see decreasing numbers as a reason to put attention elsewhere. It was vital, in this context, to focus on addressing root causes, rather than taking pride in the number of refugees repatriated. There are some countries which are looking to become refugee free zones, and this is a tendency that must be challenged. More participatory law and policy making frameworks should be encouraged as a means for better ensuring the rights of refugees.

Civil society should campaign for the ratification, implementation, and dissemination of international standards. The importance of research was emphasised. For instance, a study done by the Geneva-based Internal Displacement Monitoring Centre in 2006 anticipated and issued warnings of post-election violence that occurred in Kenya in 2008. The participants stressed the need for civil society to work collaboratively to form strategic partnerships in order to be more effective in advocacy, in particular, engagement with national and sub-regional institutions. It was noted that expertise in training on these issues, both within government and in NGOs was needed.

Relationship between the Great Lakes Protocol and the AU Convention on IDPs

Dr. Kamanga also reflected on the process initiated by the International Conference on the Great Lakes Region (ICGLR), which addressed a number of issues related to refugees and IDPs. The process was innovative, he argued, particularly in that issues of displacement were dealt with in a holistic manner.

The ICGLR offers a range of possibilities and prospects in dealing with the issue of displacement. The Great Lakes Pact and its instruments set out new norms, standards and mechanisms for protecting forcibly displaced people in the Great Lakes Region. It builds on and expands existing frameworks, both at national and regional levels.⁷ The approach taken by the member states of the International Conference on the Great Lakes Region with regards to IDPs was to develop a legal framework for the adoption and implementation of the Guiding Principles. This addressed the legal lacuna, however, its scope of application is limited to the 11 member states of the ICGLR⁸ and its substantive content also reflects the realities in that region. Both legal frameworks establish the scope of responsibility of states for the protection of internally displaced persons, outline the applicable principles of protection and assistance and lay out obligations for stakeholders to adopt and implement the law; draw on existing and applicable branches of human rights and international humanitarian law and directly incorporate the Guiding Principles on Displacement.

The question was posed, however, as to whether the adoption of such well crafted instruments will translate into genuine implementations or whether they will join the queue of poorly implemented regional instruments. Will states fully adhere to the responsibility to protect and assist IDPs in their territory? Mr. Joseph Chilengi, of African IDP Voice, argued that both the ICGLR Protocol and the new

⁷ The Great Lakes Pact on Security, Stability and Development in the Great Lakes Region, adopted by the ICGLR, included two protocols dealing specifically with the displaced: the Protocol on the Protection and Assistance to IDPs and the Protocol on the Property Rights of Returning Persons.

⁸ Member states include Uganda, Kenya, Tanzania, Sudan, Zambia, Rwanda, Burundi, Democratic Republic of Congo, Central African Republic and Angola.

AU Convention are evidence of political will to protect IDPs in Africa. He also highlighted that the signing of the solemn declaration and a plan of action to begin implementing the convention even before it enters into force is a progressive strategy and it demonstrates political commitment by states.

The AU Convention on IDPs

Mr. Chilengi offered an overview of the new AU Convention on IDPs. The Convention deals with displacement that is the result of violations of human rights and natural disasters. Unlike refugees, IDPs have not crossed an international boundary. He stressed the important fact that the Convention was premised on the primacy of state protection and was largely reflective of the Guiding Principles on IDPs.

The Convention includes the following notable provisions:

- A preamble, laying out the legal, political and philosophical underpinnings of the convention and its motivation;
- A definition, which is understood to be descriptive, rather than constitutive of a new and separate legal status;
- Objectives, which are significant to the interpretation of the substantive provisions of the Convention, these objectives include:
 - Strengthening regional measures to address root causes of, and provide solutions for, displacement,
 - Establishing a legal framework for preventing and responding to displacement, and
 - Clarifying the obligations of states parties and others, including non-state actors, and civil society.
- Legal principles laying out the general obligations of states parties, including the prevention of arbitrary displacement, prevention of exclusion and marginalisation likely to cause displacement, respecting human dignity and human rights of IDPs, ensuring respect for international humanitarian law, ensuring individual accountability for acts leading to displacement, and providing for the immediate needs and livelihoods of IDPs.
- Provisions requiring states parties to:
 - Incorporate the provisions of the Convention in national law,
 - Designate an authority responsible for coordinating government response to internal displacement,
 - Incorporate relevant provisions of the Convention into peace agreements, and
 - Respect obligations to protect populations from internal displacement, including by respecting international law obligations, devising early warning systems and promoting disaster preparedness and response systems, and defining and prohibiting arbitrary displacement.
- Obligations with regard to the protection and assistance of IDPs including by:
 - Ensuring respect for the mandates of the United Nations and the African Union,
 - Facilitating the assessment of needs of the displaced population, and humanitarian assistance, and
 - Providing sufficient protection and assistance, and where resources are insufficient, seeking the assistance of other relevant actors.
- Obligations relating to international and humanitarian actors, including respecting international and national law in their operations, respecting the rights of IDPs, and the principles of humanity, neutrality and impartiality.
- Obligations relating to armed groups, including:

- Ensuring criminal accountability of members of armed groups responsible for violating IDP rights, and
- Prohibiting armed groups from carrying out arbitrary displacement, hampering humanitarian assistance, restricting freedom of movement, recruiting children, engaging in forced recruitment, attacking humanitarian personnel, or violating the civilian and humanitarian character of IDP settlements.
- Obligations of the African Union, including intervention in accordance with the AU Constitutive Act, support for national response mechanisms, and cooperation with the African Commission on Human and Peoples' Rights and its Special Rapporteur for Refugees, Returnees, IDPs and Asylum Seekers
- Obligations of relating to protection and assistance during internal displacement, including:
 - Respecting international legal obligations with regard to international humanitarian and human rights law designed to protect the displaced,
 - Providing adequate humanitarian assistance,
 - Ensuring the right to seek safety in another part of the country,
 - Guaranteeing freedom of movement and choice of residence,
 - Maintaining the civilian and humanitarian character of the places where IDPs are sheltered, and
 - Taking necessary measures to protect property.
- Obligations of relating to durable solutions to displacement, including:
 - Enabling IDPs to make a free and informed choice on whether to return, integrate locally or relocate, and
 - Establishing appropriate mechanisms for resolving disputes relating to the property of internally displaced persons.
- Requiring a system to provide just and fair compensation
- Creating systems for registration and provision of personal documentation
- Provisions for monitoring compliance, and
- Final provisions relating to application, entry into force, and other administrative issues.

One notable element of the AU Convention and the ICGLR Protocol for the Protection and Assistance of IDPs was the explicit inclusion of those displaced by development.⁹ Both instruments require that such displacement be justified by compelling and overriding interests of national development and pursued only after all feasible alternatives have been explored.

The participants noted that, however, there are few specifics as to the particular steps which a state would have to fulfil such an obligation. Further, there are reports of inadequate consultation or lack of consent and inadequate sites of relocation from IDPs affected. This requires the role of CSOs and other actors to insist on formulation of such specific guidelines at the national level.

The Convention embraces monitoring compliance by states of obligations set as an indispensable way of ensuring effective protection and assistance to IDPs by the African Union.¹⁰ The Conference of State Parties has this key responsibility and this will be linked to the existing role of the African Commission on Human and Peoples Rights, particularly the oversight work of the Commission's Rapporteur of Refugees, Returnees and IDPs. If this mechanism is operated correctly, it can effectively serve as a watchdog holding states accountable and bringing them in line with their responsibilities to IDPs.

⁹ Examples include construction of the Merowe Dam in Sudan which displaced an estimate 50,000 people; In Uganda the discovery of minerals like oil has led to such displacement in the Albertine region and in northern Uganda.

¹⁰ Article 13 of the AU Convention on IDPs.

The participants raised their reservations on what would occur when one of the state parties breaches its obligations under the Convention? What disciplinary measures could be taken by the Conference of State Parties? The participants found that the Convention did not adequately address this and this could inhibit the effective operation of this mechanism.

Another point raised by participants was the role of the definition of “IDP.” Some expressed concerns that it might be seen as restrictive. Others argued that IDPs should not be treated as a separate legal status, but a description of those in particular need. The dynamics of displacement were discussed and it was mentioned that though the definition was broad, the nature of displacement continues to mutate and it may be difficult to foresee new elements of displacement.

Cessation of IDP status also emerged during the consultation as an issue in need of clarification. When does displacement end? The AU Convention on IDPs is well structured and provides for the protection of IDPs at all stages of displacement and imposes responsibilities on states for their return, local integration or relocation. It was noted that displacement can be said to cease when an IDP has returned and reintegrated into normal living within the community. The obligations by the state, however, do not cease with the end of displacement because the state continues to have an obligation to the individual as a citizen.

Link between Citizenship and Forced Displacement

Building on the recognition by participants in the initial session that exclusion and violations of citizenship rights, Dr. Lucy Hovil, Senior Researcher with the International Refugee Rights Initiative, explored the linkages between forced displacement and identity in greater detail. Dr. Hovil pointed out that most people have multiple and dynamic forms of identity that underlie their sense of belonging, one of which is citizenship. However, the realisation of citizenship is somewhat unique in that while international human rights law contemplates the extension of rights to all people by virtue of their shared humanity, in practice the ability of individuals to assert their rights and ensure their security is usually dependent on the formation of a strong linkage with a state. The inability to form or to assert the bond of citizenship leaves individuals stateless, alienated and at greater risk of human rights violations – including forced displacement.

At the same time, Dr. Hovil stressed the important fact that inclusion and exclusion on the basis of one’s identity lie at the root of many of the conflicts in this region. With failed or weak states that neither offer protection nor deliver basic rights, conflict has thrived. Worse still, many states are not only unable to protect their citizens but are the cause of conflict and forced displacement, precipitating a crisis in national identity. Therefore, while citizenship as a legal construct continues to have an important function, it needs to be placed within a wider context in which alternative forms of belonging play an integral, if not dominant, role in people’s lives.

These dynamics have created cyclical patterns of violence in the region that have generated massive displacement of people within and across borders. Mass displacement interacts with the dynamics of identity and citizenship on multiple levels. After all, the fundamental premise on which refugee status is configured is to ensure that those who do not enjoy the rights of citizenship in their countries of origin as a result of persecution are given a surrogate form of protection – but one that is temporary until such time as they can meaningfully re-assert the bonds of citizenship. Meanwhile, those who are internally displaced illustrate the lack of protection offered by their government.

Consequently, the discourse of displacement inevitably highlights and emphasises notions of national identity – or lack thereof. Removed from their home, displacement leads to a disjuncture between

territory and nationality and fundamentally alters people's relation to the state.

In order to illuminate some of these dynamics, Dr. Hovil referred to three different case studies that were recently carried out by the International Refugee Rights Initiative in Tanzania, eastern DRC and Burundi, each of which focused on the relationship between citizenship and displacement.

In the first instance, notions of inclusion and exclusion have too often been the cause of conflict that has led to displacement: people have been violently forced from their homes on the basis of their membership of a particular group or as a result of their presence in a specific territory – or both. For example, disputes over identity lie at the heart of the ongoing conflict in eastern DRC. IRRI's recent research among those displaced within or from North Kivu has shown the extent to which, at the core of this conflict, is a struggle over notions of citizenship and identity – over who is entitled to belong. Being able to assert Congolese identity is critical both to the ability to access power at a local level and to access resources. Some groups, despite having lived in the territory for generations, continue to be marginalised as foreigners. The issues of citizenship, access to power and land ownership are all inter-related: land ownership has limited benefit if not accompanied by political rights or access to power to defend these rights, and political rights are contingent on acceptance of belonging. The research has also shown that ethnic allegiances are blamed for much of the violence. Indeed, the extent to which ethnicity has become manipulated and perverted as a means to power was striking throughout the interviews. The assertion of Congolese identity is therefore conceived by some as an antidote to the violence that has been taking place – particularly in contrast to the “foreign” invaders, who have allegedly drawn upon ethnic allegiances. While the 2004 Citizenship law has, theoretically, resolved the issue of who belongs – albeit with a number of problems, not least the fact that it keeps alive ethnicity as a basis for citizenship – our findings make it clear that such national legislation has had little impact at a grassroots level where the right to Congolese identity remains profoundly contested.

Defining the boundaries of inclusion and exclusion also continue to play a role in the lives of those who are displaced. Nationality, a fundamental human right, is effectively denied to those in exile: unable to return home yet with little prospect of attaining new nationality either through resettlement or naturalisation, they have their lives put on hold. While they theoretically enjoy international protection under refugee law, the conditions of their exile – constrained by lack of freedom of movement and exclusion from meaningful integration – is often a form of unbelonging, characterised by marginalisation from meaningful engagement with the state. Host countries are understandably reluctant to grant refugees nationality – although many remain in exile indefinitely. A collection of international instruments that, in theory at least, protect them in the meantime do not make up for the absence of belonging that nationality affords to individuals and groups.

This exclusion was apparent in our research among Burundian refugees living in Tanzania who had fled in 1972 and have since been living in settlements or designated villages. All of those interviewed talked of being kept physically and socially isolated from mainstream Tanzanian society. More than three decades later, they were offered a choice between repatriating to Burundi or applying for naturalisation in Tanzania. Yet, both options are fraught, and refugees were profoundly unclear about whether or not either nationality would offer them full and effective protection. Our research showed numerous procedural problems relating to the process, and numerous challenges related to return to Burundi.

Finally, at the point of return, new challenges are faced, not least in situations where the conflict that forced people from their homes has not been meaningfully resolved. Repatriation is often a solution that is aggressively pursued regardless of the implications of wide scale return and the reality that for some return is still dangerous. While displacement sheds light on the failure of the state, the ability for people

to return to their homes is seen as evidence that such failures have been addressed, echoed by the vested interest of governments in encouraging return. As a result, return processes are characteristically driven by factors other than the best interests of refugees themselves.

The International Refugee Rights Initiative's research in southern Burundi tracked the experience of recently returned refugees. The findings show the enormous challenges facing those who repatriate after a considerable length of time in exile, particularly with regards to being able to genuinely regain access to their citizenship rights. Land is particularly critical in this regard: it represents access to livelihoods, bringing together of family structures and symbolises connection with the past and a re-affirmation of identity. Its equitable distribution represents hope for sustainable peace. In other words, return and genuine reintegration – as in a reconnection between citizen and state – is intimately connected with returnees' ability to access their land. The redistribution of land is not just an economic and pragmatic exercise: it relates profoundly to issues of justice and reconciliation, reintegration and belonging.

At the end of the presentation, participants agreed that at all stages in the trajectory of displacement – its causes, the experience of exile, and the process of obtaining a “durable solution” – the linkage between the individual and the state needs further interrogation, hence the need for further research.

Nationality and Statelessness

In exploring the issue of citizenship and nationality in Africa, Bronwen Manby, Senior Programme Adviser at the Open Society Institute's Africa Governance Monitoring and Advocacy Project (AfriMAP) spoke, synthesising the major lessons learned by a major research initiative by the Open Society Justice Initiative (OSJI) and AfriMAP into laws and policies across the continent. This research has led to two publications of which she is the author, *Struggles for Citizenship in Africa* (published by Zed Books) and *Citizenship Law in Africa: A Comparative Study* (published by the Open Society Institute). The books were launched during the IDP summit.

Ms. Manby mentioned that African states were made up of people thrown together by historical circumstance and that the history of colonisation had resulted in states with populations with little common history or culture. She pointed out that states in all regions have borders determined by war and historical chance and many are somewhat arbitrary. However, Africa's history of colonisation and land annexation has influenced many of the deepest nationality problems. Therefore, it was not a coincidence that the countries where nationality has been most contentious were often the countries that saw the greatest colonial-era migration and land alienation.¹¹

Exclusion and denial of citizenship opens individuals up to a series of abuses, but the grant or denial of nationality has traditionally been seen as the exclusive prerogative of states and has rarely been the focus of international human rights analysis and advocacy. The discriminatory laws and practices governing citizenship in many African countries effectively leave hundreds of thousands of people stateless, exacerbating intercommunal, interethnic and interracial tensions.¹² It is of no surprise that conflicts and forced displacement are interlinked with the denial of nationality. Therefore, an overview of nationality policy on the continent was offered, focusing first on international legal standards and then moving on to an overview of some of the most relevant trends in national law. Some of these trends included:

¹¹ B. Manby, “African leaders should address citizenship and statelessness,” *Daily Monitor*, 20 October 2009.

¹² *Citizenship Law in Africa*, 2009, p. 1.

- International Mechanisms for the Protection of the Right to Nationality- it was noted that international law in this regard is relatively weak. Participants highlighted the need for stronger standard setting in this area.
- Citizenship Law at the National Level: Jus Soli and Jus Sanguinis principles- it was reflected that citizenship law in Africa, as elsewhere in the world, drew on the international principles of *jus soli* (law or right of the soil), whereby an individual obtains citizenship because he or she was born on the territory of a particular country; *jus sanguinis* (law or right of blood) where citizenship is based on descent. It was noted that application of the *jus soli* principle would be the easiest mechanism for ensuring that statelessness would not occur, but was recognised in only five countries.
- Racism, Ethnicity and Citizenship- Among the most problematic elements of citizenship law in some African countries is an explicit racial or ethnic basis for nationality. Countries have citizenship requirements based on the concept of indigenous origin for instance of Negro descent¹³; race,¹⁴ ethnic identity and religion.¹⁵
- Gender Discrimination- Discrimination on the basis of gender in the granting of citizenship by African countries is still prevalent, but there have been recent moves to improve gender equality in conformity with international human rights instrument (including CEDAW) in many countries.¹⁶ The participants welcomed these positive changes and recommended for more legal reforms granting men and women equal rights to acquire, change and confer their nationality on their children. Participants called for increased engagement by CSOs.
- Naturalisation Procedures- Another cause of statelessness is the failure of African states to provide effective naturalisation procedures. Conditions applied for naturalisation are often designed to make it more difficult for non-natives to obtain citizenship and in some countries procedures are available in theory only.¹⁷
- Denationalisation- A very severe human rights abuse that is rampant throughout Africa and has not gotten significant attention from human rights groups is denationalisation – as the OSJI puts it: the act of “depriving an individual of legal nationality.” In some cases, victims of denationalisation are high profile political activists (some notables include Kenneth Kaunda, Trevor Ncube, and Jenerali Ulimwengu) in others, they are marginalised minority groups (examples include black Africans in Mauritania, Nubians in Kenya, and various migrant groups in Cote d’Ivoire.)¹⁸

A fuller overview of the findings of the project

Regional Citizenship under Regional Economic Communities

Regional Economic Communities (RECs) are mechanisms established in response to widespread globalisation and aimed at facilitating increased mobility of goods and services across borders and political stability through regional dialogue and improved trade relations. Such communities in Africa

¹³ Liberia and Sierra Leone take the position that only those of Negro descent have the right to nationality from birth.

¹⁴ These include Ghana, Madagascar, Malawi, and Mali.

¹⁵ In Egypt, Morocco and Libya the rules on naturalisation and recognition or deprivation of nationality discriminate against non Muslims.

¹⁶ Algeria, Burkina Faso, Burundi, Cote d’Ivoire, Djibouti, Egypt, Ethiopia, Gambia, Lesotho, Mali, Mauritius, Morocco, Niger, Rwanda, Senegal, Sierra Leone, Tunisia and Uganda enacted reforms on gender equality.

¹⁷ Under the DRC Nationality Law 2004, applications for naturalisation must be considered by the Council of Ministers and submitted to the National Assembly before being awarded the Presidential Decree; after the applicant has rendered distinguished service to the country. In some countries, like Ethiopia and Swaziland, the law requires knowledge of national languages.

¹⁸ More information on these examples and others are available in *Struggles for Citizenship in Africa*. authored by Manby, Zed Books, London. 2009.

include the Economic Community for West African States (ECOWAS), the East African Community (EAC) and the Southern Africa Development Community (SADC). During the consultation, the possibility for the creation of new regional forms of citizenship and building of identities through these RECs was discussed.

The participants noted that in the case of all citizenship rights, but particularly evident with regard to regional arrangement, the experience tended to point to three categories of access to rights:

- a) the right to be on the territory;
- b) the right to be protected inside that territory; and
- c) the right to access the bundle of rights all linked to citizenship, e.g. political, social, economic and cultural rights.

The extent to which these possible protections were made effective in specific regional contexts was the subject of the ensuing discussion.

The Economic Community for West African States

The discussion of the ECOWAS framework was facilitated by the intervention of Ibrahima Kane of the Open Society Initiative for East Africa (OSIEA). Mr. Kane pointed out that anyone who is a citizen of one of the member states can look for employment in another member state under the same conditions as a citizen of that country. West African citizenship opens up a possibility to better movement of goods and people: the ECOWAS passport entitles the holder to move and reside in any country within the region without a visa. In practice, however, there are limitations. There are divisions based on language, differing educational systems and the extent to which states have promoted integration. In practice citizens cannot benefit fully because regulations need to be put in place and harmonized.

The participants noted that ECOWAS citizenship might form an additional basis of protection for refugees in the region. In some cases, a refugee might not need to claim asylum because at the end of the day he or she is entitled to reside and work in the host country as a citizen of ECOWAS. It is important to note, however, that regional citizenship is subordinated to national citizenship – one can't be an ECOWAS citizen without first being recognised as a citizen of a member state.

The ICGLR and Regional Citizenship

The discussion of the role of the ICGLR in addressing citizenship questions on the continent was facilitated by Deirdre Clancy, Co-Director of the International Refugee Rights Initiative. Ms. Clancy examined the ICGLR in context of how it has re-conceptualised the concept of belonging in the Great Lakes region.

The ICGLR is a regional process involving 11 member states.¹⁹ The main output of the ICGLR is the Great Lakes Pact, a mechanism which was signed in December 2006 and entered into force in June 2008. The Pact represents the culmination of about seven years of negotiation, mainly between governments, but also including involvement by civil society. The discussions began in the aftermath of the Rwandan genocide and its aftermath, and built on a recognition following the crisis that solutions cannot be found without looking comprehensively at a range of interrelated issues, as well as regionally across borders. The Pact comprises of the Dar es Salaam Declaration, ten protocols, four programmes of action and a set of implementing mechanisms and institutions.

¹⁹ These 11 member states are Angola, Burundi, Central African Republic, Democratic Republic of Congo, Kenya, Republic of Congo, Rwanda, Sudan, Tanzania, Uganda, and Zambia.

Ms. Clancy pointed out that the ICGLR was neither a regional economic community nor sponsored by an REC, but rather was a different sort of regional arrangement designed to supplement the RECs. The Pact explicitly recognises that statelessness and exclusion as issues have an impact on peace and security. They recognised that there was an urgent need for a collective response. In this context, citizenship was among the issues discussed and the Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, signed by Heads of State in 2006 as a road map for the way forward and which forms an integral part of the Pact, provides that states shall “adopt a common regional approach for the ratification and implementation of the UN Conventions on statelessness, harmonise related national laws and standards.”²⁰

This commitment was further elaborated in the ICGLR’s Regional Programme of Action on Humanitarian and Social Issues, which commits states to elaborate a mutually consistent legal and policy framework to respond to statelessness, based on the 1954 UN Convention relating to the Status of stateless persons and the 1961 UN Convention on the Reduction of Statelessness; identify and harmonize national laws with the relevant international instruments on human rights, humanitarian law, refugees, and statelessness, and improving the awareness and sensitisation of all citizens and non-citizens on their rights and obligations under human rights law, refugee law, and the Conventions on statelessness.”²¹

It was pointed out that the evolution of international human rights law has begun to erode the notion of absolute national sovereignty, and the Great Lakes Pact was one part of that evolution. In this context, the Pact includes broad principles for resolving displacement. It identifies a series of rights and mechanisms that can help establish links between the displaced and former or future nationality. One such example, is the Protocol on the Property Rights of Returning Persons, which lays out the obligations of states to returnees in terms of access to property. In this sense, it begins to recognise that “going home” is to be more than a simple physical move. It reflects the need to think about repatriation in terms of its success or failure in re-opening the doorway to accessing a full range of rights.

In addition, the Pact includes interesting aspects of an emerging consensus that there should be collective responsibility by states for protection. In this sense, there is a strong reflection of the responsibility to protect principle. In addition, the process moots the notion that there might, in the future, be transnational governance zones in border areas.

The Pact also confirms that belonging can no longer be placed simply within a nationalist agenda. Regional belonging or citizenship is producing a more dynamic interaction between national and regional plane – especially dealing with the rights of those populations that are trying to reassert their link with the state.

The East African Community

The discussion of the East African Community was facilitated by Chidi Odinkalu of the Open Society Justice Initiative. Mr. Odinkalu reflected that regional citizenship generally, or at least in large part, addresses a shared history on the continent. This history generally reflects trends of colonial

²⁰ Dar es Salaam Declaration on Peace, Security Democracy and Development in the Great Lakes Region, November 2004, art. 68.

²¹ Regional Programme of Action on Humanitarian and Social Issues, Sub Programme 1: Framework for Disaster Preparedness, Protection and Assistance to IDPs and their Environment, Compliance with International and Regional Instruments on Human Rights, International Humanitarian Law, Issuance of Identity Documents to Internally Displaced Persons and Refugees and Stateless Persons.

amalgamation or integration of territory, and a post-colonial history of balkanisation. There is huge potential in the cross border human relationships between populations, but how can policies best capitalise on this potential to transform the region?

In the context of East Africa there are two colonial histories – Uganda, Kenya, Tanzania experienced British colonial rule, while Rwanda and Burundi experienced a Belgian colonial administration. Without reference to these two histories, it is impossible to understand problems with integration, citizenship and forced displacement. It would also be useful to place eastern Congo in this context, a place which is, in some sense caught between the EAC and the weight of Congo's capital in Kinshasa and its national links with the SADC. In historical context, it is also important to note that the East African Community had collapsed in 1977, but was resumed in the 1990s. The revived EAC is the most ambitious project of political unity on the continent. The process is designed to proceed in three stages:

- a) creating greater mobility (integrating people);
- b) transforming functional integration into a common market (integrating goods); and
- c) integrating into a political union (integrating politics).

Despite the ambitious process, in practice its integration is lagging behind ECOWAS. Use of the EAC passport is not clarified. An additional barrier to full integration under EAC is the fact that a significant number of forced migrants in the region, some of whom were being pushed or forced to repatriate despite the stated commitment to integration. It was argued that the policy in the region made clear that security had been prioritised over the needs of citizenship and forced migration. Mr. Odinkalu mentioned that UNHCR had failed in its responsibilities towards Burundian and Rwanda refugees being pushed or forced to return. The fate of Burundians and Rwandans – must be on the agenda. And the potential for regional integration to offer an additional layer of protection must be explored.

Engaging the African Union

Reflecting on the linkages between citizenship and forced migration in Africa, it was noted that it would be important to engage with the African Union in addressing the problem. In this context, an overview of the institution might be helpful with a view to formulating effective strategies for engagement.

The African Union replaced the Organisation of African Union (OAU) in 2002, reflecting a new vision for African States. Historically, OAU had been created with the objective of liberating Africa. With the end of apartheid in 1994, this objective had more or less been achieved. The new AU, therefore, embodies new goals of regional integration and ensuring respect for human rights.

Mr. Ibrahima Kane outlined some of the bodies that should be considered for engagement which were:

- The AU Commission, which is responsible for the day to day functioning and administration of the AU;
- The Summit, the body made up of heads of state;
- The AU Peace and Security Council is a body including 15 member states responsible for implementing the decisions of the union;
- The Committee of Permanent Representatives, which is comprised of all permanent representatives from member states to the African Union in Addis Ababa, this body represents the voice of states in the daily functioning of the AU;
- The Pan-African Parliament, a body intended to bring together members from all parliaments of AU member states based in Midlands; and
- The African Commission on Human and Peoples' Rights and the African Committee on the

Rights and Welfare of the Child, both of which are charged with oversight of African human rights instruments.

With regard to the AU Commission, the structure was built around eight Commissioners covering various thematic areas. It was reflected that issues of citizenship were typically dealt with under the rubric of human rights. It was argued, however, that a number of thematic areas should be engaged. For example, it was noted that if the issue related to the citizenship rights of children it would engage the social affairs department, and it was also noted that it would not be possible to discuss issues of citizenship in eastern Congo without discussing the peace and security context.

Considerable effort is therefore needed to be put into the development of mechanisms for engagement with the AU. This preparation needed to be done now, so as to ensure that when a crisis arises mechanisms for engagement are clear and accessible.

Another participant urged that civil society needed to be realistic in its engagement with the African Union. The AU cannot be expected to address all problems on the continent, and it must be borne in mind that the AU creates policy, but does not implement it. This was typically the purview of national governments and civil society organisations were urged to place due attention on these actors. It was noted that civil society had a substantial role to play in monitoring the implementation of AU decisions and policies.

Possibilities for Civil Society Engagement: Formulating a Plan of Action

Following the overview of relevant law and mechanisms, the discussion turned to the formulation of an agreed policy platform and plan of action. The shared policy platform was reflected in the communiqué of the session, reproduced above.

It was acknowledged, however, that civil society had considerable resources at their disposal for promoting the implementation of the existing standards relating to internal displacement and refugee protection and with regard to highlighting the continuing challenges relating to citizenship in Africa and developing new standards. In this regard, participants reflected on possible follow-up actions.

With regard to the implementation of the African Union IDP Convention, it was recognised that civil society was provided with distinct roles in providing protection and assistance and finding and implementing solutions for the sustainable return, local integration or relocation and long term reconstruction.²² The need for proactive civil society engagement was approached as a key strategy towards alleviating the root causes of forced displacement and statelessness in Africa. National level campaigns should be carried out not only for the ratification of these instruments and the adoption of implementing legislation, but for more participatory law and policy making frameworks. Collective action and experience sharing could promote implementation of these standards. The participants advocated for engaging states at an early stage to ensure that whatever was not explicitly catered for in the Convention is explicitly covered in national legislation. It was suggested that an all African Civil Society Conference could be organised to draft a comprehensive policy towards the protection and promotion of the rights of IDPs, Refugees and Returnees. The ongoing monitoring and research would be vital in order to ensure the ability to respond to emerging protection problems and ensure application of international standards.

With regard to the issues of citizenship, it was pointed out that civil society had an important role to play in conducting continuing research to illuminate the nature of citizenship struggles in Africa. Civil society

²² Articles 5, 7 and 10 of the A.U. Convention on IDPs.

was in a position, based on considerable existing understanding, to conduct awareness raising campaigns and draw attention to the issue. One of such campaigns could focus on advancing the citizenship rights of children through the anniversary of the Convention on the Rights of the Child.

The participants emphasised the need for awareness creation to reach a variety of actors; including civil society organisations, governments, members of parliament and the population at large. The need for increased advocacy and sensitisation of members of parliament in Africa was particularly highlighted. There is a need to identify key legislators, but not only from affected communities to lobby for the drafting of national legal frameworks to address these issues.

African states need to directly address the issue of statelessness. The extent of the problem of statelessness in Africa should not be taken lightly. There should be a treaty framework governing the citizenship problem and a continental standard setting on citizenship rights in Africa: participants advocated the elaboration and adoption of a protocol to the African Charter on Human and Peoples' Rights on the right to a nationality and the prevention of statelessness. The AU, its institutions, member states and African CSOs all have distinct roles to play in promoting and ensuring the implementation of such a mechanism.

APPENDIX I: THE AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA (THE KAMPALA CONVENTION)

Preamble

We, the Heads of State and Government of the Member States of the African Union;

CONSCIOUS of the gravity of the situation of internally displaced persons as a source of continuing instability and tension for African states;

ALSO CONSCIOUS of the suffering and specific vulnerability of internally displaced persons;

REITERATING the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities;

COMMITTED to sharing our common vision of providing durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance;

DETERMINED to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development;

CONSIDERING the 2000 Constitutive Act of the African Union and the 1945 Charter of the United Nations;

REAFFIRMING the principle of the respect of the sovereign equality of States Parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter;

RECALLING the 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council Resolutions;

MINDFUL that Member States of the African Union have adopted democratic practices and adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments;

RECOGNISING the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for

the protection of internally displaced persons;

AFFIRMING our primary responsibility and commitment to respect, protect and fulfill the rights to which internally displaced persons are entitled, without discrimination of any kind;

NOTING the specific roles of international Organizations and agencies within the framework of the United Nations inter-agency collaborative approach to internally displaced persons, especially the protection expertise of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the invitation extended to it by the Executive Council of the African Union in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to continue and reinforce its role in the protection of and assistance to internally displaced persons, within the United Nations coordination mechanism; and noting also the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence, as well as the work of civil society organizations, in conformity with the laws of the country in which they exercise such roles and mandates;

RECALLING the lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

REAFFIRMING the historical commitment of the AU Member States to the protection of and assistance to refugees and displaced persons and, in particular, the implementation of Executive Council Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in Addis Ababa, to the effect that that the specific needs of internally displaced persons (IDPs) such as protection and assistance should be addressed through a separate legal instrument, and to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions, respectively;

CONVINCED that the present Convention for the Protection and Assistance of Internally Displaced Persons presents such a legal framework;

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

For the purpose of the present Convention:

- a. "African Charter" means the African Charter on Human and Peoples' Rights;
- b. "African Commission" means the African Commission on Human and Peoples' Rights;
- c. "African Court of Justice and Human Rights" means the African Court of Justice and Human Rights;
- d. Arbitrary displacement means arbitrary displacement as referred to in Article 4 (4) (a) to (h);
- e. "Armed Groups" means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state;

- f. "AU" means the African Union;
- g. "AU Commission" means the Secretariat of the African Union, which is the depository of the regional instruments;
- h. "Child" means every human being below the age of 18 years;
- i. "Constitutive Act" means the Constitutive Act of the African Union;
- j. "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;
- k. "Internally Displaced Persons" means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;
- l. "Internal displacement" means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders;
- m. "Member State" means a Member State of the African Union;
- n. "Non-state actors" means private actors who are not public officials of the State, including other armed groups not referred to in article 1(d) above, and whose acts cannot be officially attributed to the State;
- o. "OAU" means the Organization of African Unity;
- p. "Women" mean persons of the female gender, including girls;
- q. "Sphere standards" mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and
- r. "States Parties" means African States which have ratified or acceded to this Convention.

Article 2

Objectives

The objectives of this Convention are to:

- a. Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- b. Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and

mutual support between the States Parties in order to combat displacement and address its consequences;

- d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;

Article 3

General Obligations Relating to States Parties

1. States Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall:
 - a. Refrain from, prohibit and prevent arbitrary displacement of populations;
 - b. Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;
 - c. Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;
 - d. Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
 - e. Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons;
 - f. Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
 - g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
 - h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
 - i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
 - j. Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and

personnel;

- k. Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;

2. States Parties shall:

- a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;
- b. Designate an authority or body, where needed, responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organizations or agencies, and civil society organizations, where no such authority or body exists;
- c. Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities;
- d. Provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support;
- e. Endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.

Article 4

Obligations of States Parties relating to Protection from Internal Displacement

1. States Parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;
2. States Parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;
3. States Parties may seek the cooperation of international organizations or humanitarian agencies, civil society organizations and other relevant actors;
4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:
 - a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;

- b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
 - c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
 - d. Displacement caused by generalized violence or violations of human rights;
 - e. Displacement as a result of harmful practices;
 - f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
 - g. Displacement used as a collective punishment;
 - h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.
5. States Parties shall endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests;
 6. States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.

Article 5

Obligations of States Parties relating to Protection and Assistance

1. States Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States Parties shall cooperate with each other upon the request of the concerned State Party or the Conference of State Parties in protecting and assisting internally displaced persons.
3. States Parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organizations in providing protection and assistance to internally displaced persons, in accordance with international law.
4. States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.
5. States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organizations or agencies.
6. States Parties shall provide sufficient protection and assistance to internally displaced persons,

and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors. Such organizations may offer their services to all those in need.

7. States Parties shall take necessary steps to effectively organize, relief action that is humanitarian, and impartial in character, and guarantee security. States Parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States Parties shall also enable and facilitate the role of local and international organizations and humanitarian agencies, civil society organizations and other relevant actors, to provide protection and assistance to internally displaced persons. States Parties shall have the right to prescribe the technical arrangements under which such passage is permitted.
8. States Parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.
9. States Parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.
10. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.
11. States Parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7.
12. Nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states.

Article 6

Obligations Relating to International Organizations and Humanitarian Agencies

1. International organizations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.
2. In providing protection and assistance to Internally Displaced Persons, international organizations and humanitarian agencies shall respect the rights of such persons in accordance with international law.
3. International organizations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

Article 7

Protection and Assistance to Internally Displaced Persons in Situations of Armed Conflict

1. The provisions of this Article shall not, in any way whatsoever, be construed as affording legal status or legitimizing or recognizing armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.
2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
3. The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law.
4. Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.
5. Members of armed groups shall be prohibited from:
 - a. Carrying out arbitrary displacement;
 - b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
 - c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
 - d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
 - e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
 - f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
 - g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons
 - h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
 - i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such places.

Article 8

Obligations relating to the African Union

1. The African Union shall have the right to intervene in a Member State pursuant to a decision of the Assembly in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of States Parties to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement;
3. The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:
 - a. Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
 - b. Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;
 - c. Collaborate with international organizations and humanitarian agencies, civil society organizations and other relevant actors in accordance with their mandates, to support measures taken by States Parties to protect and assist internally displaced persons.
 - d. Cooperate directly with African States and international organizations and humanitarian agencies, civil society organizations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;
 - e. Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and,
 - f. Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

Article 9

Obligations of States Parties Relating to Protection and Assistance During Internal Displacement

1. States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
 - a. Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;
 - b. Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;

- c. Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
- d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and
- e. Starvation.

2. States Parties shall:

- a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
- b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;
- c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;
- d. Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses;
- e. Respect and ensure the right to seek safety in another part of the State and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
- f. Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;
- g. Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;
- h. Take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;

- i. Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
 - j. Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
 - k. States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;
 - l. Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and
 - m. Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.
3. States Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.

Article 10
Displacement induced by Projects

- 1. States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;
- 2. States Parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;
- 3. States parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

Article 11
Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation

- 1. States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.
- 2. States Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.
- 3. States Parties shall cooperate, where appropriate, with the African Union and international organizations or humanitarian agencies and civil society organizations, in providing protection and assistance in the course of finding and implementing solutions for sustainable return, local

integration or relocation and long-term reconstruction.

4. States Parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.
5. States Parties shall take all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

Article 12

Compensation

1. States Parties shall provide persons affected by displacement with effective remedies.
2. States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.
3. A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

Article 13

Registration and Personal Documentation

1. States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organizations or humanitarian agencies or civil society organizations.
2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.
3. States Parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.
4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

Article 14

Monitoring Compliance

1. States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention.
2. States Parties shall enhance their capacity for cooperation and mutual support under the

auspices of the Conference of the States Parties.

3. States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union.
4. States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

Final Provisions

Article 15

Application

1. States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.
2. States Parties agree that nothing in this Convention shall be construed as affording legal status or legitimizing or recognizing armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

Article 16

Signature, ratification and membership

1. This Convention shall be open to signature, ratification or accession by Member States of the AU in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

Article 17

Entry into force

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) Member States.
2. The Chairperson of the AU Commission shall notify Member States of the coming into force of this Convention.

Article 18

Amendment and Revision

1. States Parties may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.
3. The Conference of States Parties, upon advice of the Executive Council, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance

with the provisions of paragraph 2 of this Article.

4. Amendments or revision shall be adopted by the Conference of States Parties by a simple majority of the States Parties present and voting.
5. Amendments shall come into force thirty (30) days following the depositing of the fifteenth (15) instrument of ratification by the States Parties with the Chairperson of the AU Commission.

Article 19 Denunciation

1. A State Party may denounce this Convention by sending a written notification addressed to the Chairperson of the AU Commission, while indicating the reasons for such a denunciation.
2. The denunciation shall take effect one (1) year from the date when the notification was received by the Chairperson of the AU Commission, unless a subsequent date has been specified.

Article 20 Saving Clause

1. No provision in this Convention shall be interpreted as affecting or undermining the right of internally displaced persons to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights, and to seek protection, as a refugee, within the purview of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa or the 1951 U.N Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees.
2. This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples' Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.
3. The right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.
4. The provisions of this Convention shall be without prejudice to the individual criminal responsibility of internally displaced persons, within the framework of national or international criminal law and their duties by virtue of the African Charter on Human and Peoples' Rights.

Article 21 Reservations

States Parties shall not make or enter reservations to this Convention that are incompatible with the object and purpose of this Convention.

Article 22
Settlement of Disputes

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.
2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.

Article 23
Depository

1. This Convention shall be deposited with the Chairperson of the AU Commission, who shall transmit a certified true copy of the Convention to the Government of each signatory State.
2. The Chairperson of the AU Commission shall register this Convention with the United-Nations Secretary-General as soon as it comes into force.
3. This Convention is drawn up in four (4) original texts; in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic.

**ADOPTED BY THE SPECIAL SUMMIT OF THE UNION
HELD IN KAMPALA, UGANDA,
22ND OCTOBER 2009**

APPENDIX II: KAMPALA DECLARATION ON REFUGEES, RETURNEES AND INTERNALLY DISPLACED PERSONS IN AFRICA

Ext/Assembly/AU/PA/Draft/Decl.(I)
Rev.1

We, Heads of State and Government of Member States of the African Union, meeting in Kampala, Uganda from 22 to 23 October 2009;

Recalling the pan-African spirit that inspired our predecessors to mobilize the Continent's resources in the struggle for independence and abolition of apartheid, for the collective good of all the people of Africa;

Rededicating ourselves to the pan-African ideals that guided the solidarity among African States and the peoples of Africa during the struggle for liberation from colonialism and the resolve to continue extending protection and humanitarian assistance to victims of forced displacement and search for durable solutions for their problems.

Underscoring the objectives and principles in the Constitutive Act of the African Union;

Conscious of the fact that the African continent has the largest number of refugees, internally displaced persons, and returnees;

Deploing that large numbers of people within our Continent are displaced, either as refugees or internally displaced persons and some are even stateless as a result of conflicts, natural disasters, and increasingly climate change and other causes of forced displacement in Africa;

Noting that the majority of the refugees, returnees and internally displaced persons are women and children as well as people of old age and handicapped that require special protection and assistance because of their vulnerability;

Realizing also that for a variety of reasons, refugees and internally displaced persons are sometimes unable or unwilling to return to their homes immediately after their displacement and as a result, spend many years or even decades in camps and therefore require durable solutions to their displacement situation;

Recognizing that some refugees and the internally displaced persons are people with skills, experiences and expertise and are willing and able to contribute to Africa's development and progress;

Recalling the various conventions, declarations, resolutions and decisions that have previously been adopted on the question of refugees and internal displacement in Africa and their impact for the Continent and reiterating the need to implement them;

Recognising further the problems of hosting large numbers of refugees, and commending the States and host communities that extend hospitality to refugees and internally displaced persons;

Acknowledging the efforts made and paying tribute to the regional organizations including the Regional Economic Communities, the United Nations Systems, especially its agencies such as the

High Commissioner for Refugees, the World Food Program, the Office for the Coordination of Humanitarian Affairs, United Nations Children's Fund as well as other international organizations including the Red Cross and Red Crescent Movement, the International Organization for Migration and the Civil Society Organizations for the support that they continue to extend to refugees, returnees and internally displaced persons in Africa;

Calling upon the international community to continue to support the African Union as it addresses the challenges of forced displacement in Africa, in particular, the increasing incidence of displacement caused by environmental factors, including climate change;

Recognizing further that the incidence of refugees and internally displaced persons is an outcome of underlying political, socio-economic and developmental problems as well as the influence of external factors, which cause f destabilisation, and that the search for solutions to this problem requires our full attention;

Having considered and endorsed the Report and Recommendations of the Executive Council as well as the Ministers in-charge of Forced Displacement Matters in our respective governments;

Having carefully examined the challenge that the problem of forced displacement in Africa poses to the Continent and deliberated on steps that need to be taken to address it;

Hereby Declare as Follows:

On Prevention of Forced Displacement in Africa,

We undertake to examine further all the factors that cause or contribute to forced displacement of people in Africa, with a view to taking measures that will prevent and finally eliminate from our Continent the occurrence of forced displacement of people arising from conflict and natural disasters.

1. We undertake therefore to establish or strengthen high-level national mechanisms to address the problem of forced displacement in our respective countries, with particular focus on the root causes.
2. We undertake to address under development and unemployment as causes of forced displacement.
3. We call upon Member States who have not done so to sign and ratify treaties, conventions and covenants relating to human rights, refugees, the protection of civilians during armed conflict, civil, political and socio-economic rights as well as the prevention of large scale arbitrary population displacement, including the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the African Charter on Democracy Elections and Governance..
4. We undertake to fast track entry into force of the African Charter on Democracy, Elections and Governance and, as soon as it enters into force, agree to take measures to promulgate national laws and review existing laws with a view to addressing gaps and strengthening mechanisms for their implementation, including lifting reservations deposited on certain of the provisions in these treaties and conventions. We undertake to develop by 2015, national strategies for the full implementation of the African Charter on Democracy, Elections and Governance including by aligning relevant national legislation and strengthening national

institutions charged with democratisation and electoral processes.

5. We condemn and call for an end to external interference such as the support for mercenaries and sponsoring of armed groups that have fuelled conflict in Africa.

On Effective Protection of Victims of Forced Displacement

6. We undertake to deploy all necessary measures to ensure full respect for the fundamental principle of *non-refoulement* as recognised in International Customary Law as enunciated in Article 33 of the 1951 UN Geneva Convention relating to the Status of Refugees and in Article 2 of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and, through appropriate national mechanisms, ensure that asylum seekers and refugees are treated humanely, and that their rights are protected.
7. We shall do everything possible to address the plight as well as to find durable solutions for refugees and internally displaced persons who are in protracted situations in the territories of our respective States. To this end we commit to facilitate intra-Africa third-country resettlement.
8. We also undertake to enable IDPs find durable solutions by promoting and creating conducive conditions for voluntary return, local integration or settlement elsewhere in the circumstances of safety and dignity.
9. We undertake, with the support of UNHCR, other Agencies and organizations to address the phenomenon of mixed migration flows and irregular secondary movement in order to accord refugees and asylum seekers the protection they deserve.
10. We also commit to creating an enabling environment for refugees and internally displaced persons particularly women and vulnerable groups as well as the youth to become self-reliant through socio-economic integration which will enable them prepare to contribute to the local economy upon return. We also call upon the international donor community to support the efforts of African nations in protecting and assisting refugees and IDPs to meet their basic needs as well as access their fundamental rights.
11. We reiterate our commitment to maintain the civilian and humanitarian character of camps and centres hosting refugees and internally displaced persons. To that end, we commit to deal with all aspects of this issue based on the provisions of international Instruments.

On Meeting the Specific Needs of Displaced Women and Children and Other Vulnerable Groups

12. We strongly support the need for protection of civilians in situations of armed conflict, based on International Humanitarian Law, taking note of the disproportionate share of special vulnerability of displaced persons especially women, children and other disadvantaged groups including persons with disabilities. We also commit to the prohibition of the recruitment of children into armed forces and groups set out in the African Charter on the Rights and Welfare of the Child and the optional Protocol to the UN Convention on the Rights of the Child on the involvement of Children in Armed Conflict. Furthermore we call for full ratification of the Protocol on Human and Peoples' Rights on the Rights of Women in Africa and the Charter on the Rights and Welfare of the Child
13. We strongly denounce and condemn impunity, rape, sexual abuse and all forms of Gender

Based Violence (GBV) and exploitation among civilian populations as well as their use as a weapon of war during armed conflict. We commit ourselves to ensure that all refugee victims of rape, sexual abuse, violence and exploitation in our territories will have free access to legal advice, support and counselling in order to seek and obtain effective redress for the violation of their rights and dignity as well as medical attention, rehabilitation and reintegration.

14. We commit ourselves to ensure access to primary, secondary and post-secondary education, and other training for all children, including refugee and internally displaced children as well as access to informal and adult education by out of school girls and women.

On Reconstruction of Communities Emerging from Conflicts and Natural Disasters

15. We reiterate our commitment to the speedy implementation of the AU Policy Framework on Post-Conflict Reconstruction and Development and request Member States to enact national policies on peace building and reconciliation.
16. We undertake to expedite targeted support to post-conflict countries, including meeting critical gaps in human resources. In this regard, the African Union Commission is hereby requested to expedite the establishment of the African Union Volunteers Programme and database of African experts on post-conflict reconstruction and peace building in order to facilitate and coordinate the deployment of skilled and experienced human resources to support post-conflict reconstruction and development.
17. We commit ourselves to Disarmament, Demobilization and Reintegration (DDR) following the settlement of an armed conflict as well as mine clearance and other unexploded ordinances. We undertake to also raise awareness as an integral part of the effort to address the impact of armed conflict and ensure safety and sustainability of return.
18. We commit ourselves to ensure that our national development plans give priority attention to the recovery and reconstruction needs of communities affected by conflict and disasters. To this end, we commit to deploy adequate human, financial and material resources to support the return, reintegration and rehabilitation of returnees and the receiving communities. Member States also recognize the need for support to refugee-hosting communities.
19. We commit ourselves, to increase support for the consolidation of peace and a smooth transition from humanitarian response to development assistance in countries emerging out of conflicts and disasters. We appeal to development partners to support this process.
20. We further call upon development partners to dedicate a portion of development assistance to projects and activities benefiting displaced populations as well as the hosting communities in both internally displaced persons and refugee situations and ensure sufficient funding for infrastructural and other improvements in areas of return and reintegration
21. We undertake to create an enabling environment for the development and strengthening of the partnership of independent and responsible civil society organizations, including private educational and research institutions, policy think-tanks, non-governmental organizations, religions institutions, labour and trade unions, professional associations, media and the press, as well as other civic and public interest groups that could help in further building national and local capacity for peaceful public discourse in political, economic and social spheres.

22. We commit ourselves to deal with challenges of climate change, increased pressure on natural resources, issues of land management, water and sanitation, rural infrastructure in our efforts to find durable solutions to the problem of refugees and internally displaced persons.
23. We hereby call upon Member States to contribute generously to the AU Special Refugee Contingency Fund. The Fund shall, inter-alia, be used to support the fast tracking of the implementation of programmes to meet the needs of refugees, returnees, internally displaced persons and other conflict affected populations, during the critical period straddling the transition from conflict to peace. To this end we request the African Union Commission to develop modalities and guidelines for the operation of the Fund for the consideration and decision of the Executive Council during their regular sessions in 2010.
24. We commit ourselves to prioritize the building of capacity of national institutions, including those dealing with the challenge of refugees, returnees and internally displaced persons, with a view to the attainment of self-reliance and empowerment of Africans to address Africa's problems.
25. We undertake to work closely with national parliaments to ensure that they are engaged with issues of forced displacement, relating to prevention of displacement and finding durable solutions including passing appropriate legislations and provision of adequate resources to address challenges posed by forced displacement.

On Forging Partnerships in Addressing Forced Displacement

26. We call upon the African Development Bank and regional banks to establish financing windows for the support of fast-track recovery and reconstruction efforts in countries and communities emerging from conflict. In connection thereto, we call upon other international financial institutions including the International Monetary Fund (IMF) and the World Bank to review their policies and urgently develop appropriate policies and financing mechanisms to bridge the persistent gap facing countries during the transition from conflict to peace. We also call upon Africa's bilateral and multilateral development partners to review their policies with a view to increasing support to critical development activities that are crucial in building the peace and under-girding recovery and reconstruction during the transition from conflict to peace.
27. We call upon the United Nations Systems, International Organizations, bilateral and multilateral partners, as well as NGOs, to strengthen coordination of their programmes including joint planning, implementation, monitoring, and impact assessment, in partnership with national authorities, particularly in countries affected by conflict. We welcome the ongoing reform process by the international humanitarian community to improve effectiveness, predictability and partnership in all aspects of humanitarian operations.

On the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa

28. (We hereby adopt the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa and urge our Member States to ratify and implement it as soon as possible.)

APPENDIX III: SUMMARY AND RECOMMENDATIONS OF *CITIZENSHIP LAW IN AFRICA: A COMPARATIVE STUDY*

Summary

Laws and practices governing citizenship in too many African countries effectively leave hundreds of thousands of people without a nationality. These stateless Africans are among the continent's most vulnerable populations: they can neither vote nor stand for office; they cannot enrol their children in school, travel freely, or own property; they cannot work for the government; they are exposed to human rights abuses. Statelessness exacerbates and underlies intercommunal, interethnic, and interracial tensions in many regions of the continent.

Few African countries provide for an explicit right to a nationality. Moreover, though the laws in more than half of the continent's countries grant children born on their soil the right to citizenship at birth or the right to claim citizenship when they reach the age of majority, the observance of these laws is often lacking. The laws of some African countries explicitly restrict citizenship rights on racial or ethnic bases, and in many other countries ethnic or racial discrimination in the recognition of citizenship is widespread in practice. The legal provisions of at least half a dozen African countries effectively ensure that those persons who do not have the "right" skin colour or speak the "right" languages at home can never obtain nationality from birth, and neither can their children nor can their grandchildren.

The citizenship laws of more than half of Africa's states discriminate against women. Women in these countries are unable to pass on their citizenship to their foreign spouses or to their children if the father is not a citizen. Encouragingly, however, in recent years laws drawing on the international conventions on women's rights have introduced gender neutrality in many countries, and others have enacted reforms providing for greater gender equality.

Another cause of statelessness is the failure by many African states to provide effective naturalisation procedures, especially for refugees. In practice, even where the law is unproblematic, some countries' procedures are available in theory only. A final critical problem is the widespread lack of due process protections, especially when the government wishes to revoke citizenship. The laws in too many countries give almost unfettered discretion to the executive, allowing for incumbent governments to abuse the law in order to silence critics and exclude political opponents from public office.

African states should address the problems of citizenship that the continent's history of colonisation and migration has created and should bring their citizenship laws into line with international human rights norms. They should adopt a protocol to the African Charter on Human and Peoples' Rights on the right to nationality. The African Union and its Regional Economic Communities should lead a process to harmonise national laws and to ensure their compliance with the basic principles of nondiscrimination and due process already enshrined in the African Charter on Human and Peoples' Rights.

The laws, and preferably the constitutions, of African states should provide for an explicit right to a nationality from birth. In general, laws should provide for citizenship (whether from birth or by naturalisation) to be granted on the basis of any strong connection to the country, including birth on its territory, having a father or mother (including adoptive father or mother) who is a citizen, marriage to a citizen, and long-term residence. The laws regulating citizenship should not refer to membership of any particular race or ethnic group as the basis for inclusion in or exclusion from citizenship rights.

Citizenship rights should be based on gender equality in all respects, including the right of a woman to pass her citizenship on to her children and spouse. African states should take legal and other measures

to ensure that members of all ethnic groups resident in their territory are given equal rights to citizenship, and in particular to ensure that members of groups that have historically been excluded from such benefits are included from now on. Obtaining citizenship by naturalisation should be possible for anyone able to prove legal residence in a country for a reasonable period. Any additional requirements—such as knowledge of national languages—must be reasonably possible to achieve for someone who has arrived in a country as an adult.

African Citizenship Laws

The laws governing citizenship in most African countries—as in most countries in the world—reflect a compromise between two basic concepts: *jus soli* (literally, law or right of the soil), whereby an individual obtains citizenship because he or she was born in a particular country; and *jus sanguinis* (law or right of blood), where citizenship is based on descent from parents who themselves are or were citizens. In addition to these two principles based on birth, two other factors are influential in determining citizenship for adults: marital status, in that marriage to a citizen of another country can lead to the acquisition of the spouse's citizenship, and residence within a country's borders.

Few African countries provide for an explicit right to a nationality. Only South Africa and Ethiopia provide in their constitutions for a child to have a right to a nationality, and a handful of other countries establish such a right in other laws. In Ethiopia, moreover, the citizenship law does not comply with the constitution, failing to provide a right to a nationality for a child born in the country who would otherwise be stateless. Even so, the citizenship laws of many African countries are generous. The simplest way of ensuring that children born in a country are not at risk of statelessness is to apply an absolute *jus soli* rule, providing automatic citizenship to any child born on national soil. Those countries whose laws do this (with an exception for the children of diplomats or other representatives of foreign states) include Chad, Equatorial Guinea, Lesotho, and Tanzania. However, the laws of more than 20 other countries either provide automatic citizenship from birth for children born to parents who were themselves also born there or give children born on the territory to non-citizen parents the right to claim citizenship from birth by origin if they are still resident in the given country when they reach the age of majority. A handful of other countries (Cape Verde, South Africa, Namibia, and São Tomé and Príncipe) grant citizenship to children born on their territory to parents who are legally resident on a long-term basis. Several other civil law countries have additional provisions allowing for those persons who have always been treated as citizens to obtain citizenship papers without the need for further proof of descent or location of birth. Gabon's 1998 Nationality Code states that children born in the border zones of countries neighbouring Gabon or raised by Gabonese citizens who have lived in Gabon for 10 years can claim Gabonese nationality by origin when they reach the age of majority.

More than half Africa's countries thus provide—at least in law—for most children born on their soil to have the right to citizenship from birth or to claim it at the age of majority. But more than 20 other countries either fail to make any provision for children born on their territory with no other option to have a right to a nationality, or provide the fallback right to a nationality only for children born on the territory with unknown parents, an extremely rare circumstance. These countries include some obvious and some surprising names. Among them are: Algeria, Botswana, Burundi, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Guinea-Bissau, Kenya, Liberia, Madagascar, Mauritius, Nigeria, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, and Zimbabwe. This issue is of particular concern where citizenship by descent discriminates on the basis of gender, leaving the children of non-citizen fathers especially vulnerable. This situation exists in its most acute form in Madagascar, Swaziland, Zimbabwe, and, in some cases—despite recent reforms—Morocco.

Children and adults affected by these laws are spread throughout the continent. They comprise a vast

population of disenfranchised people excluded from full membership in the country where they live, which may be the only one they have ever known.

Racial, ethnic and religious discrimination

Among the most problematic elements of citizenship law in some African countries is an explicit racial or ethnic basis for nationality. At least half a dozen countries effectively ensure that those from certain ethnic groups can never obtain nationality from birth; nor can their children nor their children's children. At the most extreme end, Liberia and Sierra Leone, both founded by freed slaves, take the position that only those "of Negro descent" can be citizens from birth. Sierra Leone also provides for more restrictive rules for naturalisation of "non-negroes" than of "negroes"; while Liberia provides that those not "of Negro descent" are not only excluded from citizenship from birth, but, "in order to preserve, foster, and maintain the positive Liberian culture, values, and character," are prohibited from becoming citizens even by naturalisation.

Other countries exercise elements of racial preference. In Malawi, citizenship from birth is restricted to those who have at least one parent who is not only a citizen of Malawi but is also "a person of African race," Mali does not generally have an ethnic requirement for citizenship, but it does grant citizenship by origin to any child born in Mali of a mother or father "of African origin" who was him- or herself also born there (but not if neither parent is "of African origin"). Several other countries put a positive spin on the same distinction, giving preferential treatment in terms of naturalisation to those who are from another African country (defined in practice by race rather than citizenship). Ghana has recently extended this principle to members of the wider African diaspora, allowing them to settle and ultimately become citizens on easier terms than those applied to people not of African descent.

Several north African countries discriminate on grounds of religion in their laws. In Egypt, Morocco, and especially Libya, the rules on naturalisation and recognition or deprivation of nationality discriminate against non-Muslims as well as non-Arabs. In Algeria, though the right to nationality does not on the face of it have any conditions related to religion, the rules on proof of the right to nationality by origin privilege those with Muslim parents.

Another version of these distinctions has been applied in the countries that have citizenship requirements based on the concept of "indigenous origin" rather than on race, though the effect may be the same in practice. The constitution of the Democratic Republic of the Congo (DRC) explicitly states that nationality of origin belongs to those persons who are members of an "indigenous community" present in the country at the date of independence. The application and interpretation of the different versions of this provision have helped over many years to fuel conflict. The constitution of Uganda in the same way largely restricts citizenship from birth to those persons with ancestors of "indigenous origin." Nigeria's constitution, though not as strict, has provisions that imply some similar rules. Eritrea provides that nationality from birth is given to a person born to a father or mother "of Eritrean origin"; Somalia's 1962 citizenship law provides for any person "who by origin, language or tradition belongs to the Somali Nation" and is living in Somalia to obtain citizenship. In Côte d'Ivoire—where ethnic discrimination in the granting of citizenship is not written into law but is widely practised—legal reform may not be enough, but it is an essential starting point to address this discrimination and exclusion.

Gender discrimination

At independence and until recently, most countries in Africa discriminated on the basis of gender in the granting of citizenship. Women were unable to pass on their citizenship to their foreign spouses, or to their children if the father was not a citizen. This situation has begun to change, as reform laws based

on the international human rights consensus on women's rights have introduced gender neutrality in many countries. In recent years, Algeria, Botswana, Burkina Faso, Burundi, Côte d'Ivoire, Djibouti, Egypt, Ethiopia, Gambia, Lesotho, Mali, Mauritius, Morocco, Niger, Rwanda, Senegal, Sierra Leone, Tunisia, Uganda, and other countries have enacted reforms providing for greater (if not in all cases total) gender equality. However, some recently adopted nationality laws have re-enacted discriminatory provisions, including those of Burundi and Swaziland.

At least a dozen countries (including Benin, Burundi, Guinea, Kenya, Liberia, Libya, Madagascar, Mali, Mauritania, Senegal, Somalia, Sudan, Swaziland, Togo, Tunisia, and Zimbabwe) still discriminate on the grounds of gender in granting citizenship from birth to children either born in their territory or abroad, though the child of a citizen mother and noncitizen father born in these countries may be able to apply for citizenship. A few countries also still effectively discriminate on the basis of a child's birth in or out of wedlock; and several other countries have provisions that disadvantage children born out of wedlock, but the effect is not significant in practice. In some countries, such as Ethiopia, the law is gender-neutral on its face; but often in practice the children of citizen mothers and noncitizen fathers are not regarded as citizens.

Assuring the right of women to pass citizenship to their husbands has proved to be even more of a struggle. More than two-dozen countries either do not allow women to pass their citizenship to their noncitizen spouses at all, or apply discriminatory residence qualifications to foreign men married to citizen women who wish to obtain citizenship. These countries include Benin, Burundi, Cameroon, Central African Republic, Comoros, Republic of Congo, Côte d'Ivoire, Egypt, Equatorial Guinea, Guinea, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritania, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, Tunisia, and Zimbabwe.

Naturalisation

Most African countries permit in principle the acquisition of citizenship by naturalisation. In many there is also the possibility or alternative for some people, such as spouses of citizens, to acquire citizenship by an easier process, usually known as "registration" in Commonwealth countries, or "declaration" or "option" in civil-law countries. In practice, however, obtaining citizenship by naturalisation or by these other processes can be very difficult.

The criteria on which naturalisation or registration is granted vary, but usually include long-term residence or marriage to a citizen. In some countries, acquiring citizenship by naturalisation is straightforward, at least in theory. More than 20 countries provide for a right to naturalise based on legal residence of five years; but Chad, Nigeria, Sierra Leone, and Uganda require 15 or 20 years, and the Central African Republic requires as many as 35 years. South Africa provides a two-step process: a person must first become a permanent resident, a process which takes a minimum five years; following acquisition of permanent residence, a further five years' residence is required to become a citizen.

The other conditions applied for naturalisation are often designed to make it more difficult for those persons who are not "natives" of the country to obtain citizenship. In many countries, investigations are required, including interviews and police inquiries. Under the 2004 nationality law adopted by the DRC, applications for naturalisation must be considered by the Council of Ministers and submitted to the National Assembly before being awarded by presidential decree; moreover, the individual must have rendered "distinguished service" (*d'éminents services*) to the country. In Egypt, naturalisation is exceedingly rare and the grounds for it discriminate in favour of those who are of Arab or Muslim heritage. Although obtaining a presidential decree in some countries involves only a routine administrative procedure, the requirement does leave a great deal of discretionary power in the

executive branch.

Similarly, some countries add requirements based on cultural assimilation, in particular knowledge of the national language(s). Ethiopia's 1930 Nationality Law, though now repealed, was the most extreme example: it required an applicant to "Know [the] Amharic language perfectly, speaking and writing it fluently"; today, the 2003 Proclamation on Ethiopian Nationality requires only the ability to "communicate in any one of the languages of the nations/nationalities of the Country." Egypt requires an applicant for naturalisation to "be knowledgeable in Arabic." Botswana requires a knowledge of Setswana or another language spoken by a "tribal community" in Botswana; Ghana requires knowledge of an indigenous Ghanaian language; and other countries have similar requirements. In practice, these laws are in some cases used to restrict citizenship on an ethnic basis.

Acquiring citizenship by naturalisation may be very difficult even where the rules are not onerous on paper. In Sierra Leone, for example, citizenship by naturalisation is in theory possible after an (already-long) 15-year legal residence period; in practice it is nearly impossible to obtain. According to available records, in the whole of Sierra Leone there are roughly a hundred naturalised citizens. In Madagascar, naturalisation is very difficult to obtain for those not of ethnic Malagasy origin.

Among the groups most seriously affected by deficiencies in laws for naturalisation are long-term refugees. The record of African countries in granting citizenship to long-term refugee populations varies greatly, and many countries do not have laws that establish procedures for refugees to acquire permanent residence and citizenship. In Egypt, the case of the Palestinian refugees stands out. A 1959 decision by the Arab League that the Palestinian refugees should not be granted citizenship in their states of refuge has prevented them from integrating into the societies where they live. The Western Saharan refugees in Algeria face a similar political problem in finding any long-term resolution to their situation. Even countries that have recently adopted refugee laws and procedures stop short of drawing on international best practice when it comes to providing for naturalisation of refugee populations. Even though the general law may theoretically provide a right to naturalisation, this may not be available in practice, as in the case of Kenya.

There is, however, movement in some other countries toward allowing for the acquisition of citizenship by refugees. South Africa's law does, notably, provide for a transfer of status from refugee to permanent resident to naturalised citizen; though problems are reported in this process in practice. Tanzania has made generous provision for long-term refugees from Rwanda, Burundi, and Somalia to become citizens. The most effective implementation of states' obligations under international refugee law to promote national integration of refugees is by those states where the general naturalisation law is generous, with only a short period of permanent residence required for naturalisation and a functioning system to implement this rule. Senegal has provisions to this effect for refugees from neighbouring states. But these examples are too few and far between and leave too many refugees excluded.

Dual citizenship

At independence, most African countries took the decision that dual citizenship should not be allowed. Increasingly, however, an African diaspora with roots in individual African countries, in addition to the earlier involuntary diaspora of slavery, has grown to match the European and Asian migrations. These "hyphenated" Africans, whose roots are both in an African country and a European or American one, have brought political pressure to bear on their "home" governments to change the rules on dual citizenship and concede that someone with two identities need not necessarily be disloyal to either state. In addition, there are increasing numbers of Africans with connections to two African countries—

and not only among ethnic groups living on the frontiers between two states—who also wish to be able to carry the passports of both.

In recent years, many African states have changed their rules to allow dual citizenship or are in the process of considering such changes. Among those that have changed the rules in the last decade or so are Angola, Burundi, Djibouti, Gabon, Gambia, Ghana, Mozambique, Rwanda, São Tomé and Príncipe, Sierra Leone, Sudan, and Uganda. Others, including Egypt, Eritrea, and South Africa, allow dual citizenship but only with the official permission of the government.

Today just under half of all African countries still prohibit dual citizenship on paper—though in many cases the rules are not enforced, so that a citizen can acquire another citizenship without facing adverse consequences in practice. Some African countries—notably Ghana and Ethiopia—have created an intermediate status for members of their diaspora, in addition to or instead of creating a right to dual nationality.

Many countries have rules prohibiting those with dual citizenship or who are naturalised citizens rather than citizens from birth from holding senior public office on the grounds that the loyalty of such persons should not be divided. In Ghana, dual citizens may not hold a set of listed senior positions; in Senegal and several other countries, they may not be president; and in Côte d'Ivoire, the constitution prohibits those who have ever held another citizenship from becoming the president of the republic or the president or vice president (speaker and deputy speaker) of parliament. Mozambique has a prohibition on naturalised citizens' being deputies or members of the government or working in the diplomatic or military services. Around 20 countries impose delays of between three and 10 years before naturalised citizens can hold office.

Due process: Revocation of citizenship and expulsion of citizens

Provisions allowing a state to revoke citizenship acquired by naturalisation in case of fraud or other abuse of process, or if the person joins the military or diplomatic service of another state, are relatively common throughout the world and are permitted by the 1961 UN Convention on the Reduction of Statelessness. Even in these cases, however, minimum standards of due process should be applied, including the right to challenge the decision in a court of law.

Revocation of citizenship from birth is far more problematic. More than 20 African countries do not allow revocation of citizenship acquired at birth, including Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Djibouti, Gabon, Gambia, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, and Uganda. A dozen others allow revocation of citizenship from birth only in the case where the person acquires another citizenship (Algeria, Botswana, Cameroon, DRC, Ethiopia, Lesotho, Malawi, Mauritania, Senegal, Zambia, and Zimbabwe).

Some countries, however, provide sweeping powers for revocation of citizenship, even citizenship from birth. These powers go well beyond the question of fraud or service to a foreign state. Both the Libyan and Egyptian nationality laws, for example, give extensive powers to the government to revoke citizenship, whether from birth or by naturalisation, including on grounds that an individual has acquired another citizenship without the permission of the minister of the interior, enrolled in the military of another country, worked in various ways against the interests of the state, or been "described as . . . a Zionist at any time." The law provides additional reasons for the revocation of citizenship from those who obtained it by naturalisation.

Even in those countries where citizenship may be taken only from those who have become citizens by naturalisation, the grounds are often very broad, and extend far beyond cases in which citizenship might have been acquired by fraud. The decision to deprive someone of citizenship is not always subject to appeal or court review: many countries have provisions allowing for revocation of naturalisation at the discretion of a minister and without appeal to any independent tribunal. At the other end of the process, the laws of many countries provide explicitly that there is no right to challenge a decision to reject an application for naturalisation.

These broadly drafted provisions have been used by many different African governments [for political purposes] to revoke the nationality of a troublesome critic or of someone who is running for high office and shows signs of winning. Although there are other means of silencing journalists and blocking political candidates, the usefulness of denationalisation is that the person affected then has a tenuous legal status that is highly vulnerable to abusive use of discretionary executive power.

Yet examples of better laws do exist. The laws of several countries, including Gambia, Ghana, and South Africa, establish explicit due-process protections in case of deprivation of citizenship acquired by naturalisation, limiting grounds for removal, requiring reasons to be given, and granting a right to challenge the decision in court—and, in the best cases, providing for the decision to be made in the first place by the courts and not the executive.

International norms

International law related to nationality is relatively undeveloped. The grant of nationality has historically been regarded as being within the discretion of the state concerned, though it was generally assumed that if you were born in a territory you had the nationality of that state. But if general rules on the right to the nationality of a particular state have still not been established, certain basic principles have been laid down. These principles include the requirement to grant nationality to children born in the territory who would otherwise be stateless; a prohibition on racial, ethnic, gender or political discrimination in granting or revoking citizenship; and basic rules of due process in the granting and revoking of citizenship. The Universal Declaration of Human Rights provides that “everyone has a right to a nationality.” The 1961 Convention on the Reduction of Statelessness mandates that “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”

Another international-law principle important in Africa is that related to “succession of states”: all African states except Ethiopia were at one time colonised by a power external to Africa; and in the case of Ethiopia, the state has been split into two (Ethiopia and Eritrea). Under international law, individuals who had the nationality of a predecessor state should have the right to the nationality of at least one of the successor states. However, this rule has not always been respected in African national laws: indeed, the manipulation of the transitional rules on citizenship applied at independence or on division of the state has often been at the heart of efforts to deny people nationality.

African treaties relating to nationality rights are relatively weak. The African Charter on Human and Peoples’ Rights does not mention the right to a nationality. The African Charter on the Rights and Welfare of the Child, ratified by 41 African countries, follows the UN Convention on the Rights of the Child by providing for the right to a name from birth and the right to acquire a nationality, as opposed to the right to a nationality from birth. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa even goes against the grain of international norms by not mentioning a woman’s right to pass citizenship to her husband and by providing for national law to override the treaty’s provision for nondiscrimination in granting citizenship to children.

Many African states, however, have more generous provisions than these. More than half of African countries either provide a right to a nationality to any child born in their territory, or the right to claim nationality from birth/of origin for that child if he or she is still living in the state at adulthood; and a majority of states now allow men and women citizens equal rights to pass citizenship to their children.

African states should move toward the international norm, accepting as a basic principle that all those who had the right of nationality before independence and their descendants have equal rights to nationality today. They should recognise the reality of historical and contemporary migration and ensure in law and practice that those who are the descendants of migrants can obtain nationality from birth, and that those who have migrated themselves can naturalise as citizens on reasonable terms. They should allow dual nationality. They should harmonise their laws to adopt in all countries the best practices that already apply in some. The African Union should take concrete steps to realise the ideals and aspirations of a greater African unity by adopting and taking steps to enforce measures that guarantee the right to a nationality on the basis of nondiscrimination, due process, and respect for human rights.

Recommendations

International treaties and harmonisation of laws

1. African states acting within the framework of the African Union should take steps to prepare and adopt a Protocol on Nationality to the African Charter on Human and Peoples' Rights, based on the principles of the African Charter, the Constitutive Act of the African Union, the Universal Declaration of Human Rights and other international human rights norms (and the recommendations below).
2. African states that have not yet done so should take immediate steps to ratify relevant treaties, including the African Charter on the Rights and Welfare of the Child, the UN Convention on the Rights of the Child, the UN Convention relating to the Status of Stateless Persons, and the UN Convention on the Reduction of Statelessness.
3. African states should withdraw any reservations made to Article 9 of the UN Convention on the Elimination of All Forms of Discrimination Against Women, Article 7 of the U.N. Convention on the Rights of the Child, and the statelessness conventions. African states should interpret Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in light of the general nondiscrimination requirements established by Article 2 of the Charter.
4. African states should bring their nationality laws into line with the norms embodied in these treaties (and the recommendations below). The Regional Economic Communities that make up the African Union should lead these efforts.
5. African states should cooperate in making efforts to harmonise nationality laws and to determine the nationality of persons who face difficulties in establishing their nationality.
6. African intergovernmental institutions, including the African Commission on Human and Peoples' Rights, should monitor and report on African states' respect in their nationality law and practice for the human rights norms established by African and international treaties.

Right to a nationality

7. National constitutions and nationality laws should provide for an explicit and unqualified right to a nationality from birth.
8. The law should provide for persons to have a right to nationality (whether from the time of birth or by acquisition at a later stage) on the basis of any appropriate connection to the country, including birth in the territory, having a father or mother (including an adoptive father or mother) who is a citizen, marriage to a citizen, or habitual residence.
9. The law should provide for a child to have nationality from birth (of origin) if he or she is born in the

state concerned, or if he or she is born in the state concerned and :

- a. either of his or her parents are citizens; or
 - b. either of his or her parents was also born in the country; or
 - c. either of his or her parents has his or her habitual residence in the country; or
 - d. he or she would otherwise be stateless.
10. The law should provide that a child found in the territory of the state shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that state.
11. The law should provide for a person to have the right to obtain recognition of nationality from birth (of origin) if he or she was born in the state concerned or arrives there as a child, fulfils a minimum residence requirement, and still has his or her habitual residence there at the age of majority.
12. The law should provide at a minimum for a child to have nationality from birth (of origin) if he or she is born outside the state concerned and
- a. either of his or her parents was born in that state and is a national or has the right to acquire the nationality of that state; or
 - b. either of his or her parents is a national or has the right to acquire the nationality of that state and the child would otherwise be stateless.
13. Under no circumstances should national laws be amended, adopted, or repealed in circumstances where the changes are, or could be interpreted to be, intended to deny or revoke the nationality of any specific individual or group. No law relating to the denial or revocation of nationality should have retroactive effect. In case of doubt, national courts should apply a presumption in favour of the person or group concerned.

State succession

14. In case of state succession, the law should provide the following:
- a. Every person who had the nationality of a predecessor state, irrespective of the mode of acquisition of that nationality, or who would otherwise become stateless as a result of the state succession, has the right to opt for the nationality of any or all of the successor states to which he or she has an appropriate connection, including birth in the territory, having a father or mother (including an adoptive father or mother) who is a citizen, marriage to a citizen, or habitual residence.
 - b. If a person does not take any action to opt for the nationality of one of the other states, the law should attribute to a person the nationality of the successor state where he or she is habitually resident.
15. Transitional provisions relating to nationality dating from independence should be interpreted in favour of those affected and should not be invoked arbitrarily to deny nationality to any person.

Nondiscrimination

16. The law should not refer to membership of any particular racial, ethnic, religious, linguistic or similar category noted in international human rights treaties as the basis for inclusion or exclusion from nationality rights.
17. The law should grant men and women equal rights to acquire, change or retain their nationality and confer nationality on their children.
18. The law should not permit any discrimination with regard to the acquisition of nationality as between legitimate children and children born out of wedlock.
19. African states should take legal and other measures to ensure that persons of any race, ethnicity, religion or linguistic community have a right to nationality on the same terms, and, in particular, that members of groups that have historically been excluded from nationality (including children whose mothers but not fathers are citizens), benefit from such measures.
20. African states should take measures to ensure equality of rights among persons possessing their

nationality, and in particular that the right to nationality is not undermined by discriminatory laws and practices applying to members of sub-national units.

Proof, documentation and information

21. The law should provide that a person has a right both to the documents that are necessary to prove nationality, including birth certificates, and to proof of nationality itself.
22. The laws and practices relating to recognition of nationality should provide for alternative systems of proof of identity and other requirements in contexts where documentary evidence is not available or cannot reasonably be obtained.
23. The law should provide for the certification of nationality by the courts where an application for recognition of nationality has not been processed within a reasonable time or where the official documentation necessary to prove nationality does not exist or cannot be obtained, and for the courts to order that any other documents be issued.
24. The law should provide that, in the event that an application for recognition of nationality is denied, the state must provide reasons in writing for the refusal and the decision may be appealed to the courts.
25. African states should take all necessary measures to provide relevant documentation to all those who are entitled to citizenship and to ensure that the administrative processes by which persons acquire registration and other documents required to prove a right nationality are accessible on the same basis to anyone who satisfies the criteria established by law.
26. African states should take all necessary measures to ensure that all children born in the country are registered at birth, without discrimination, including those children born in remote areas and in disadvantaged communities; and that children not registered at birth can be registered later during childhood or adulthood. These measures should include, for example, the use of mobile birth registration units, registration free of charge and flexible systems of proof where it is not reasonable to meet the standard requirements. Children whose births have not been registered should be allowed to access basic services, such as health care and education, while waiting to be properly registered.
27. African states should take measures to provide for registration of the births of the children of citizens who are born abroad.
28. The law should provide that all citizens have the right to a passport and, where in use, to an identity card.
29. The fees required to apply for recognition, acquisition, retention, loss, recovery or certification of nationality and to obtain necessary documents to support such applications should be reasonable.
30. African states should take steps to inform and educate all those who might be eligible for a particular nationality about that right, especially but not only in the case of succession of states.

Naturalisation

31. The law should provide the right to acquire nationality by naturalisation (or similar process) to anyone who has been habitually resident in the country for five years, or a shorter period in the case of a person married to a citizen, persons born in the country, former citizens, stateless persons, and refugees.
32. Where there is a right to naturalisation only if a person is lawfully present in the country, any period of unlawful residence preceding the recognition of lawful residence should be included in the calculation of the necessary period for naturalisation.
33. Any other conditions required for naturalisation should be clearly and specifically provided in law and reasonably possible to fulfil. Grounds for exclusion from the right to naturalise should not include ill health or disability or general provisions relating to good character and morals, with the exception of criminal convictions for a serious offence.
34. The law should provide that a minor child of a person who acquires the nationality of a state

- acquires nationality at the same time as the parent if he or she is living with that parent.
35. The law should provide that the rights of those persons who are citizens from birth and those who have acquired nationality subsequently are equal.
 36. The law should provide that a person whose application for naturalisation is rejected has the right to be given reasons in writing for the refusal and to appeal to the courts.
 37. The law should provide for the courts to rule on an application for naturalisation in the event that it has not been processed within a reasonable time.
 38. African states should fulfil the obligations under the 1951 UN Convention relating to the Status of Refugees and the 1954 Convention on the Status of Stateless Persons and as far as possible facilitate naturalisation, including by making every effort to expedite procedures and to reduce as far as possible the charges and costs of such proceedings. These measures should apply in all cases, with no exceptions made on the basis of national origin or membership of a particular national, racial or ethnic origin, political opinion, religion or membership in a particular social group.
 39. Where a refugee acquires the nationality of the state of refuge but is not able to renounce his or her previous nationality, his or her new nationality shall be considered to be predominant for the purposes of diplomatic protection in relation to the state of previous nationality and the state of previous nationality shall be bound to recognise this exercise of diplomatic protection.

Marriage and family relations

40. African states should take legal and other measures to facilitate the acquisition of nationality by foreigners married to citizens and by the children of both parents or the foreign spouse, whatever the sex of the foreign spouse or parent.
41. The law should not include any provisions providing that marriage to a foreigner or change of nationality by the husband during marriage automatically changes the nationality of the wife, or forces upon her the nationality of the husband, or that place her at risk of statelessness.
42. The law should grant women equal rights to men with respect to the nationality of their children.
43. The law should provide that those who have acquired nationality on the basis of marriage to a citizen do not lose that nationality in the event of dissolution of the marriage.
44. The law should provide for spouses to have the right to acquire nationality on the basis of marriage to a citizen even when they do not have their habitual residence in the country whose nationality is sought.
45. The law relating to the acquisition of nationality by marriage should recognise any marriage conducted according to the laws of the country where it took place; there should be no requirement for it to have been conducted according to the laws of the country whose nationality is sought.

Dual nationality

46. The law should provide that existing citizens, whether from birth or by acquisition, may acquire other nationalities without any penalty and that citizens of other countries may be naturalised without any requirement to renounce an existing nationality, so as to avoid the risk of creating statelessness.
47. Countries that amend their laws to allow dual nationality when it had previously been forbidden should adopt transitional provisions allowing those who had previously lost their nationality on acquiring another to recover their former nationality.
48. Any provisions under national laws placing restrictions on the holding of public office by persons with dual nationality should be narrowly defined, restricted to the very highest offices of state, and applied only to the nationality of the person concerned and not the nationality of his or her parents or spouse. Where there are restrictions, they should apply only from the time the person takes up office and not while he or she is running for election or applying for appointment.

Loss and deprivation of nationality

49. The law should not provide for involuntary loss of birth nationality (nationality of origin).
50. In the case of those persons who are citizens by acquisition, the law should provide for deprivation of nationality only on the grounds of clear, narrowly defined, and objectively provable criteria that comply with international human rights law, and in particular the principle of proportionality. The law should prohibit deprivation of nationality on racial, ethnic, religious, political or similar grounds.
51. The law should prohibit any deprivation of nationality that would have the effect of rendering the person concerned stateless.
52. Where the law provides for the deprivation of nationality on grounds of fraud or false representation, the law should also provide exceptions in favour of retention of nationality where at the time of the fraud or false representation the person involved was a minor or the fraud or false representation took place more than 10 years earlier.
53. The law should not provide for deprivation of nationality based on refusal to carry out military service or the perpetration of an ordinary crime. The law should not provide for deprivation of nationality on grounds of disloyal or criminal behaviour where such behaviour is not seriously prejudicial to the vital interests of the state. Voluntary service for a foreign military force can only be considered seriously prejudicial to the vital interests of the state if the force is engaged in armed conflict against that state.
54. The law should provide that any children of a person whose nationality is revoked retain nationality, in particular if their other parent retains it or if they would otherwise become stateless; or if the ground for loss relates to the personal behaviour of the parent, or occurs or is discovered after they have attained the age of majority.
55. The law should provide that deprivation of nationality does not affect the spouse of the person concerned.
56. The law should provide that nationality may be only revoked by court order following an individual hearing on the merits of the case, and not by administrative decision. The state should bear the burden of proving that the person concerned is not entitled to nationality and there should be a right to appeal through established procedures.

Renunciation of nationality

57. The law should provide that a person may renounce nationality, unless he or she would otherwise become stateless. Procedures required to renounce nationality should be purely administrative and should give no right to the state to refuse permission.
58. The law should provide for the possibility of recovery of nationality by persons who have previously renounced it.

Expulsions

59. The law should prohibit expulsion of citizens from the country except in the context of extradition by due process of law to stand trial or serve a sentence in another country.
60. The law should prohibit expulsion or return of any person contrary to the provisions of the 1951 UN Convention relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons, the African Charter on Human and Peoples' Rights or any other relevant international law.
61. The law should protect against arbitrary expulsion of noncitizens from the country, in particular by establishing clear and narrowly defined grounds for expulsion and providing that in all cases, including those where expulsion is purportedly on the basis of national security, the persons affected have the right to have their cases heard on an individual basis before an independent tribunal with the right to representation and appeal through established procedures, and that the state bears the burden of proof of the case for expulsion, including the fact that the person is not a citizen.

62. The law should provide that those who are habitually resident in the country but who for whatever reason have not acquired citizenship nonetheless acquire rights that give them greater protection against expulsion than nonresidents. The courts should apply the law taking into account the proportionality of the harm caused to the person being expelled in relation to the gravity of the reason asserted for his or her expulsion.
63. African states should incorporate in their national laws and respect in practice the provisions of the African Charter on Human and Peoples' Rights prohibiting mass expulsions.

Freedom of movement

64. The law should provide that citizens and those habitually resident in the country, including but not limited to stateless persons, have the right to enter the country.
65. The law should provide that everyone lawfully present in the country has freedom of movement and freedom to choose his or her residence within the country.
66. The law should provide that everyone, including a citizen, has the right to leave the country.

APPENDIX IV: AGENDA OF THE MEETING ON AFRICAN UNION MECHANISMS AND THE PROTECTION OF REFUGEE, IDP AND CITIZENSHIP RIGHTS

AGENDA

Kampala
19-20 October 2009

19 October 2009

- 8:30 - 9:00** **Registration**
- 9:00-9:45** **Welcome and introductions, Dismas Nkunda, IRRI**
- 9:45-10:45** **Panel Discussion I: Rights and challenges of the displaced**
Chair: Adam Hussein Adam, OSI
- Existing mechanisms for the protection of refugees: prospects and possibilities - *Khoti Kamanga, the Centre for the Study of Forced Migration, University of Dar es Salaam*
 - The AU Protocol on IDPs: Key features and possibilities for civil society engagement - *Joseph Chilengi, African IDP Voice*
 - The link between citizenship and forced displacement: a view from the Great Lakes Region - *Lucy Hovil, International Refugee Rights Initiative*
- Comments and discussion
- 11:00-11:30** **Tea and Coffee Break**
- 11:30-13:00** **Panel Discussion II: Rights and challenges related to nationality and statelessness - a overview of the issues**
Chair: Dismas Nkunda, IRRI
- Ethnicity and citizenship - *Traore Wodjofini*
 - An overview of OSI's research - *Bronwen Manby*
- Comments and discussion
- 13:00-14:30** **Lunch**
- 14:30- 15:30** **Panel Discussion III: Regional citizenship under RECs**
Chair: Gima Forje, West African Civil Society Forum
- General overview and the Economic Community of West African States - *Ibrahima Kane, Open Society Initiative for East Africa.*
 - The East African Community - *Chidi Odinkalu, Open Society Justice Initiative.*
 - Citizenship in the International Conference on the Great Lakes Region - *Deirdre Clancy, International Refugee Rights Initiative*
- Comments and discussion
- 15:30-16:00** **Tea and Coffee Break**
- 16:00-17:30** **Working Groups: Preparing presentation for the Ministerial Meeting.**

20 October 2009

- 9:00-10:00** **Panel Discussion V: Mechanisms within the African Union**
Chair: Dismas Nkunda, International Refugee Rights Initiative
- Presentations by the different Working Groups.
 - Reflections on possible AU engagements including the AU Commission and the Peace and Security Council, the African Court on Human and Peoples' Rights, and the African Commission on Human and Peoples' Rights and the Committee on the Rights of the Child—*Ibrahima Kane* and *Chikezie Anyanwu*
- Comments and discussion
- 10:00- 11:00** **Panel Discussion VI: Strategies for legislative engagement**
Chair: Achieng Akena, OSI
- Existing citizenship legislation: key priorities for change? Salome Katia, AMANI Forum
 - The need for continental standard setting on Citizenship (introduction to the proposed protocol on citizenship)
 - Chidi Anselm Odinkalu
- Comments and discussion
- 11:00-11:15** **Tea and Coffee Break**
- 11:15-13:00** **Panel Discussion IV: Advocacy initiatives on citizenship updates**
Chair: Chidi Odinkalu
- CRAI advocacy - *Adam Hussein Adam, Open Society Initiative for East Africa*
 - CRAI Website: Possibilities for extension of resources, *Olivia Bueno, International Refugee Rights Initiative*
- Comments and discussion
- 13:30-14:30** **Lunch**
- 14:30-15:30** **Report back from working groups**
- 15:30-16:00** **Tea and Coffee Break**
- 16:00-16:30** **Discussion and Adoption of the Draft Communiqué of the African Civil Society Consultation meeting**
Chair: Chidi Odinkalu
- 18:00** **Reception and book launch Struggles for Citizenship in Africa**
Welcome: Dismas Nkunda
- Remarks by the Author: Bronwen Manby
- The need for a protocol on statelessness: Chidi Odinkalu
- Remarks by Prof. Tarsis Kabwegyere, Minister of Disaster Preparedness, Office of the Prime Minister of Uganda and launch of the book
- Launch by guest speaker.
- Entertainment and refreshments

APPENDIX V: LIST OF PARTICIPANTS

Awet Haile Okba, East and Horn of Africa Human Rights Defenders Programme
Achieng Maureen Akena, Open Society Initiative for East Africa
Adam Hussein Adam, Open Society Institute for East Africa, Kenya
Alice Mogwe, Ditshwanelo, the Botswana Centre for Human Rights
Ambreen Dharani, School for International Training, USA
Bronwen Manby, Open Society Institute, United Kingdom
Chidi Anselm Odinkalu, Open Society Justice Initiative, Nigeria
Chikezie Anyanwu, Save the Children, Ethiopia
Chinedu Yves Nwagu, International Refugee Rights Initiative, Uganda
Deirdre Clancy, International Refugee Rights Initiative, Uganda
Dismas Nkunda, International Refugee Rights Initiative, Uganda
Emmanuel Mbabazi, Uganda
Eric Ogoso, UN Integrated Regional Information Network, Uganda
Fatoumata Toure, Pan-African Movement, Uganda
Faustin Vunungoma, Conseil de concertation des organisations d'appui aux initiatives de base (CCOAIB), Rwanda
George Kuchio, Senior Protection Officer UNHCR Uganda
Gima H. Forje, West African Civil Society Forum, Nigeria
Hamissi Dunia Ibrahim, Rassemblement pour la Minorité Swahilli du Burundi
Dr. Henry Oriokot, World Food Program, Uganda
Innocent Matigita, Ligue Iteka, Burundi
Isaac Zirabamuzaale, Revolutionary Committee Movement, Uganda
Jackie Omara, Kituo Cha Katiba, Uganda
James Otto, Human Rights Focus, Uganda
Jessica Senyonjo, Save the Children, Uganda
Joseph Chilengi, African Internally Displaced Persons Network, Zambia
Kabagambe Kenneth, Revolutionary Committee Movement, Uganda
Katherine Stanley, SIT World Learning, Uganda
Keffa Karuoya Magyenyi, Internal Displacement Policy and Advocacy Centre, Kenya
Khoti Kamanga, Centre for the Study of Forced Migration, University of Dar es Salaam, Tanzania
Kiko Mapunda, AFRIMAP
Krisi Andreski, SIT World Learning, Uganda
Linda Ochiel, Open society Initiative for East Africa, Kenya
Lucy Hovil, International Refugee Rights Initiative, South Africa
Mabel Kirabo, Uganda
Maria Magezi, Akina Mama wa Afrika, Uganda
Mbabazi Rebecca, Revolutionary Committee Movement, Uganda
Mia Schmid, SIT World Learning, Uganda
Mwakasungula Undule, CHRR, Malawi
Njenjo Mwangi, Project Hope Trust, Kenya
Njima B. B. Bolt, PAM, Uganda
Ojira Charles, Uganda Management Assistance Programme
Olivia Bueno, International Refugee Rights Initiative, USA
Dr. Patrick Matibini, University of Zambia
Paula Biraaro, International Refugee Rights Initiative, Uganda
Roba Sharamo, Institute for Security Studies
Sadikh Niass, West African Refugees and Internally Displaced Persons Network, Senegal
Salima Namusobya, Refugee Law Project, Uganda

Salome Katia, Amani Forum, Kenya
Sandrah Akello, International Refugee Rights Initiative, Uganda
Sarah Margiotta, Uganda
Soo-Ryun Kwon, Human Rights Watch, Uganda
Traore Wodjo Fini, Coalition de la société civile pour la paix et le développement démocratique en Côte d'Ivoire
Vivi Akiki Masamba, Revolutionary Committee Movement, Uganda
Wossen Taye, African Humanitarian Action, Uganda
Zahra Soucek, International Refugee Rights Initiative

ABOUT THE AFRICA GOVERNANCE MONITORING AND ADVOCACY PROJECT

AfriMAP, the Africa Governance Monitoring and Advocacy Project, is an initiative of the Soros foundation network's four African foundations, and 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.

www.afriMAP.org

ABOUT CITIZENSHIP RIGHTS IN AFRICA INITIATIVE

Citizenship Rights in Africa Initiative (CRAI) is a joint project of the Global Pan African Movement, the International Refugee Rights Initiative and the Open Society Justice Initiative. It is a campaign dedicated to ending statelessness and the arbitrary denial of citizenship in Africa by responding to the challenge of guaranteeing for Africans the right to co-exist in community, pursue livelihoods and participate in the government of their countries without arbitrary interference with their right to belong. CRAI also works to end the continuing impoverishment of the peoples of the African continent through citizenship-inspired conflict, insecurity and exclusion or citizenship-related persecution on the basis of race, religion, ethnicity, colour, sex, political opinion, or status. CRAI monitors, investigates, documents, denounces and where necessary litigates, cases of statelessness and denial of citizenship rights in Africa. CRAI also incessantly advocates for African governments to adopt a treaty to establish principles and rules to eliminate arbitrariness and discrimination in the proof, acquisition, enjoyment, and loss of citizenship in Africa.

www.citizenshiprightsinafrica.org

ABOUT THE INTERNATIONAL REFUGEE RIGHTS INITIATIVE

The International Refugee Rights Initiative (IRRI) works to enhance the protection of the rights of the displaced worldwide. IRRI grounds its advocacy in the rights accorded in international human rights instruments to those who are forced to flee and strives to make those guarantees effective in communities where they are displaced and their hosts live. Based in New York and Kampala, IRRI acts as a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping local advocates integrate the implications of global policy in their work at home. Currently IRRI has a regional focus on enhancing the African legal and policy architecture in order to promote the rights of refugees and internally displaced persons.

www.refugee-rights.org

ABOUT THE OPEN SOCIETY JUSTICE INITIATIVE

The Open Society Justice Initiative, an operational program of the Open Society Institute, 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: anticorruption, equality and citizenship, freedom of information and expression, international justice, and national criminal justice. Its offices are in Abuja, Brussels, Budapest, London, New York, and Washington, D.C.

<http://www.soros.org/initiatives/justice>