

# Ethiopia-Eritrea: statelessness and state succession

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## There is a need to strengthen international law on nationality rights and avoidance of statelessness in the context of state succession and international conflict.

The experiences of people of Eritrean origin in Ethiopia and of those deported to Eritrea during the 1998-2000 border conflict illustrate the need for an initiative that would help prevent arbitrary loss of nationality and the resulting risks to other human rights in the Horn of Africa or elsewhere. Border changes may then occur – reflecting evolving group identities – without necessarily being precursors to statelessness.

While relations between Ethiopia and Eritrea are tense today, the two countries' heads of government used to be great allies. Both led rebel movements which joined forces to overthrow the brutal dictatorship of Mengistu Haile Mariam. After Mengistu was deposed in 1991, the two leaders established separate provisional governments in Addis Ababa and Asmara. In 1993, after 30 years of struggle, Eritrea peacefully seceded from Ethiopia following a referendum. But the citizenship status of persons of Eritrean origin, particularly of those living in Ethiopia, was unclear. Almost 16 years later, nationality rights of individuals in both countries remain fragile.

Voting in the referendum was open to "any person having Eritrean citizenship." The Eritrean nationality law provides that anyone who qualifies for citizenship by birth or through naturalisation and who wishes to be recognised as an Eritrean citizen must apply for a certificate of nationality. Numerous people of Eritrean origin – living in Eritrea, Ethiopia or elsewhere in the world – accordingly obtained Eritrean ID cards and nearly all voters chose independence.

Ethiopian law does not permit dual citizenship but at the time of the referendum and Eritrean independence, with the nationality

laws of both countries still unresolved, the two countries' ministries of internal affairs declared that "until the issue of citizenship is settled in both countries, the traditional right of citizens of one side to live in the other's territory shall be respected." The Ethiopian government also continued to issue passports and other identification documents to those who had voted in the referendum. Eritrean officials later contended that people holding Eritrean IDs at the time of the referendum were not Eritrean citizens because the Eritrean state was 'provisional' and had not yet come into existence.

The Ethiopian Constitution of 1995 also provides that "[n]o Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will." In 1996, both governments agreed that "Eritreans who have so far been enjoying Ethiopian citizenship should be made to choose and abide by their choice." Implementation was nonetheless postponed pending resolution of trade and investment issues. Perhaps because both countries initially felt much mutual goodwill, difficult subjects such as citizenship and border demarcations were left unresolved. Finally in 2004, the Eritrea-Ethiopia Claims Commission (EECC), which was established to decide, through binding arbitration, claims brought by the two governments and their nationals, determined that those who had qualified to participate in the referendum had acquired dual nationality because both states continued to treat them as nationals.

### Denationalisation and deportations

Despite the amicable start, simmering tensions over port access, currency exchange and

border disputes erupted into armed conflict in May 1998. By the end of the fighting in December 2000, both sides had lost tens of thousands of soldiers and around one million people were displaced.

In 1998, an estimated 120,000 to over 500,000 persons of Eritrean origin were living in Ethiopia. During the course of the war the Ethiopian government sought to justify denationalising and deporting them on the basis that they had acquired Eritrean citizenship by voting in the referendum. Individuals had not been informed that participation in the referendum would amount to renunciation of their Ethiopian citizenship. Around 70,000 people were expelled, initially individuals deemed to be security threats (including those prominent in business, politics, international organisations – including the UN – and community organisations with links to Eritrea). In July 1999, the Ethiopian government declared that all those who had been expelled to Eritrea were Eritrean citizens, having acquired citizenship by voting in the 1993 referendum. In August 1999, all those who had voted in the referendum and remained in Ethiopia were ordered to register for alien residence permits, which had to be renewed every six months.

Those who were to be expelled were interrogated at police stations, where their identification documents were destroyed. Their assets were frozen and business licences revoked, and most of them were unable to dispose of their property before being deported. They were detained for days, weeks or months before they were bussed up to the Eritrean border or forced to flee through Djibouti. The EECC determined that loss of nationality and expulsion of individuals identified through Ethiopia's security review procedures were lawful "even if harsh for the individuals affected." However, deprivation of

nationality and expulsion for any other reasons were deemed illegal.

Eritrea also deported around 70,000 Ethiopians during the conflict, although the nationality status of persons of Ethiopian origin in Eritrea was never in dispute. Most of them were resident aliens working in urban areas. They too suffered discrimination, violence and harsh conditions during deportation.<sup>1</sup>

Eight years after the war's end, relations still remain very tense. The Eritrea-Ethiopia Boundary Commission's 2002 decision awarding disputed territory to Eritrea has not been enforced and the UN peacekeeping mission departed from the region months ago. Both governments appear to be fighting by proxy in Somalia, and their leaders' entrenched personal animosity afflicts thousands of lives in the region. Eritrean society remains highly militarised and both sides have troops stationed along the border. In this insecure environment, nationality rights – among others – remain vulnerable.

Today, the International Committee of the Red Cross estimates that 10,000 to 15,000 Ethiopian nationals still reside in Eritrea, most of whom have not been given permanent status or citizenship in Eritrea.<sup>2</sup>

On the fate of people of Eritrean origin in Ethiopia, reports are mixed. Between 2000 and 2004, individuals of Eritrean origin or from mixed families were allegedly arrested, detained and sometimes beaten or raped by Ethiopian authorities on suspicion of collaborating with or spying for Eritrea.<sup>3</sup> To its credit, the Ethiopian government quietly introduced a new nationality proclamation in 2003, which apparently enabled many Eritreans living in Ethiopia to re-acquire Ethiopian citizenship. With a national ID card, persons of Eritrean origin are presumably no longer restricted from work, travel, education and other social services. However, many individuals still conceal their Eritrean background for fear of discrimination and harassment.

Families of mixed heritage continue to suffer from prolonged separation as the war ended all travel and

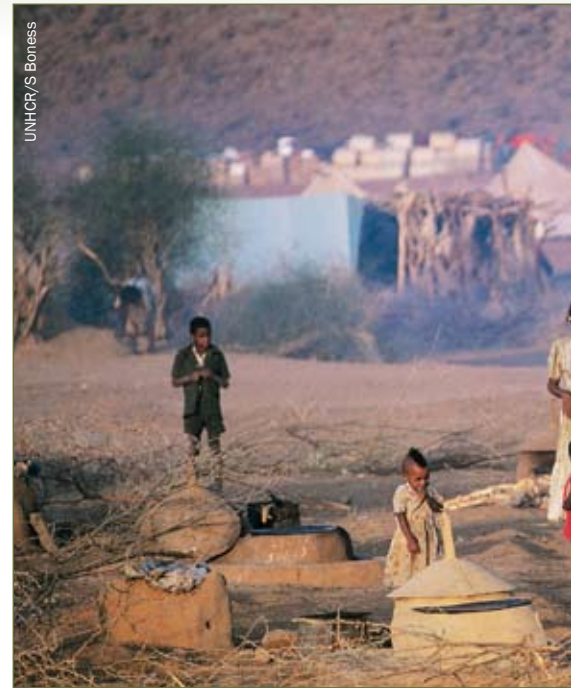
communication between the two countries. In 2008 on a research trip for Refugees International, a colleague and I met one woman in Addis Ababa who recently visited her father in a third country, having not seen him in the ten years since his deportation. An elderly Ethiopian widow cannot visit the grave of her husband in Asmara. We also met Ethiopians who had lost touch with Eritrean friends and loved ones after the deportations. A 2006 study of Ethiopian-Eritrean refugee families in Cairo found that “people who are of mixed parentage have often found it impossible to gain recognition of either nationality on account of their parentage or administrative obstacles,” concluding that such persons “are at least *de facto* if not *de jure* stateless.”<sup>4</sup>

### Nationality rights

Beyond general efforts to strengthen the rule of law, fortifying the right to nationality and avoidance of statelessness within the context of state succession are essential. Violations of the right to nationality were (and continue to be) at the root of other human rights issues in the Horn of Africa. Other parts of Africa and the world are vulnerable to similar problems. Lack of clarity on nationality status following Eritrea's creation, along with weak norms against statelessness, enabled Ethiopia to deprive thousands of persons of Eritrean origin and mixed families of numerous human rights. Weak norms have also apparently emboldened Eritrea to obstruct citizenship for Eritrean-Ethiopian families and certain deportees now living in Eritrea are denied access to employment and social services and are vulnerable to governmental and social harassment and abuse.

### Constructing a framework

Although neither Ethiopia nor Eritrea is party to the two Statelessness Conventions, key principles on statelessness and state succession can be drawn from several sources and recently statelessness in the context of state succession has gained further prominence. The breakup of the former Soviet Union and Yugoslavia and the split of Czechoslovakia have highlighted the need for a clear framework. Certain international instruments provide guidance on how to handle nationality issues in state succession.



In 2001, the UN General Assembly adopted the International Law Commission's (ILC) Articles on the Nationality of Natural Persons in Relation to the Succession of States. The Preamble “recognize[s] that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals.” States concerned are to “take all appropriate measures to prevent persons who, on the date of succession of States, had the nationality of the predecessor State from becoming stateless ...” States should enact nationality legislation and “should take all appropriate measures to ensure that persons concerned will be apprised ... of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.” The Articles emphasise respect for the wishes of the persons concerned and for family unity. They prohibit discrimination and arbitrariness in denying rights to retain, acquire or choose a nationality. When a state separates from another, a predecessor state cannot withdraw its nationality from persons who qualify to acquire the nationality of the successor state if such persons have habitually resided in or “have an appropriate legal connection with” the predecessor state.<sup>5</sup>



People of Eritrean origin deported from Ethiopia, in Camp Shelab in Eritrea. 2001

The 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession is rooted in the notion that “the avoidance of statelessness is one of the main concerns of the international community in the field of nationality.” The Convention obliges the successor state to grant nationality to persons who would become stateless as a result of the succession if they habitually resided or had “an appropriate connection with the successor state.” The predecessor state also “shall not withdraw its nationality from its nationals who have not acquired the nationality of a successor state and who would otherwise become stateless.” Like the ILC Articles, the European treaty underscores respect for the wishes of those affected and stresses that states must take all steps necessary to “ensure that persons concerned have sufficient information about rules and procedures [regarding] the acquisition of their nationality.”<sup>6</sup>

In the case of Ethiopia and Eritrea, the judgments of the EECC are binding regarding international law violations in connection with the border war. Significantly they do not derogate from the fundamental obligation to prevent statelessness and for all decision-making processes to be reasonable and to avoid arbitrariness. Even in cases where loss of nationality was considered

reasonable under the circumstances, those individuals who lost Ethiopian nationality must still be assured Eritrean citizenship.

While the African Charter on Human and People’s Rights does not explicitly address avoidance of statelessness, it does prohibit mass expulsion of non-nationals on discriminatory grounds and identifies the state’s duty to protect and

assist the family, as “the natural unit and basis of society.”<sup>7</sup>

Guided by these principles, we can imagine a different scenario for nationality rights in the course of Eritrea’s secession. Resolution of citizenship issues should have been a top priority when both countries established provisional governments in 1991. Before the referendum, both countries should have clarified and informed all who might qualify to vote about the consequences voter registration could have on their citizenship. Once conflict broke out, Ethiopia should have confined loss of nationality and expulsion only to those individuals who had undergone a transparent security review process. People, and their families, should have received fair notice of their expulsion orders. Spouses and children of people being deported should have had the option to stay in Ethiopia or accompany their loved one to Eritrea and, along with other persons of Eritrean origin, should not have lost Ethiopian citizenship without having acquired Eritrean citizenship. Eritrean nationality laws should have facilitated speedy acquisition of citizenship in such cases.

To strengthen nationality rights and avoidance of statelessness in state succession, concrete steps should be taken. Ethiopia and Eritrea should:

- protect individuals and ethnically mixed families from statelessness, by internalising standards set forth in the UN Statelessness Conventions and by becoming party to them<sup>8</sup>
- promote full integration of Ethiopians of Eritrean origin in their respective countries
- reunite families by re-establishing interstate travel and communications
- devise plans to compensate victims of the 1998-2000 conflict, consistent with the EECC decisions.

The international community should:

- collectively articulate clear standards for avoiding statelessness in state succession, such as by creating an Optional Protocol to the 1961 Convention on the Reduction of Statelessness using as a basis the ILC Articles and the Council of Europe Convention
- support UNHCR efforts to advise countries on developing nationality laws which incorporate nationality rights principles in state succession
- promote overdue accession to UN Statelessness Conventions.

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1. See for example Eritrea-Ethiopia Claims Commission, Partial Award: Civilian Claims, Ethiopia’s Claim 5 (Dec. 17, 2004), pp. 30-31, [http://www.pca-cpa.org/upload/files/ET Partial Award Dec 04.pdf](http://www.pca-cpa.org/upload/files/ET%20Partial%20Award%20Dec%2004.pdf) (stating liability for violations of international law against Ethiopians in Eritrea).

2. Human Rights Watch, *The Horn of Africa War* (2003), p47.

3. Louise Thomas, ‘The Son of a Snake is a Snake: Refugees and Asylum-Seekers from Mixed Eritrean-Ethiopian Families in Cairo’, FMR Working Paper No 7 (2006), p31-32.

4. Thomas *ibid*, p22.

5. <http://www.unhcr.org/refworld/type,INTINSTRUMENT,,4512b6dd4,0.html>

6. <http://conventions.coe.int/Treaty/EN/Treaties/Html/200.htm>

7. <http://www1.umn.edu/humanrts/instree/z1afchar.htm>

8. These recommendations are drawn in part from Refugees International, ‘Ethiopia-Eritrea: Stalemate Takes Toll on Eritreans and Ethiopians of Eritrean Origin’, 30 May 2008, available at <http://www.refugeesinternational.org/content/article/detail/10668/>.