

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
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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 Ethiopia primarily affects people of Eritrean origin. Since the independence of Eritrea, and in particular since the 1998-2000 war, many tens of thousands of people of Eritrean origin have been trapped in a stateless limbo. In addition, Ethiopia's nationality laws are currently not in line with its international obligations regarding the protection of children from statelessness.

II. ETHIOPIA'S LAWS VIOLATE THE RIGHT TO NATIONALITY OF STATELESS CHILDREN BORN ON ITS TERRITORY

A. Scope of international obligations

3. Ethiopia is a party to several international and regional treaties that provide legal standards with respect to statelessness and the right to nationality, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), and the African Charter on the Rights and Welfare of the Child (ACRWC).¹ 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."²
4. Ethiopia 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 are key international instruments that guarantee the protection of stateless people and go some way in offering a resolution to the problem of statelessness. Ethiopia should consider accession to these two treaties.

¹ Acceded to the International Covenant on Civil and Political Rights on June 11, 1993 (no reservations); acceded to the Convention on the Elimination of All Forms of Racial Discrimination on June 23, 1976 (no reservations); ratified the Convention on the Elimination of All Forms of Discrimination Against Women on September 10, 1981 (one reservation to paragraph 1 of article 29 regarding international arbitration under the Convention); Acceded to the Convention on the Rights of the Child on May 14, 1991 (no reservations); acceded to the African Charter on Human and Peoples' Rights on June 15, 1998; acceded to the African Charter on the Rights and Welfare of the Child on October 2, 2002.

² CERD, General Recommendation No. 30: Discrimination Against Non-Citizens, October 1, 2004, para. 14.

B. Constitutional and legislative framework

5. Citizenship law in Ethiopia is governed by the Constitution of the Federal Democratic Republic of Ethiopia of 1994 and the Ethiopian Nationality Proclamation No. 378/2003. The *Proclamation to Provide Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in their Country of Origin No. 270/2002* has additional citizenship implications. In article 3(2) the Nationality Proclamation provides for the acquisition of Ethiopian nationality for an abandoned infant found in Ethiopia unless it can be proven that she or he is a foreign national. However, the Nationality Proclamation does not provide for the acquisition of Ethiopian Nationality for stateless children born on its territory who have *not* been abandoned.
6. This Proclamation therefore is inconsistent with article 7 of the CRC which obliges Ethiopia to respect the right of all children to acquire a nationality, “in particular where the child would otherwise be stateless.”³ Similarly, the ICCPR guarantees the right of ‘[e]very child...to acquire a nationality’⁴.
7. It is also in contradiction with Articles 6(3) and 6(4) of the ACRWC which provide that every child has a right to acquire a nationality and that states should ensure that their legislation provides that “a child shall acquire 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. Ethiopia should amend its nationality law to guarantee the acquisition of nationality for stateless children born on its territory, in accordance with its international obligations.

III. ETHIOPIA’S PRACTICE DENIES CITIZENSHIP TO STATELESS PERSONS OF ERITREAN ORIGIN WHO HAVE NOT ACQUIRED CITIZENSHIP OF ANOTHER STATE

9. Currently some 150,000 people of Eritrean descent live in Ethiopia. Most are not considered Ethiopian citizens, because they voted in the referendum on the independence of Eritrea that was held in 1993—having no idea at the time that this would jeopardize their Ethiopian citizenship. Ethiopia has consistently insisted that Ethiopians who registered to vote in the referendum acquired Eritrean nationality and thus lost their Ethiopian citizenship. Eritrea, however, does not recognize these people as Eritrean citizens. They are thus *de jure* stateless. Due to their legal status they suffer deprivation of a range of fundamental human rights, including those linked to citizenship (i.e., political participation through voting or holding office) and those which are not (i.e., access to employment and education).

³ Convention on the Rights of the Child, article 7(2)

⁴ International Covenant on Civil and Political Rights, article 24(3).

10. The *Proclamation to Provide Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in their Country of Origin* of 2002 provides special rights and privileges, such as a right to employment in Ethiopia and access to social services, for people who have previously been Ethiopian nationals, or whose parents, grandparents or great grandparents were Ethiopian nationals. However, the Proclamation explicitly excludes people who ‘forfeited Ethiopian nationality and acquired Eritrean nationality’. This proviso thus excludes most people of Eritrean origin in Ethiopia who are considered Eritrean nationals by the Ethiopian government.
11. While a stateless person of Eritrean origin may in theory naturalize under the Ethiopian Nationality Proclamation of 2003, in practice this is very difficult since the person is obliged to show that she has been released from her previous nationality (which is impossible since Eritrea, the state of which they are assumed by Ethiopia to have nationality, will not issue proof of non-citizenship) or that she is stateless (which is equally impossible since Ethiopia considers her an Eritrean national by virtue of having registered for the 1993 referendum, rather than on the basis of documentation).
12. Ethiopia should grant Ethiopian citizenship – and effective documentation of that status - to stateless persons of Eritrean origin who have not acquired citizenship of another state. Status determination should be carried out not on the basis of who was registered to vote in the 1993 independence referendum but on the basis of what documentation of citizenship people possess, or, alternately, on the basis of an individual’s effective links⁵—of residence and family, for example—with Ethiopia. In particular, Ethiopia should act without delay to provide citizenship to stateless children of Eritrean origin in accordance with its obligations under ACRWC article 6, CRC article 7 and ICCPR article 24.

IV. RECOMMENDATIONS TO THE UPR WORKING GROUP

13. The Justice Initiative calls on the UPR Working Group and other States to ask the Ethiopian state representatives:
 - What steps will Ethiopia take to guarantee citizenship to children born on its territory to parents who are stateless?
 - How will Ethiopia resolve the situation of individuals of Eritrean ancestry who are permanently resident in Ethiopia?
14. The UPR Working Group should clarify that Ethiopia’s treatment of stateless persons of Eritrean origin is incompatible with its human rights obligations, and recommend that Ethiopia:

⁵ 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).

- Consider accession to the two treaties on statelessness, namely the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961);
- Amend its nationality law to guarantee the acquisition of Ethiopian nationality for stateless children born on its territory;
- Grant citizenship to persons of Eritrean origin who have not acquired citizenship of another state.

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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.

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