

The Africa Citizenship & Discrimination Audit Preparatory Meeting

*Report of a Conference held in Dakar, Senegal on
July 19-20, 2004*

July 2004



Africa Citizenship and Discrimination Audit

Meeting, Dakar, Senegal, July 19-20, 2004

Activists from eleven African countries met in Dakar, Senegal, on July 19-20, 2004, to launch the “Africa Citizenship and Discrimination Audit,” a two-year review of citizenship and discrimination laws and practice on the continent. The meeting, hosted by the Open Society Justice Initiative, brought together civil society representatives from the Democratic Republic of Congo, Egypt, Ethiopia, Mauritania, Morocco, Nigeria, Sierra Leone, Zambia and Zimbabwe. Participants identified trends in citizenship-related discrimination throughout Africa and highlighted the human rights implications of citizenship deprivation.

The Audit will trace the relationship between racial/ethnic discrimination and citizenship, and evaluate existing protections under national, regional, and international law. National partners will compile testimonials from victims of discrimination, as well as legislation, regulations, and evidence of discriminatory policies.

Discrimination in relation to citizenship

Citizenship and discrimination are interlinked problems throughout much of Africa. The advent of multi-party democracy in many African states in 1990s heightened the political significance of distinguishing citizens from non-citizens, and led to a marked increase in attempts to denationalize political opponents and/or entire ethnic and social groups. Several countries, such as Zimbabwe and the Democratic Republic of Congo, have recently adopted more restrictive nationality laws which place the burden upon individuals to “prove” they are citizens, often on the basis of unobtainable information. Other countries, such as Sierra Leone, have legislation that explicitly discriminates against particular ethnic groups in particular spheres of public life.

Most African states are subject to a multiplicity of human rights norms that guarantee equality, including international and regional human rights treaties. However, national laws do not always conform to treaty provisions. Even where national law is non-discriminatory, policies and practices carried out by state actors may still discriminate in access to land, education, and other social benefits. Authorities commonly fail to protect vulnerable populations from discrimination or ethnically-motivated violence.

The effects of this citizenship-based discrimination have included the polarization of societies on ethnic grounds, widespread disenfranchisement of affected groups, deprivation of a range of social and political rights, and, in extreme cases, mass expulsions of specific ethnic groups and the subsequent creation of refugees and displaced peoples.

Guidelines for Audit partners

The Audit will pursue research and documentation in support of advocacy to combat discrimination and enhance protection of non-citizens and ethnic minorities.

- The countries to be examined in the first phase of the audit are: Angola, Botswana, Cote d’Ivoire, Democratic Republic of Congo, Egypt, Ethiopia, Mauritania, Morocco, Nigeria, Rwanda, Sierra Leone, Sudan, and Tanzania. Zambia and Zimbabwe.
- The Audit will seek to document four types of *discrimination*:
 - Discrimination on grounds of citizenship status (i.e., against migrants, refugees and other non-citizens) in access to fundamental rights.
 - Discrimination on grounds of race, ethnicity or religion in access to citizenship.
 - Discriminatory deprivation of citizenship.
 - Discrimination on grounds of race, ethnicity or religion in access to fundamental rights other than citizenship.
- The Audit follows the definition of racial discrimination in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): “the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”
- The Audit defines citizenship in its legal sense, as the reciprocal relationship of rights and duties between the individual and the state (rather than in the wider cultural or civic sense).
- A central undertaking of the Audit is to collect laws and administrative texts in target countries related to citizenship or discrimination, and analyse whether discrimination exists in law.
- Another aspect of the Audit will be to document discriminatory practices. The effects of discrimination are manifest in deprivation of rights, which include (1) rights guaranteed to citizens and (2) rights guaranteed to all.
- Advocacy activities may be identified through the Audit and may be carried out simultaneously, but as separate projects.
- The Audit will confront the fact that state actions that appear to discriminate against non-citizens are not necessarily prohibited in law, since state discretion in the treatment of non-citizens is wide. For example, the Gambian government has prohibited non-Gambian citizens from driving taxis.
- The challenge of locating the relevant legal texts—the international and national laws, administrative regulations and case law which govern citizenship, discrimination and the rights of non-citizens—will vary widely. Where this research has already been done there is no need to reinvent the wheel. In other countries, obtaining such texts may be very difficult. Where such texts are frequently revised, the analysis of texts should note this so that the texts do not appear in a vacuum.

- Discrimination may be documented through interviews or quantitative methods. When interviewing populations who have experience of discrimination, it is important to use interviewers that witnesses will trust.

Country examples

Participants at the meeting reported several examples of citizenship-related discrimination, which will be investigated further in the course of the Audit:

- Nationality is at the root of the wars in the Democratic Republic of the Congo, and there is discrimination in both law and practice. Congolese national legislation is not in keeping with the international instruments it has ratified. For example, foreign-born lawyers may not be licensed to practice in Congo, contrary to international law. Tutsis are continuously demonised in the press. Katangese are often denied Congolese nationality. New and increasingly restrictive citizenship laws have been adopted as often as every two years.
- The Egyptian government has made several reservations to the 1951 Refugee Convention, limiting access to education and employment (work is allowed for refugees, but permission must be sought, which in practice is almost impossible to obtain). Many refugees can only access limited health and education services, provided by churches and NGOs. Refugee children cannot continue beyond primary level education. Access to the judicial system is limited. Although Egypt is a signatory to the 1990 International Convention on Protection of the Rights of All Migrant Workers on Members of their Families (MWC), there are no specific provisions in domestic legislation to allow access to services for migrants. The laws for accessing citizenship remain very restrictive, and many problems concerning citizenship in Egypt have their roots in the Middle East conflict.
- In Ethiopia, land ownership is prohibited to foreigners—only citizens have a right to ownership of so-called “immoveable property”. In business and travel throughout Ethiopia, citizens pay half as much as foreigners. In addition, Ethiopian citizens can experience discrimination between regions, where they may be barred from working, or from access to the courts, on grounds of language.
- Mauritania has become more rigid in its application of citizenship laws, and is tightening borders in expectation of increased immigration as the oil industry develops. In 1989, tens of thousands of black Mauritians were deported to Senegal, and were stripped of Mauritanian citizenship. Many remain refugees, with their citizenship status still unresolved. Another marginalised group in Mauritania are the *Touaregs*, who have no effective citizenship and whose rights are not guaranteed.
- In Morocco, women and migrants suffer discrimination related to citizenship. Many sub-Saharan Africans have been expelled from Morocco as asylum seekers without any attempt to determine their status. Two recently adopted anti-terrorism laws further restrict the rights of non-citizens. Women cannot pass on nationality to their children or husbands. The children of unmarried women cannot obtain citizenship and are thereby deprived of education.

- In Nigeria, citizens have uneven rights across different states in the federation. In principle, a federal citizen has all the rights of citizenship—but a federal citizen cannot stand for election in a state that is not considered his/her “state of origin”. Even individuals who have settled for decades outside their state of origin may be expelled, or have their property seized. Women who marry between states become members of their new state in customary law—and lose membership of their former state.
- Sierra Leone has experienced many forms of discrimination against Liberians and other foreigners and ethnic groups during its long-running wars. In 1999, when ECOMOG forces were in the country, Nigerians were mutilated or killed because of their nationality. Non-citizens cannot stand for public office and cannot own land. Women are governed by customary law—which frequently discriminates against them. Sierra Leonean citizenship law inherits from the colonial era a distinction between “natives” and “non-natives”, constructed along lines of exclusion/inclusion. Judicial institutions are ill-equipped to surmount these structures of discrimination.
- In Zambia, civil society groups challenged laws that discriminated against Zambian women in conferring citizenship upon the spouses of Zambian men. In response, the government denied citizenship to *all* foreign spouses. Discrimination on grounds of citizenship has become a tool of politically motivated deportation.
- In Zimbabwe, a Citizenship Act enacted in preparation for the presidential election of 2002 obliged anyone presumed to have any other citizenship to renounce this claim or lose Zimbabwean citizenship. The Act threatened specific ethnic groups such as white farmers who often held European as well as Zimbabwean citizenship, and farmworkers with “non-Zimbabwean” surnames. Some of these individuals are now stateless, having been deprived of Zimbabwean nationality without having the right to any other. The government’s seizure of land, factories and industries has been chiefly on the basis of race.

Appendix A:

Africa Citizenship and Discrimination Audit Preparatory Meeting AGENDA

Monday July 19, 2004

- 9:30 Introduction to the Africa Citizenship and Discrimination Audit and the Open Society Justice Initiative
- 10:00 Introductions by participants (5 minutes each)
- 11:00 Coffee Break
- 11:30 Discussion: Examples of citizenship-related discrimination in different countries: Can we detect any trends?
- 13:00 Lunch
- 14:30 Discussion: The relationship between ethnic discrimination and citizenship restrictions – how does the causality flow?
- 16:00 Coffee Break
- 16:30 Discussion: The human rights implications of deprivation of citizenship, differential status of ethnic/race discrimination, and citizenship protections under international law
- 18:30 Close

Tuesday July 20, 2004

- 9:30 Principles and methodology for information gathering in the Audit: legislation, administrative texts, court decisions,
- 11:00 Coffee Break
- 11:30 Discussion: Anticipated obstacles in collection of documents and preventive strategies
- 13:00 Lunch
- 14:30 Additional documentation: testimonials and affidavits
- 16:00 Coffee Break
- 17:00 Next Steps
- 18:00 Close

Appendix B:

Africa Citizenship and Discrimination Audit Preparatory Meeting PARTICIPANT LIST

Said Adejumobi, *Lagos State University, UNECA*

Ahmed Bouhoubeyni, *DEI_Mauritanie*

Roy Clarke, *Longway Clarke & Associates*

Mike Dzakuma, *Open Society Initiative for West Africa*

Khadija Elmadmad, *University Hassan II Casablanca Ain Cock; UNESCO Chaire "Migration and Human Rights"*

Indira Goris, *Open Society Justice Initiative*

Kasia Grabska, *Forced Migration and Refugee Studies Program/American University in Cairo*

Abebe Hailu, *Law Consultant*

Julia Harrington, *Open Society Justice Initiative*

Stephen Humphreys, *Open Society Justice Initiative*

Maxwell Kadiri, *Open Society Justice Initiative*

Jamesina King, *Campaign for Good Governance*

Alice Kwaramba, *Open Society Initiative for Southern Africa*

Katy Mainelli, *Open Society Justice Initiative*

Yoseph Mulugeta, *Ethiopian Human Rights Council*

Mustapha Touré, *Collectif des associations des réfugiés Mauritanien au Sénégal*

Arnold Tsunga, *Zimbabwe Lawyers for Human Rights*

Marcel Wets'okonda, *Campagne pour les Droits de l'homme au Congo*

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. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in five priority areas: national criminal justice, international justice, freedom of information and expression, equality and citizenship, and anticorruption. Its offices are in Abuja, Budapest, and New York.

The Justice Initiative is governed by a Board composed of the following members: Aryeh Neier (Chair), Chaloka Beyani, Maja Daruwala, J. 'Kayode Fayemi, Anthony Lester QC, Juan E. Méndez, Diane Orentlicher, Wiktor Osiatyński, András Sajó, Herman Schwartz and Christopher E. Stone.

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