

OPEN SOCIETY  
**JUSTICE INITIATIVE**

**More Primitive than Torture:  
a Statelessness and Arbitrary Denial of Citizenship  
in Africa – A Call to Action**

Background Briefing for  
Africa Programming Advisory Committee Meeting  
Kampala, Uganda, February 2007

# **More Primitive than Torture: Statelessness and Arbitrary Denial of Citizenship in Africa – A Call to Action**

## **I The Right to Citizenship is in Crisis in Africa**

This paper illustrates the scope and patterns of the crisis of citizenship in Africa, and seeks to offer a basis for action and advocacy in support of regional responses to this crisis. That there is such a crisis has long been established in social science research in Africa.<sup>1</sup> This crisis results in a high incidence in Africa of statelessness and arbitrary denial of both citizenship and access to it.

Citizenship is the bundle of entitlements and obligations embodied in the multi-faceted connections of an individual to a territory and its sovereign. It has been described as “membership of a State....the condition of integration of the individual within the political framework of that State.”<sup>2</sup> This bundle of entitlements has both internal and external elements. The internal elements include the rights and entitlements that accrue to the individual from this relationship, such as voting, other participation, and social security rights. These internal elements constitute the bundle of entitlements referred to as citizenship. The external elements reflect the consequences of these entitlements enabling the bearer, whenever their citizenship rights are endangered, to claim the protection of the State whose citizenship s/he asserts. This external aspect, better described as nationality, is most relevant when the citizen is outside his or her country. Theoretically, therefore, citizenship and nationality are complementary and mutually inter-dependent concepts. In this paper, they are used interchangeably for convenience.

## **II More Primitive than Torture: Statelessness is Civic Death**

Perhaps the most widely used shorthand is Hannah Arendt’s formulation of citizenship in *The Origins of Totalitarianism* as “the right to have rights.”<sup>3</sup> This articulation uniquely underscores the fact that the international regime of what has become known as the “responsibility to protect” is founded on the right to nationality. States have a primary responsibility to protect their nationals. Conversely, persons without nationality or stateless persons are unable to mobilize such protection when they are violated.

With the benefit of hindsight provided by the development of the international human rights regime since Hannah Arendt rendered this formulation, it is worth

---

<sup>1</sup> Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press (1996)

<sup>2</sup> Constantin Sokolof, *Denial of Citizenship: Challenges to Human Security*, 5 (2005)

<sup>3</sup> “We became aware of the existence of a right to have rights...and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights....”, Hannah Arendt, *The Origins of Totalitarianism*, Andre Deutsch, 1986, 295-296.

clarifying that the right to have rights is predicated on our shared humanity not on territorialized belonging encapsulated in citizenship. However, in practice, the effective proof of citizenship is a necessary foundation for the exercise of rights of movement and associated economic activity and livelihood, civic participation, and, most significantly, the entitlement to mobilize protection of the state of nationality both within and outside its territory when the enjoyment of our human rights is endangered or threatened. (Hence the inscription on so many passports linking the protection of the holder to their nationality, and making clear that because they have that nationality state protection follows them across borders). These are the constitutive elements of meaningful civic and transactional life.

Thus, while citizenship may not, strictly speaking, be the right to have rights, its denial means civic death. As pointed out by the United States Supreme Court in *Trop vs. Dulles*, although involving neither physical mistreatment nor primitive torture, the loss of citizenship or the status of statelessness causes “the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development.”<sup>4</sup>

### **III There are three categories of Statelessness**

Statelessness refers to the status of persons unable to avail themselves of belonging to or the nationality of any country, whether by birth, descent, domicile or other means available for the acquisition of nationality. Statelessness could occur as a matter of law (*de jure* statelessness) as, for instance, when loss of nationality is confirmed by judicial order. Some people are denied access to proof of their citizenship, thus denying them effective exercise of citizenship rights dependent on such proof. Such persons are said to be stateless in fact (*de facto*). In addition, members of transboundary migrant and pastoral communities face uniquely high exposure to the risk of being unable to prove their nationality or, even when they possess proof of such nationality, to being disbelieved by their national authorities when they seek to do so. Livelihood in these communities is defined uniquely by migration often in search of livelihood, grazing and water for livestock. Many such communities straddle the borders of multiple African countries but their members are often unable to assert an effective claim to the nationality of any as they are constantly on the move between porous international borders, often without documentation.<sup>5</sup> Such people are classed as belonging to populations or communities at risk of statelessness. In this briefing, the class of statelessness

---

<sup>4</sup> *Trop vs. Dulles*, 356 U.S. 86, at p.101

<sup>5</sup> Some examples of ethnic groups or communities whose members face heightened risk of statelessness in Africa include: Foullah, Mandingo, and Mossi in West Africa, the Nubians and Turkana (Kenya/Sudan), Somalis (Kenya/Somalia/Ethiopia), Massai (Kenya/Tanzania), Banyarwanda and Basongora/Hima (East and Central Africa), Zaghawa and Masalit (Chad/Sudan), and Kanuri and Shua-Arab (Nigeria-Chad-Cameroon).

persons includes those who are stateless *de jure*, or *de facto*, as well as those at risk of statelessness.

#### **IV Statelessness and Denial of Citizenship Violate Human Rights and Endanger Regional Peace and Security in Africa**

The crisis of citizenship in Africa has two dimensions. At the individual level, the arbitrary deprivation of citizenship and the creation of statelessness violate both human rights and international law. Yet, as illustrated below, many African States (or, more appropriately, ruling governments) seek, by repeatedly asserting powers to arbitrarily deprive certain citizens, usually members of minority communities, political opponents, or vocal critics of their citizenship to diminish citizenship from an entitlement, which it is under international law to a privilege existing at their discretion. As Bettina von Lieres observed in 1999, this increasingly high incidence of the arbitrary denial of citizenship has reduced citizenship in Africa to a hollow “slogan”.<sup>6</sup> The African Commission on Human and Peoples’ Rights has repeatedly affirmed that statelessness and the arbitrary denial of citizenship violate international law.<sup>7</sup>

At the collective level, the African citizenship crisis presents a clear and present danger to regional peace and security. For instance, in Rwanda, an ideology of genocide was founded on the denying the Rwandan citizenship (and then humanity) of the Tutsis. In the Democratic Republic of the Congo, long-running conflicts have arisen in response to attempted mass de-nationalization through law of the Tutsis of Eastern Congo (*Banyamulenge*). These led the Council for the Development of Social Science Research in Africa (CODESRIA) to declare in 2004 that “the citizenship and identity question has easily become the most important political question in Africa today.” Citizenship is also arguably the most severely endangered human *right* in Africa. However framed “it carries serious implications for policy making and the continuing stability, even viability of many a polity.”<sup>8</sup>

The true population of the human victims of the crisis of citizenship and statelessness in Africa is difficult to estimate with certainty but number possibly in the tens of millions. They include a majority of the continent’s estimated migrant and pastoralist population of 17.3 million persons representing the biggest population of persons at risk of statelessness in the world; an estimated 30% of Côte d’Ivoire’s 17.5 million people de-nationalized by the Ivoirité-inspired amendments to Côte d’Ivoire’s citizenship laws between 1995-2000, 1.5 million

---

<sup>6</sup> Bettina von Lieres, “Review Article: New Perspectives on Citizenship in Africa”, 25 *Journal of Southern African Studies*, 139, 148.

<sup>7</sup> Communication 97/93, *John K. Modise vs. Botswana* (2000) *African Human Rights Law Reports*, 30; *Amnesty International vs. Zambia*, (2000) *African Human Rights Law Reports*, 325.

<sup>8</sup> CODESRIA, “Multinational Working Group on Citizenship in Africa: Call for Applications. Theme: Citizenship and Identity in Contemporary Africa” (2004)

*Banyamulenge* the status of whose citizenship in the DRC remains disputed within the country; hundreds of thousands of Ethiopians of Eritrean-descent who had their Ethiopian nationality arbitrarily cancelled and nationality documents destroyed, before their forced expulsion to Eritrea in 1998-1999, just to cite a few illustrations.

## **V There is a Compelling Case for a Regional Approach to the Citizenship Crisis in Africa**

This paper suggests that only a regional inter-governmental response can assure durable resolution of the crisis of citizenship and statelessness in Africa. The response should begin with but not be limited to the adoption of a regional protocol within the African Union creating a binding legal obligation on African States to guarantee and protect the right to nationality, preclude arbitrary denial of this right, and prohibit statelessness in Africa. Regional advocacy is needed to persuade the African Union, regional economic communities, and individual Member States of the AU to take steps to secure and effectively guarantee the entitlement to and enjoyment of citizenship rights in Africa.

Citizenship in international law is characterized by a constitutive contradiction between two essential pillars of international law that underpin it. On the one hand, the entitlement to citizenship is a universalized human right proclaimed in Article 15 of the Universal Declaration of Human Rights, which also simultaneously prohibits the arbitrary deprivation of this right. On the other hand, the enjoyment of citizenship has traditionally been made the subject – until recently – of the most extreme assertions of sovereignty. Traditional international law took the view that “it is for each state to determine under its own laws who are its nationals.”<sup>9</sup>

This extremely atomized approach to nationality has proved unsustainable in the face of the complicated and continuously evolving history of territorialization and sovereignty all over the world, especially in Africa.<sup>10</sup> The history and shared experiences of African countries as shown below make a compelling and urgent case for a regional response to citizenship on the continent.

## **VI Africa’s citizenship crisis has a long history and many causes**

The crisis of citizenship in Africa is driven by a combination of factors, including state succession in the aftermath a history of arbitrary colonial and post-colonial territorialization, post-independence nation-building and struggle for scarce resources within national boundaries, and the intensification of plural electoral politics in the recent wave of democratization on the continent.

---

<sup>9</sup> Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, Article 1 (1930)

<sup>10</sup> The European Convention on Nationality, adopted 6 November 1997, for instance, reflects a pan-European recognition of the nationality problem in Europe as a regional and international issue.

It bears recalling that African citizenship is a relatively recent, post-colonial occurrence. Until independence, the inhabitants of the various colonial territories in Africa were mere subjects of the colonial powers. In France's colonial territories in Africa, only the residents of the *Quatre Communes* (Dakar, St Louis, Rufisque and Goree) were considered entitled to any form of French citizenship. Prior to independence, the territories of Africa were shared between five 'sovereigns': Belgium, Britain, France, Portugal, and Spain. In sub-Saharan Africa, these five were to be replaced at independence by 47 countries and territories, each asserting sovereign autonomy over its own citizenship laws without reference to the other.

Colonial rule in Africa was founded on an efficiency imperative, which dictated that contiguous colonial territories were administered as amalgams within which there was shared subject-status under one colonial power and mobility of people and goods subject to the strictures of colonial government. These amalgamated administrative units were, however, dismantled shortly before independence giving rise to new citizenships without providing for joint resolution of pre-existing ties of belonging and legal status. Thus, following Guinea's "rebellion" in opting for independence in the Referendum of 1958, France Balkanized the territories comprised in colonial French West Africa, granting them independence as six separate countries – Benin, Burkina Faso (Upper Volta), Côte d'Ivoire, Mali, Niger, and Senegal. French Equatorial Africa became the independent States of Central African Republic, Chad, Congo, and Gabon. The Belgian- ruled Mandates of Ruanda-Urundi Federation, which included eastern Congo in a colonial Common Market dating back to 1925, became three different independent territories, with Eastern Congo becoming part of the DRC. The colonial East African Federation became the independent States of Kenya, Uganda, and Tanzania; the Federation of Rhodesia and Nyasaland became Malawi, Zambia, and Zimbabwe, while the High Commission Territories in southern Africa became the independent States known as Botswana, Lesotho, and Swaziland. As illustrated below, these divisions would later become "real obstacles" to the enjoyment of citizenship rights.<sup>11</sup>

Following independence, most leaders of Africa's new States pursued the consolidation of their personal power through policies of nation-building that ironically exploited ethnic cleavages at the national level to drive artificial wedges between both national and transboundary populations with historical ties. The then Organization of African Unity (OAU) in the Tunis Declaration, acknowledged that this form of nation-building "was often characterized by strife, conflict, and political instability", whose human consequences included an "increase in the number of refugees in the continent."<sup>12</sup> In reality, the expression "refugees" in this context conflated different albeit overlapping classes of victims including the

---

<sup>11</sup> B.N.T. Mutharika, *Multinational Economic Cooperation in Africa*, 3 (1972)

<sup>12</sup> OAU, Tunis Declaration on the 1969 OAU Refugee Convention 2<sup>nd</sup> operative para. (1994)

internally displaced, refugees (strictly speaking), victims of mass or collective expulsions, persons denied access to citizenship, and stateless persons.

As to the effects of competitive electoral politics, Georges Nzongola-Ntalaja has demonstrated how “during the current wave of democratization (in Africa), incumbents bent on prolonging their stay in power have used the exclusionary notions of citizenship to bar their most challenging rivals from the electoral process.”<sup>13</sup> Often these exclusions excavate claims of alienage pre-dating independence, to a time when, in fact, there was no African citizenship as such.

## **VII ....And tens of millions of human victims and dis-located communities**

In both the motivation of the perpetrators and their effects on the victims, the numerous cases of statelessness and denial of citizenship in post-colonial Africa exhibit a clear pattern of persecution and arbitrariness. Although each case produces unique experiences of victimization, common patterns are discernible. These patterns include the stripping of citizenship status and rights resulting in statelessness; forced expulsion or population transfers; elimination of minority groups through mass de-nationalization sometimes followed by targeted killings of members of the affected identity groupings; persecution of vocal opponents or critics of incumbent regimes; and refusal to recognize or accord the rights of particular (groups of) citizens absent documentary proof.

In nearly all cases of mass de-nationalization and statelessness in Africa, including the examples cited below from Côte d’Ivoire, Ethiopia, Mauritania etc., the perpetrating authorities and their agents take active steps to deny the victims access to the means with which to prove their nationality. This is accomplished through destruction or confiscation of nationality, identity, and birth records in the possession of the victims where these exist. In the case of undocumented nationals, including pastoralist communities, the absence of nationality documents facilitates the process of denial of citizenship, de-nationalization, and statelessness.

Women in Africa are particularly affected by gendered citizenship practices and norms that uniquely disable them from access to proof of citizenship in ways that are inapplicable to men generally. These disabilities remain in effect despite – or because of – the entry into force of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. Article 6(h) of this Protocol entitles women in equality with men to “have equal rights, with respect to the nationality of their children” unless “this is contrary to a provision in national legislation or is contrary to national security interests.” In many countries, women remain unable by themselves to transmit their nationality to their children or to gain access to nationality documents, such as identity cards and passports, except

---

<sup>13</sup> Georges Nzongola-Ntalaja, “Citizenship, Political Violence and Democratization in Africa”, 10 *Global Governance*, 403 (2004)

with the express consent of senior male relatives such as fathers or husbands.<sup>14</sup> Rather than discourage them, article 6(h) of the African Women's Protocol remarkably reinforces such discriminatory citizenship practices.

**(a) Racially motivated de-nationalization and collective expulsion as persecution of national minorities:**

Some African countries have deployed mass and arbitrary de-nationalization as a form of racial or ethnic discrimination. Such cases are usually followed by mass expulsion of the affected nationals by their own government to countries other than their own. For instance, the Idi Amin government in Uganda expelled an estimated 200,000 Ugandan nationals of Asian descent in the 1970s.<sup>15</sup> Between 1989-1991 and several times subsequently, the government of Mauritania cancelled the Mauritanian nationality of hundreds of thousands of black ethnic Mauritians and forcefully expelled and re-located them to Senegal. As reported by Human Rights Watch:

To stave off war in April 1989, Mauritania and Senegal decided to repatriate each other's citizens. The Mauritanian government took advantage of the agreement to further the country's "Arabization" by getting rid of its black population.<sup>16</sup>

In late 2006, the government of Niger expelled an estimated 150,000 Chadian Arabs, otherwise referred to as "*Mohamides*". The *Mohamides* of Niger are a pastoral community of nearly 200,000 found mainly in Niger's Diffa State. Announcing this measure in October 2006, Niger's Interior Minister, Mounkila Modi, reportedly said: "We have decided, starting today, to expel these nomadic Arab '*Mohamides*' to their home countries."<sup>17</sup> The anomaly here is that Niger's *Mohamides* belong to Niger.

In certain situations of conflict, some African governments have pursued programs of forced population transfers designed to produce statelessness and diminish the populations of some minority populations caught in the conflict. The best-known recent example of this form of denial of citizenship occurred in the 1998-2000 Ethiopian-Eritrean conflict. At the outset of the conflict between Eritrea and Ethiopia in 1998, the government of Ethiopia de-nationalized, detained, and expelled into the territory of Eritrea over 100,000 Ethiopians of ethnic Eritrean origin. As reported by Human Rights Watch:

---

<sup>14</sup> In 1991, the Botswana Court of Appeal struck a provision of the 1984 Citizenship Act denying Botswana women married to non-nationals the right to transmit their nationality to their children as unjustifiable discrimination. See *Unity Dow vs. Attorney-General*, 1994 (6) BCLR 1

<sup>15</sup> Anthony Lester, "Thirty Years On: The East African Asians Case Revisited" [2002] *Public Law*, 52

<sup>16</sup> Human Rights Watch, "Mauritania, Human Rights Developments", available at <http://www.hrw.org/reports/1990/WR90/AFRICA.BOU-06.htm> visited 31 January 2007

<sup>17</sup> <http://news.bbc.co.uk/2/hi/africa/6087048.stm> of 26 October 2006

Most were trucked or bussed to the border with Eritrea. Documents proving Ethiopian nationality were confiscated, property rights were cancelled, and travel papers in many instances were marked 'Expelled—Never to Return.' There was no opportunity for judicial review—or even for appeal of rulings through administrative processes.<sup>18</sup>

In many countries, collective de-nationalization has been used to persecute or eliminate altogether national minorities, who are branded as beneath both citizenship and humanity. Kasaians who have been the target of serial cleansing in the resource-rich Katanga Province of the DRC were branded "*Bilulu*" (insects). To facilitate genocide in Rwanda, the victims were called "*Inyezi*" (cockroaches). The Rwanda genocide stands out among recent examples in Africa of denial of both citizenship and humanity as a prelude to extermination of minorities. According to Professor Nzongola-Ntalaja:

Those targeted for death were not perceived as citizens – in fact they were not even seen as human. Demonizing the targets of ethnic cleansing and genocide allows the perpetrators to feel justified in that those being cleansed or killed are "insects" or "cockroaches", rather than human beings.<sup>19</sup>

In 1981, the government of then Zaire (now DRC) adopted a Nationality Law repealing the Presidential Decree of 1972 recognizing the Congolese nationality of the *Banyamulenge* of eastern Congo, effectively denationalizing them. This has produced serial instability in the region, which deteriorated rapidly in the aftermath of the Rwanda Genocide, and the attempted mass expulsion in 1996 of the *Banyamulenge* from Congo.<sup>20</sup>

**(b) Denial of citizenship as exclusionary instrument of disenfranchisement:**

Incumbent regimes in many African countries have found ways to exclude leading political opponents from the electoral process on grounds of citizenship. This is designed to deny the affected persons or communities their entitlement to participate in public affairs, which, more than any other human right recognized in international law, is most closely tied to citizenship.<sup>21</sup> While examples of such have become quite common since the onset of plural politics in Africa in the 1990s, the

---

<sup>18</sup> Human Rights Watch, "Mass Expulsions and the Nationality Issue (June 1998-April 2002", Vol. 15, No 3A, Jan 2003, p. 3. Eritrea similarly collectively expelled over 70,000 persons of Ethiopian nationality.

<sup>19</sup> Georges Nzongola-Ntalaja, *supra*, 405

<sup>20</sup> Mahmood Mamdani, "Preliminary Thoughts on the Congo Crisis" 17:3 *Social Text*, 53 (1999)

<sup>21</sup> Universal Declaration of Human Rights, Article 21; International Covenant on Civil and Political Rights, Article 25; African Charter on Human and Peoples' Rights, Article 13.

manipulation of citizenship for purposes of disenfranchisement predates this period.

In Botswana, for instance, the government cancelled the citizenship of one of the early founders of the Opposition Botswana National Front, John Modise, in 1978. Subsequently, Mr. Modise was on seven different occasions serially expelled by Botswana to South Africa and to the territory of the then Homeland of Bophuthatswana. In the mid-1980s, the government of Botswana “imprisoned” Mr. Modise in a special piece of boundary territory between Botswana and South Africa, known as “No-Man’s Land”. Over the period of nearly 20 years during which this lasted, Mr. Modise’s health and business were ruined, his family dis-integrated and his aspiration to political life in Botswana was destroyed. 22 years after Mr. Modise was first deported from Botswana, the African Commission on Human and Peoples’ Rights confirmed in 2000 that he was indeed a citizen of Botswana by birth and by descent and that Botswana had acted unlawfully in rendering him stateless.

Also in Nigeria, the federal government of then President, Alhaji Shehu Shagari, on 24 January 1980, arrested and expelled to Chad the Majority Leader of the Opposition-controlled state legislature of the north-Eastern State of Borno, Alhaji Shugaba Abdulrahman Darman, alleging that he was Chadian not Nigerian. Nigerian courts struck down this act as illegal, holding that citizens, such as Shugaba, were not liable to be deported from their own countries of nationality.<sup>22</sup>

To preclude him from running in general elections in 1996, the government of former Zambian President, Frederick Chiluba, cancelled the nationality of his predecessor in office, Zambia’s founding President Kenneth Kaunda, in 1995 on the grounds that Kaunda was Malawian because his parents had their origins in the colonial territory that later became Malawi. In March 1999, the Zambian High Court sitting in Ndola affirmed that Kaunda had not lawfully acquired Zambian nationality, effectively rendering him stateless and unable to seek high office in Zambia, a country that he had led for 27 years as President.<sup>23</sup> Also in 1991 and 1994, two senior members and financiers of ex-President Kaunda’s political party, William Banda and John Lyson Chinula, were similarly de-nationalized by Zambia and forcibly expelled to Malawi, where Mr. Chinula later died. The African Commission on Human and Peoples’ Rights would later find as a fact that both cases of deprivation of citizenship “were politically motivated,” in violation of the African Charter on Human and Peoples Rights.<sup>24</sup> In the run-up to the 2002 elections

---

<sup>22</sup> *Shugaba Abdulrahman Darman vs. Federal Minister of Internal Affairs and 3 Others* [1981] 2 *Nigerian Constitutional Law Reports* 459

<sup>23</sup> Donald G. McNeil Jr., “Founder of Zambia Is Declared Stateless In High Court Ruling”, *New York Times*, 1 April 1999, 8; Human Rights Watch, “Memorandum To The Consultative Group Meeting On Zambia Paris, May 27-28, 1999”, available at <http://www.hrw.org/press/1999/may/zambia-memo.htm>

<sup>24</sup> Communication 212/98, *Amnesty International vs. Zambia*, (2000) *African Human Rights Law Reports* 325

in Zambia, then Vice-President, General Christon Tembo, a vocal opponent of the design of former President Chiluba to prolong his tenure beyond the constitutionally permitted two terms, was similarly threatened with the cancellation of his nationality and expulsion to Malawi.<sup>25</sup>

In Côte d'Ivoire, the then incumbent government excluded leading Presidential candidate and former Prime Minister, Alasane Dramane Ouattara, from Presidential elections in 1996 and 2000 "on the grounds that he had in the past 'availed himself of another nationality' by carrying a diplomatic passport from Burkina Faso."<sup>26</sup> In Niger, political opponents of President Mamadou Tandja who was born in Niger to a mother from Niger and a father from Mauritania, sought his exclusion from the electoral process on grounds that he was a non-national, even in spite of their admission that under the applicable customs, Niger was a predominantly matrilineal society where "the child belongs to the mother".<sup>27</sup>

In addition to leading politicians, some incumbent regimes in Africa have adopted similar measures to ensure mass dis-enfranchisement of communities suspected of harboring Opposition sympathies. For instance, adopted on the eve of important general elections in 2002, Zimbabwe's 2001 Citizenship Amendment Act disenfranchised an estimated three-quarters of a million black farm workers suspected of being mostly sympathetic to the Opposition Movement for Democratic Change (MDC), on the grounds that they were descended from at least one parent with origins in the territories of the former colonial entities that became the independent countries called Malawi, Mozambique, and Zambia. The Act required them, as a pre-condition for voting rights in Zimbabwe, to provide proof of having renounced their other nationality before authorities of the other country of presumed nationality. The Act also empowered the government to unilaterally remove from the electoral roll voters suspected of not having done so.<sup>28</sup> After the High Court struck this measure down on due process grounds, the government unilaterally changed the law by gazette enabling it to create a list of citizens who had either renounced their citizenship of Zimbabwe or were deemed to have lost their citizenship by virtue of the new law and "any person whose name appears on the list ... shall not be entitled to vote at the election, notwithstanding that his name appears on the roll for any constituency".<sup>29</sup>

The escalation of the situation in Côte d'Ivoire into civil conflict is similarly traceable to the mass disenfranchisement of over one-quarter of the eligible

---

<sup>25</sup> "Possible deportation of Vice-President to Malawi", available at <http://www.queensu.ca/samp/migrationnews/2001/feb.htm>

<sup>26</sup> Georges Nzongola-Ntalaja, *supra*, 403

<sup>27</sup> Hippolyt A.S.Pul, "Belonging and Citizenship in Africa", 3:1 *Democracy at Large*, 8 at p. 9 (2005)

<sup>28</sup> Zimbabwe Citizenship Amendment Act, No 12 of 2001

<sup>29</sup> (Zimbabwe) Electoral Act (Modification) Notice, 2002 Statutory Instrument 41D of 2002.

population, who were suspected of being sympathetic to the similarly excluded Alasane Ouattara.

**(c) Denationalization as reprisal for free expression**

Some African governments have also employed arbitrary denial of citizenship as reprisal against the media and vocal exponents of free expression. This has become the contemporary equivalent of the colonial-era deportation and banishment of leading anti-colonial advocates.

For instance, in 2001, the government of Tanzania stripped leading publisher, journalist, media proprietor and Chief Executive of Habari Media Limited, Jenerali Ulimwengu, of his Tanzanian nationality. The government's allegation that Ulimwengu, a former Tanzanian diplomat and member of Parliament, who was born and educated in Tanzania, was Rwandan,<sup>30</sup> was cover for reprisal for against independent coverage by his media group of political and economic developments in Tanzania.<sup>31</sup> In August 2006, the government of Tanzania similarly stripped two journalists, Ali Mohammed Nabwa, weekly consulting editor of *Fahamu*, and Mr. Richard Mgamba, a reporter with the Mwanza-based *The Citizen* newspaper, of their nationality, accusing them of being "unpatriotic and enemies of the State."<sup>32</sup> Trevor Ncube, publisher of the independent *Mail and Guardian* newspaper in Zimbabwe was also arbitrarily stripped of his Zimbabwean nationality at the end of 2006, a measure subsequently struck down by the High Court of Zimbabwe in January 2007.<sup>33</sup>

**(d) Statelessness of transboundary migrant and pastoral communities**

With an estimated pastoralist population of over 17.3 million people, Africa has the highest concentration of pastoral communities in the world and more pastoralists than all the other continents combined.<sup>34</sup> Africa's population of pastoralists is also the largest population at risk of mass statelessness in the world. This high concentration of pastoralists in Africa, as a population with high exposure to statelessness, gives peculiar urgency the need for immediate action on the problem of statelessness and denial of citizenship on the continent. Transboundary pastoralist communities, such as the Masai and Turkana of East Africa, the

---

<sup>30</sup> Also stripped of their nationality at the same time were Tanzania's then High Commissioner to Nigeria, Timothy Bandora; the leader of the ruling Chama Cha Mapinduzi (CCM) party in the North-Western Kagera region, Anatoli Amani, and a former publicity secretary of CCM in Zanzibar, Mouldine Castico who was said to be a Zambian. Bandora and Ulimwengu were alleged be Rwandans, while Amani was said to be Ugandan. See "Tanzania drops envoy to Nigeria over citizenship" available at <http://www.queensu.ca/samp/migrationnews/2001/feb.htm>

<sup>31</sup> Ernest Mpinganjira, "Intimidation of media exposes Tanzania's fear of criticism", available at [www.eastandard.net/archives/sunday/hm\\_news/news.php?articleid=1143956720](http://www.eastandard.net/archives/sunday/hm_news/news.php?articleid=1143956720)

<sup>32</sup> *Ibid.*

<sup>33</sup> <http://news.bbc.co.uk/2/hi/africa/6299725.stm> visited 25 January 2007

<sup>34</sup> For more information visit: <http://www.pastoralpeoples.org/pastoralists.htm>

Basongora of East and Central Africa, and the Mohamides and Foullah of West Africa, are particularly at risk of statelessness in Africa. These are very mobile communities whose members move across vast tracts of territory in search of grazing for their livestock. They are often un-documented and poorly served by public utilities and facilities for access to education that promote economic mobility. They are also usually found in regions where there are severe strains on access to both vegetation and water. Members of such communities become targets of persecution and exclusion following disputes over grazing and water rights.<sup>35</sup>

**(e) Inferior classes of citizenship founded on “Indigeneship”**

In different parts of Africa, the content of citizenship rights is determined by localized notions of indigeneship, which unfairly discriminate between nationals within their own country. For instance, in Nigeria, a policy of Federal Character instituted by the Constitution seeks to achieve equitable allocation of national resources and access to public positions among the hundreds of ethnic and national groups in the country.<sup>36</sup> In practice, this policy has resulted in a situation in which “the population of every state and local government in Nigeria is officially divided into two categories of citizens: those who are indigenes and those who are not. The indigenes of a place are those who can trace their ethnic and genealogical roots back to the community of people who originally settled there”, giving rise to a culture of institutionalized ethnic discrimination which “taken as a whole, ...effectively relegate many non-indigenes to the status of second-class citizens, a disadvantage they can only escape by moving to whatever part of Nigeria they supposedly belong in.”<sup>37</sup> In Sierra Leone, Creoles are constitutionally precluded from owning non-urban lands, the ownership of which is restricted to members of ethnic groups supposedly indigenous to Sierra Leone. In Zimbabwe, the constitutional rights of the black population are trumped by customary law, thereby putting them beyond the protection of the Bill of Rights.<sup>38</sup>

**VIII A Call to Action**

The failure to clearly acknowledge and guarantee the right to nationality is without doubt the most notable omission in the African Charter on Human and Peoples’ Rights. The arbitrary denial of citizenship, discriminatory access to citizenship, and

---

<sup>35</sup> Bernhard Struck, “On the Ethnographic Nomenclature of the Uganda-Congo Border, IX, *African Affairs*, 275; “Expelled Ugandans face epidemic”, *The Monitor* (Uganda), 28 March 2008; “Uganda: Basongora Encroachers Face Eviction”, <http://allafrica.com/stories/200701221583.html>

<sup>36</sup> Constitution of the Federal Republic of Nigeria, 1999, §14(3) provides: “[t]he composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies.”

<sup>37</sup> Human Rights Watch, “They Do not Own This Place: Government Discrimination against “Non-Indigenes” in Nigeria”, Vol. 18:3A, 3 (2006)

<sup>38</sup> *Magaya v. Magaya*, 3 LRC 35 (Sup. Ct. of Zimbabwe [1999]).

statelessness on the continent violates international human rights law applicable to African countries. As shown above, arbitrary denials of citizenship and statelessness violate human dignity, undermine the institutional integrity of government and its institutions, dislocate families, destroy the livelihoods of those affected and render the victims open to further abuses of their rights. Mass de-nationalization and statelessness has resulted in conflict in some parts of Africa. The insecurity of citizenship in Africa leads to an untold toll of insecurity in the continent. It is necessary to establish a clear regional regime of norms and mechanisms to prevent this.

The crisis of citizenship in Africa clearly transcends national borders and so do its consequences. One country cannot, without reference to the second country, unilaterally determine that a person hitherto known to be its national has the nationality of the second country. In the case of *Amnesty International vs. Zambia*, where the government of Zambia de-nationalized two senior public figures before expelling them to Malawi, "Malawi courts ruled...that they were not citizens of Malawi",<sup>39</sup> effectively rendering them stateless *de jure*. The victims of all the cases of arbitrary de-nationalization and forcible expulsion described in this paper find themselves in a similar position.

For reasons earlier described, African States clearly have a self-interest in pursuing a regional solution to this crisis. The basis for this regional solution should be a regional legal regime that guarantees the right to citizenship in Africa and defines legal standards applicable to its acquisition and loss. Adopted ideally within the framework of the African Union as a Protocol to the African Charter on Human and Peoples' Rights, such a legal instrument would at the minimum address five objectives:

- (a) guarantee a legally enforceable right to nationality for persons or members of all races and ethnic groups found in Africa;
- (b) prohibit statelessness and measures that lead to statelessness;
- (c) propose concrete measures for resolving disputes as to nationality and citizenship;
- (d) place the burden of proof on the state in situations of disputed citizenship and fix the standard of proof at a high level
- (e) provide for interim remedies pending resolution of citizenship disputes.

Pending the adoption of such this Protocol, vigorous advocacy must continue to monitor and highlight the numerous cases in different parts of the continent, which make the adoption of such a regional regime both necessary and urgent.

---

<sup>39</sup> *Amnesty International vs. Zambia*, (2000), *African Human Rights Law Reports* 325, p. 331