

Restoration of Nationality after Arbitrary Denationalization

*Statement Submitted by the Open Society Justice Initiative for
Consideration by the United Nations Human Rights Council at
its Ninth Session, on the occasion of its Universal Periodic
Review of the Islamic Republic of Mauritania
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I. INTRODUCTION

1. The 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 worldwide. 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. In 1989, the government of Mauritania forcibly expelled tens of thousands of black Mauritians from their country into neighboring Senegal and Mali, confiscating or destroying identity documents in order to prevent the possibility of return and rendering those expelled effectively stateless. In 2000, the African Commission on Human and Peoples' Rights declared these acts to be in violation of international law. Since January 2008, the Mauritanian government and the United Nations High Commissioner for Refugees (UNHCR) have been repatriating groups of those expelled and working to restore their Mauritanian citizenship.

II. THE ISLAMIC REPUBLIC OF MAURITANIA'S INTERNATIONAL AND NATIONAL OBLIGATIONS WITH RESPECT TO THE RIGHT TO NATIONALITY

A. Scope of international obligations

3. The Islamic Republic of Mauritania 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, the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women (with a reservation for compatibility with shari'a law), the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights. It is not a party to the Convention on the Reduction of Statelessness (1961) or the Convention Relating to the Status of Stateless Persons (1954). These are key international instruments that guarantee the protection of stateless people and Mauritania should take steps to ratify both treaties.
4. Mauritania's obligations under international law must be understood in terms of General Recommendation No. 30 of the Committee on the Elimination of All Forms of Racial Discrimination (CERD) which recommends 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."

B. Constitutional and legislative framework

5. The Mauritanian constitution, adopted in 1961, does not define who is a citizen. This is done by the citizenship law, (Loi N° 1961-112, Loi portant code de la nationalité mauritanienne) adopted in the same year. Article 8 of the nationality law provides that anyone born to a Mauritanian father is Mauritanian as a matter of right, from birth ("citoyen d'origine"). Article 9 (1) provides that anyone born on Mauritanian territory to a father or mother who was also born there is a citizen of origin (as of right, from birth).

III. MAURITANIA SHOULD MAKE ITS CITIZENSHIP LAW GENDER NEUTRAL AND EXTEND AND COMPLETE EFFORTS TO RESTORE CITIZENSHIP TO INDIVIDUALS WHO WERE PREVIOUSLY DE-NATIONALIZED

A. Mauritania's nationality law discriminates against women and should be amended to be gender neutral

6. Mauritania's citizenship law, adopted in 1961 and still in force, enshrines gender discrimination. Although it is possible for Mauritanian women to pass nationality to their children and husbands, they are at a disadvantage in doing so. Whereas all children of Mauritanian men become citizens (regardless of where they are born, the nationality of their mothers, or any declarations they may make), Mauritanian women can pass their nationality to their children only under specific circumstances: if the fathers of the children are stateless or unknown, or if the children (in addition to having a Mauritania mother) are born in the country.
7. Similarly, while Mauritanian women can pass citizenship to their husbands, the procedure is different than for women married to Mauritanian men—the ordinary naturalization procedure with the residence period waived, as opposed to being considered automatic.
8. Although the disadvantages of Mauritanian women in conveying citizenship can be overcome, there is no justification for the entrenching of these distinctions on the basis of gender.

B. The restoration of nationality cards to individuals who were previously expelled and denationalized is commendable, but must be made more efficient and extended to include delivery of certificates of Mauritanian nationality to all returnees.

9. The current repatriation exercise, which began in January 2008, includes re-issuing of Mauritania identification cards to all returnees. A tri-partite agreement between Senegal, Mauritania and the UN High Commissioner for Refugees governs these repatriations.
10. Under the terms of the agreement, Senegalese birth certificates are being accepted as proof of Mauritanian origin in lieu of Mauritanian ones for individuals born in Senegal to expelled parents; these children of Mauritanian expellees, as well as expellees' spouses, are being recognized as Mauritanian citizens. However, there have been delays of over a year in the re-issuance of documents to some eligible individuals. Also, some individuals, particularly women, who returned to Mauritania prior to the entry into force of the tri-partite agreement, are not eligible to participate in the process of restoration of identity cards. Without an identity card, it can be difficult or impossible to travel between villages and towns, since identity checks on the national highways are frequent.
11. Furthermore, the present focus on issuance of national identity cards does not go far enough because such cards are not sufficient to exercise all the rights of citizenship. For example, to be admitted to study in university in Mauritania, students must present a certificate of nationality (*certificat de nationalité*). In the one known case in which a returnee required a certificate of nationality for this purpose, rather than issuing one, the authorities waived the requirement. This raises the concern that individuals may not be able to readily obtain certificates of nationality when they are needed.

C. The repatriation and restoration of nationality process must be extended to individuals who were expelled or fled to Mali

12. The current repatriation and restoration of citizenship exercise covers only Mauritians who have been living in Senegal. However, in 1989, many black Mauritians ended up in Mali as a result of the expulsions. Most of these individuals are members of pastoralist communities who were accustomed to moving back and forth across the Mauritania-Mali border. Some of them were in Mali at the time of the expulsions, and remained there, fearful of returning. Others fled Mauritania when they learned of the expulsions that were taken place to Senegal. Still others were expelled directly to Mali or moved from Senegal to Mali after being expelled. Most of these individuals have no proof of their Mauritanian citizenship, either because they never possessed this documentation or because they lost it at the time of the expulsions.
13. An additional tri-partite agreement is reported to be planned between the governments of Mali and Mauritania and the UNCHR, but has not yet been signed or made public. If action is not taken, an estimated 10,000 Mauritians will remain stranded in Mali without proof of their citizenship. The Mauritians exiled in Mali deserve the same treatment as those in Senegal, and the Mauritanian government should thus prioritize signing and implementing an agreement for their return and restoration of their nationality.

IV. RECOMMENDATIONS TO THE HUMAN RIGHTS COUNCIL

14. The Justice Initiative urges the UPR Working Group of the Human Rights Council to address the nationality policies and practices described in this statement when it conducts its review of Mauritania's human rights situation at its upcoming ninth session. In particular, we urge the Working Group to ask the Mauritanian state representatives the following questions:
 - Does Mauritania acknowledge that its nationality legislation is discriminatory on the basis of gender and thus in violation of its international obligations? What does Mauritania intend to do to address this problem?
 - What plans are in place to make the restoration of national identity cards more efficient?
 - What plans are there to issue certificates of nationality to returnees who require them?
 - When will an agreement for the return and restoration of nationality to Mauritians in Mali be signed?
12. Further, we urge the Working Group to make clear that Mauritania's current nationality practices must be improved, and recommend to Mauritania that it:
 - Amend the nationality law to make it gender-neutral and implement nondiscriminatory citizenship policies and practices;
 - Speed the process of issuing Mauritanian identity documents to all individuals, their spouses and descendants of individuals who were expelled in the events of 1989;
 - Ensure that expellees who returned prior to the current repatriation exercise are also able to obtain identity cards;
 - Ensure that expellees, their spouses and descendants receive not only national identity cards, but also certificates of nationality when these are required;
 - Extend the repatriation and restoration of nationality exercise to individuals who were expelled or fled to Mali, as well as those who were expelled or fled to Senegal