

Discrimination in Access to Nationality

*Statement Submitted by the Open Society Justice Initiative for
Consideration by the United Nations Human Rights Council at
its Sixth Session, on the occasion of its Universal Periodic
Review of Eritrea
November 30 – December 11, 2009*

April 2009

I. INTRODUCTION

1. The Open Society Justice Initiative is an operational program of the Open Society Institute (OSI) that pursues law reform activities grounded in the protection of human rights and contributes to the development of legal capacity for open societies throughout the world. A major area of the Justice Initiative's work is the enforcement of international legal prohibitions on discrimination, statelessness and arbitrary deprivation of nationality.
2. Statelessness in Eritrea primarily affects people of Ethiopian origin, who number approximately 15,000. Questions of citizenship were never adequately resolved after the independence of Eritrea, and thousands are still left in a stateless limbo. In addition, Eritrea's nationality laws are not in line with its international obligations regarding the protection of children from statelessness, and naturalization provisions are discriminatory on grounds of disability.

II. ERITREAN LAW CONTRAVENES THE RIGHT OF CHILDREN TO A NATIONALITY, IMPOSES EXCESSIVE AND DISCRIMINATORY REQUIREMENTS FOR NATURALIZATION, AND DOES NOT PROVIDE ADEQUATE PROTECTION FROM ARBITRARY DEPRIVATION OF NATIONALITY

A. Scope of international obligations

3. Eritrea is a party to several of the international and regional treaties that provide legal standards with respect to statelessness and the right to nationality.¹
4. Eritrea is not a party to either of the two international conventions on statelessness: the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). These instruments suggest criteria for naturalization and safeguards against arbitrary deprivation of nationality, as well providing for the protection of stateless individuals. Eritrea should consider accession to these two treaties.

B. Constitutional and legislative framework

5. Citizenship law in Eritrea is governed by the Constitution of Eritrea of 1997 and the Eritrean Nationality Proclamation No. 21/1992.

¹ Acceded to the International Covenant on Civil and Political Rights on April 22, 2002 (no reservations); acceded to the Convention on the Elimination of All Forms of Racial Discrimination on August 30, 2001 (no reservations); acceded to the Convention on the Elimination of All Forms of Discrimination Against Women on October 5, 1995 (no reservations); acceded to the Convention on the Rights of the Child on September 2, 1994 (no reservations); acceded to the African Charter on Human and Peoples' Rights on January 14, 1999; acceded to the African Charter on the Rights and Welfare of the Child on December 22, 1999.

6. The Nationality Proclamation is in line with most of Eritrea's international obligations, guaranteeing, for instance, gender neutrality in the acquisition of citizenship through marriage and the passing of citizenship to one's children.

Citizenship of children

7. In article 2(3) the Nationality Proclamation provides for the acquisition of Eritrean nationality by birth for an abandoned infant found in Eritrea until proven otherwise. However, the Nationality Proclamation fails to provide for the acquisition of Ethiopian Nationality for stateless children born on its territory who have *not* been "abandoned". Thus, children born to known but stateless parents in Eritrea will remain stateless, in violation of article 7 of the Convention on the Rights of the Child (CRC), which calls for states to grant citizenship to children born on their territory where the child would otherwise be stateless.² This also violates Eritrea's obligations under the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right of '[e]very child...to acquire a nationality'³, and under articles 6(3) and 6(4) of the African Charter on the Rights and Welfare of the Child (ACRWC) which provide that States Parties should grant a child the nationality of the State in the territory of which he has been born "if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."
8. Eritrea should amend its nationality law to guarantee the acquisition of Eritrean nationality for stateless children born on its territory, in accordance with its international obligations.

Naturalization

9. The Eritrean Nationality Proclamation provides that naturalization is available to persons who are "free of any of the mental or physical handicaps mentioned in article 339-340 of the Transitory Civil Code of Eritrea, [and] will not become a burden to Eritrean society."⁴ This provision is discriminatory on grounds of disability. While Eritrea has not signed the Convention on the Rights of Persons with Disabilities, it nevertheless has an obligation to ensure that its laws are not discriminatory on grounds of disability under article 2 read in conjunction with article 15 of the Universal Declaration of Human Rights; article 26 of the International Covenant on Civil and Political Rights; article 2 in conjunction with article 3 of the African Charter on Human and Peoples' Rights; and in the case of children, article 2 in conjunction with article 7 of the Convention on the Rights of the Child; and, article 3 in conjunction with article 6 of the African Charter on the Rights and Welfare of the Child.

² Convention on the Rights of the Child, article 7(2)

³ International Covenant on Civil and Political Rights, article 24(3).

⁴ Eritrean Nationality Proclamation No. 21/1992, article 4(d).

10. Eritrean law also requires an excessive period of residence as a condition for naturalization. According to article 2(d) of the Nationality Proclamation, 20 years of residence in Eritrea is required for naturalization.⁵ This requirement impedes resolution of situations of statelessness. Recent international treaties specifically dealing with nationality⁶ have limited the residence period requirements for naturalization to 10 years, and provided that for stateless persons this period should be significantly shorter.

Deprivation of Nationality

11. Article 8 of the Nationality Proclamation sets out conditions under which Eritrean citizens may be deprived of their nationality. These conditions do not provide adequate protection for Eritrean citizens against arbitrary deprivation of nationality—specifically, deprivation that is discriminatory on the basis of ethnicity, or deprivation that leaves individuals stateless. Article 15(2) of the Universal Declaration of Human Rights prohibits arbitrary deprivation of nationality. Likewise, the Human Rights Council has repeatedly, and unanimously, resolved that arbitrary deprivation of nationality constitutes a violation of international law.⁷ The Committee on the Elimination of All Forms of Racial Discrimination (CERD) has recommended that states “[r]ecognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States’ Parties obligations to ensure non-discriminatory enjoyment of the right to nationality.”⁸

12. Eritrea must ensure that citizens are not deprived of their nationality on discriminatory grounds; that judicial review is available in all cases of deprivation of nationality; and, that effective remedies are available to persons who have been arbitrarily deprived of their Eritrean nationality. Eritrea should also ensure that citizens by birth and citizens by naturalization are treated equally in matters of deprivation of nationality so as to not discriminate against either group on grounds of social status.⁹ At the very least Eritrea ought to ensure, by an appropriate amendment to the Nationality Proclamation or by implementing instructions that deprivation of Eritrean nationality never results in statelessness, regardless of the justification for the deprivation.¹⁰

III. ERITREAN PRACTICE DISCRIMINATES AGAINST INDIVIDUALS OF ETHIOPIAN ORIGIN AND HAS LEFT SOME REFUGEES COMING FROM ETHIOPIA STATELESS

⁵ 10 years for persons born prior to 1974.

⁶ See, for example, the European Convention on Nationality, article 6(3)

⁷ Most recently in resolution A/HRC/10/L.35 of 2009.

⁸ CERD, General Recommendation No. 30: Discrimination Against Non-Citizens, October 1, 2004, para. 14.

⁹ See, for instance, Human Rights Council resolution A/HRC/10/L.35 of 2009.

¹⁰ The only exception to this rule under international law is when citizenship has been acquired by means of fraudulent conduct.

A. Implementation of international human rights obligations

Equality and non-discrimination

13. Despite Eritrea's denial of an official policy of expulsion, the ICRC and the UN have estimated that approximately 70,000 people of Ethiopian origin were expelled from Eritrea to Ethiopia during the 1998-2000 war—a discriminatory policy that has continued vestiges. Today, some 15,000 people of Ethiopian origin who still reside in Eritrea are considered foreigners: the practice has been to grant citizenship only to those who registered as Eritrean nationals before the war broke out in 1998.
14. This constitutes discrimination on the basis of ethnicity: Eritrea should grant citizenship to these people on the basis of their genuine and effective links¹¹ with Eritrea—measured by their residence and family ties. The lengthy residence period required for naturalization, described above, is an obstacle to naturalization for these individuals.

Migrants, refugees, asylum-seekers and stateless persons

15. Large numbers of people of Eritrean origin were expelled from Ethiopia to Eritrea during the 1998-2000 war. The Eritrean government provided reasonably quick assistance to the expellees, registering them as refugees. Since then, the more economically advantaged integrated fairly quickly and many obtained Eritrean citizenship. However, others still live in refugee camps where significant numbers of people have not been able to acquire citizenship or even basic identity documents. Eritrea should regularize the status of all these individuals, granting them citizenship or at least beginning the process of naturalizing them.
16. As described above, at least 15,000 individuals of “Ethiopian origin” are permanent residents of Eritrea. Most of these people do not have proof of Ethiopian citizenship and thus are *de facto* stateless. An option of preferential naturalization should also be available to those who clearly have no other nationality. This will require a stateless status determination mechanism, shortened residence requirements for naturalization, and assistance to secure effective documentation of nationality for those who lack proof of their citizenship status.

IV. RECOMMENDATIONS TO THE UPR WORKING GROUP

17. The Justice Initiative calls on the UPR Working Group and other States to ask the Ethiopian state representatives:

¹¹ Recent international treaties have employed this principle as a criterion for granting nationality. See, e.g., the *European Convention on Nationality*, 6 November 1997, Article 18.2(a).

- What steps will Eritrea take to eliminate the discrimination against those with physical disabilities in access to citizenship?
- What steps will Eritrea take to guarantee citizenship to children born on its territory to parents who are stateless?
- What steps will Eritrea take to ensure that persons expelled from Ethiopia during the 1998-2000 war are given full Eritrean citizenship?
- How will Eritrea resolve the situation of individuals of Ethiopian ancestry who are permanently resident in Eritrea?
- What expedited procedures for granting citizenship will be implemented for individuals who are stateless?

18. The Justice Initiative urges the UPR Working Group to make clear that discrimination in access to citizenship is incompatible with Eritrea's human rights obligations, and to recommend that Eritrea:

- Consider accession to the two treaties on statelessness;
- Amend its nationality law to guarantee non-discrimination in access to citizenship, in particular by removing an provisions that are directly or indirectly discriminatory on grounds of disability;
- Amend its nationality law to guarantee the acquisition of Eritrean nationality for stateless children born on its territory;
- Grant citizenship to stateless persons permanently resident in Eritrea, whether of Ethiopian origin or those who physically came from Ethiopia, who have not acquired citizenship of another state.

OPEN SOCIETY
JUSTICE INITIATIVE

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), 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, Budapest, London, New York, and Washington DC.

The Justice Initiative is governed by a Board composed of the following members: Aryeh Neier (Chair), Chaloka Beyani, Maja Daruwala, Anthony Lester QC, Jenny S. Martinez, Juan E. Méndez, Diane Orentlicher, Wiktor Osiatyński, Herman Schwartz, Christopher E. Stone, Abdul Tejan-Cole and Hon. Patricia M. Wald.

The staff includes James A Goldston, executive director; Robert O. Varenik, director of programs; Zaza Namoradze, Budapest office director; Kelly Askin, senior legal officer, international justice; David Berry, senior officer, communications; Sandra Coliver, senior legal officer, freedom of information and expression; Maxim Ferschtman, senior legal advisor, equality and citizenship; Indira Goris, program officer, equality and citizenship; Julia Harrington, senior legal officer, equality and citizenship; Ken Hurwitz, senior legal officer, anticorruption; Sebastian Köhn, program assistant, equality and citizenship; Katy Mainelli, director of administration; Cynthia Morel, legal officer, equality and citizenship; Chidi Odinkalu, senior legal officer, Africa; Martin Schönleich, senior legal officer, national criminal justice; and Rupert Skilbeck, litigation director.

E-mail: info@justiceinitiative.org

Abuja

Plot 1266/No.32
Amazon Street
Maitama, Abuja, Nigeria
Phone: +234 9 413-3771
Fax: +234 9 413-3772

Budapest

Oktober 6. u. 12
H-1051 Budapest, Hungary
Phone: +36 1 327-3100
Fax: +36 1 327-3103

London

Cambridge House
100 Cambridge Grove
Hammersmith London
W6 0LE United Kingdom
Phone: +44 207 031 0200
Fax: +44 207 031 0201

New York

400 West 59th Street
New York, NY 10019 USA
Phone: +1 212-548-0157
Fax: +1 212-548-4662

Washington DC

1120 19th Street, N.W., 8th Floor.
Washington, DC 20036 USA
Phone: +1 202 721 5600
Fax: +1 202 530 0128

www.justiceinitiative.org



OPEN SOCIETY INSTITUTE