Southern Africa

October 2020

Democratic Republic of Congo. An internally displaced woman holds her 6-month old baby 's new birth

certificate in Kabembe, Katanga Province.   © UNHCR/Brian Sokol

1- Southern Africa Context

Statistics and population at risk

States in Southern Africa do not have mechanisms in place to collect data/statistics; therefore, the scale of the problem is not yet defined in the region. Nonetheless, according to the World Bank's estimation, over 137 million people

in the region lack identity and nationality documents; a telling indicator of the possible prevalence of statelessness[1].

The groups at risk of statelessness fall into five main groups: orphans, abandoned infants, and other vulnerable children, including those trafficked for various purposes; people of mixed parentage; border populations, including nomadic and pastoralist ethnic groups who regularly cross borders, as well as those affected by border disputes or transfers of territory; historical and contemporary migrants,and more especially their descendants; and refugees and former refugees, returnees with no real link to country of origin, as well as internally displaced persons within their country's borders,

Causes of statelessness

The reasons why a significant number of people are at risk of statelessness in the region date back to the colonial history of Africa, the arbitrary delineation of borders which divided many ethnic groups between two or more countries, and the forced movement of populations; as well as the challenges created by more recent conflict and forced displacement, in part a legacy of this colonial past. The transitional provisions applied at independence (the rules on state succession) often did not enable those with a strong connection to the country and without access to another nationality to acquire the nationality of the country of residence, (as a result) they – and their descendants – are stateless or at high risk of statlessness today. Statelessness is also created by gaps in the law for the protection of vulnerable children, including those of unknown or undocumented parents, and by discrimination in law or practice based on sex or ethnicity.

In practice, civil registration and identification systems are key to recognition of nationality, but they remain weak in many states, meaning that nationality can be difficult to prove for a person who is not accepted by officials as "obviously" a citizen. There is also inadequate independent oversight of executive discretion in determination of eligibility for identity documents.

The impact of statelessness

Statelessness has a strong negative impact on the ability of individuals to enjoy respect for their human rights, and to participate fully in the economic, social and political life of a country. The most serious risk is arbitrary detention and expulsion, which can impact people who may in fact be nationals or entitled to

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[1] *http://id4d.worldbank.org/global-dataset*

acquire nationality. Where there is a requirement to hold a national identity card, whether newly instituted or over many decades, lack of an identity card can lead to complete exclusion from public and private benefits, including not only the possibility of obtaining a passport for international travel, or the right to vote or stand for public office, but also a job in the formal sector; the ability to complete school leaving exams; access to health care and financial services, or any number of other entitlements.

J.S. migrated from Zimbabwe to South Africa with his mother when he was around 10 years old. Due to not having a birth certificate, J.S. was unable to enrol in school in South Africa. As a teenager, his mother abandoned him. J.S. survived through the kindness of friends and eventually learned how to weld. He never knew his father.

Around 2008, J.S. returned to Zimbabwe to try to obtain documentation. However, no record of his birth or identity could be traced. He was further told by government officials that due to his mother having been Malawian, his father being unknown, combined with lack of any relatives and his long absence from Zimbabwe, J.S. would not qualify for Zimbabwean citizenship.

Home Affairs in South Africa also turned him away and instructed him to get help from Zimbabwean authorities. J.S. does not qualify for citizenship in Malawi either, given that J.S. has no documentation to show that his mother was Malawian and he is over the legal age limit to apply.

J.S. remains undocumented in South Africa, although he has lived here for nearly twenty years. He is married and has two children, but he cannot register his marriage or his children's births due to his lack of documentation.

"Citizenship means having rights. I am not safe because I don't have papers ... I know that if I talk too much I will have problems because I don't have papers, so even when things happen to me which I know are not right ... I'm quiet."

Case study from: "Promoting Citizenship and Preventing Statelessness in South Africa: A Practitioner's Guide", Lawyers for Human Rights

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Madagascar. A Karana family still awaiting nationality. © UNHCR/Roger Arnold

UNHCR Activities in Southern Africa

What UNHCR does

UNHCR's action is guided by the Global Action Plan of the #Ibelong campaign, which aims to end statelessness by 2024

MAPPING STATELESSNESS.
No State in Southern Africa has officially reported on the numbers of stateless persons or persons at risk of statelessness. Data collection is key to influence and inform States' policy on statelessness. UNHCR's goal is to assist all States to put in place mechanisms to collect reliable estimates.

REFORMING NATIONALITY LAWS
None of the nationality legislation of countries in the region fully complies with international standards against statelessness. Most nationality laws lack proper safeguards against statelessness for children born (if otherwise stateless) or found

on the territory, some include discrimination on gender and ethnicity grounds, and several provide for loss or deprivation of nationality on unfair and excessive grounds. The UN has identified early on that gaps in nationality law constitute the main source of statelessness, as such closing these gaps will significantly contribute to eradicating this scourge.

STRENGTHENING BIRTH REGISTRATION

Birth registration in Southern Africa is on average less than 50 %. Some countries have worryingly low birth registration rates, with an average of 10% in Zambia and 30% in Angola. UNHCR's goal, in collaboration with other stakeholders including civil society and UNICEF, is to advocate for legal and structural reforms, assist in raising awareness of the population and support regularization of undocumented individuals through late birth registration procedures.

NATIONAL ACTION PLANS TO END STATELESSNESS

UNHCR advocates for and advises States in the region on identifying the main policy priorities to end statelessness and, on this basis, developing and implementing a national action plan in collaboration with multi-stakeholder teams. To date most countries (13) have not yet adopted a national action plan towards the eradication of statelessness

STATELESSNESS STATUS DETERMINATION

UNHCR advocates for and advises States in the region on setting up a legal regime of stateless migrants, including through the establishment of statelessness status determination procedures. To-date no state has developed procedures to identify, recognize and protect stateless migrants.

How does UNHCR work

ENGAGING THE SOUTHERN AFRICAN DEVELOPMENT COMMISSION (SADC).

SADC is the main regional economic community in Southern Africa. UNHCR's objective is to nest a regional platform within SADC to address issues of forced

displacement and statelessness through strengthened interstate cooperation and harmonised regional approach.

SADC Member States

MUSTERING STATES' INTEREST AND ENGAGEMENT

In the absence of dedicated state structures, it is crucial for UNHCR and other partners that government interlocutors on statelessness are clearly identified, and empowered, and regularly engaged with UNHCR and other stakeholders on issues pertaining to statelessness policies. UNHCR has advocated for the nomination of government focal points on statelessness.
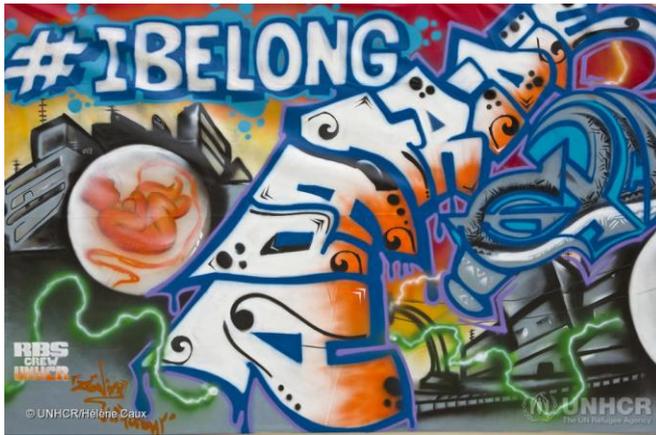
ENGAGING OTHER STAKEHOLDERS

A successful response to statelessness must be built on a multi-stakeholder approach. To that end UNHCR has mobilised a large spectrum of actors:

- States are connected at various levels with regional organizations and are influenced by policy development within these organizations. UNHCR is therefore engaging these regional organisations, such as, the International Conference for the Great Lakes (ICGLR), the Indian Ocean Commission (IOC), the Pan African Parliaments (PAP), etc.
- UNHCR partners with other UN organisations such as UNFPA (Data collection), UNICEF (birth registration) and OHCHR (access to right to nationality)
- UNHCR also partners with civil society organisations, universities, National Human Rights Institutions and media. In all events organised, UNHCR consistently ensures that participants adopt a declaration and/or issue a statement calling for SADC's action amongst other requests.

RAISING AWARENESS ON STATELESSNESS THROUGH MEDIA.

UNHCR trains journalists, and encourages them to cover statelessness in newspaper articles, blogs, radio and TV programmes. UNHCR also engages high-level influencers including artists, religious leaders, and high profile journalists, to voice the importance of statelessness. This media attention plays a part in educating the public about statelessness, mustering interests and swaying States' as well as SADC's policy.

Graffiti Artists celebrate the #Ibelong Campaign © UNHCR/Helene Caux

Achievements

SADC engagement
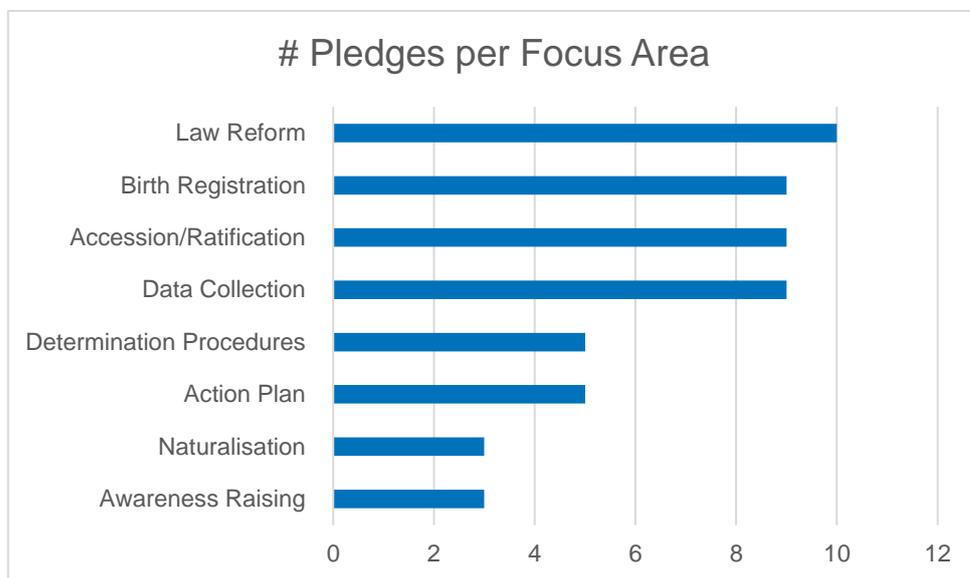
In 2016, UNHCR supported the SADC Parliamentary forum by facilitating a session on statelessness, that resulted in a resolution on the eradication of statelessness in SADC. In the following year, UNHCR engaged States to address statelessness, on the occasion of their Migration Dialogue for Southern Africa (MISDA) which resulted in recommendations followed by a draft regional action plan to end statelessness in 2019. In 2020, SADC agreed to co-organise with UNHCR a ministerial conference, that will, follow up on the implementation of pledges and adopt a regional action plan to end statelessness.

States engagement

As indicated above, each State has officially nominated a government focal point who has been trained on statelessness and nationality and with whom UNHCR regularly liaises on related issues at country and regional levels.

To-date, under the leadership of the government focal points, two national action plans to end statelessness have been adopted, respectively by Eswatini and the Republic of Congo. In addition, the Democratic Republic of Congo, Madagascar, Malawi, Namibia and Zambia have developed national action plans that are awaiting official endorsement.

The High-Level Segment on Statelessness (HLS) and the Global Refugee Forum (GRF) galvanized an unprecedented commitment to take action to end statelessness by 2024, demonstrated by the extraordinary number of statelessness-related pledges made by states in Southern Africa. With thirteen states providing 53 pledges, Southern Africa is the second region in the world in terms of number of pledges.

Pledges per Focus Area

Focus Area	Pledges
Law Reform	10
Birth Registration	9
Accession/Ratification	9
Data Collection	9
Determination Procedures	5
Action Plan	5
Naturalisation	3
Awareness Raising	3

Improvement of legal framework

ACCESSION

To date, out of 16 States, 8 are parties to the 1954 Convention on the Status of Stateless Persons, namely Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Zambia, and Zimbabwe. 4 States are parties to the 1961 Convention on the Reduction of Statelessness, namely Angola, Eswatini, Lesotho and Mozambique. 11 States have pledged to accede to the conventions, including 9 during the High-Level Segment on Statelessness. Implementation of those pledges is well underway in the Republic of Congo, Zambia and Namibia.

LAW REFORM

In 2017 Madagascar reformed its nationality law removing a gender discriminatory provision, barring women from conferring their nationality to their children. In 2019 Eswatini, whose constitution includes a similar provision, also embarked on a legislative reform process. As a first step, the government, following up on a pledge to remove

gender discrimination, conducted consultations with traditional Chiefs throughout the country.

A reform of the nationality law is being examined by the parliament of Madagascar. The reform intends to remove remaining discriminatory provisions, including race-based discrimination, and provide for adequate legal safeguards against statelessness at birth.

Lesotho, Malawi, Namibia and Zimbabwe have committed to reform their nationality laws to safeguard children, born or found abandoned on their territories, against statelessness. To date Lesotho is very advanced in its response, with a bill pending adoption by the parliament.

STRATEGIC LITIGATION

Strategic litigation is essentially used in South Africa. Its nationality law is by and large compliant with international standards, but its implementation falls short of the mark.
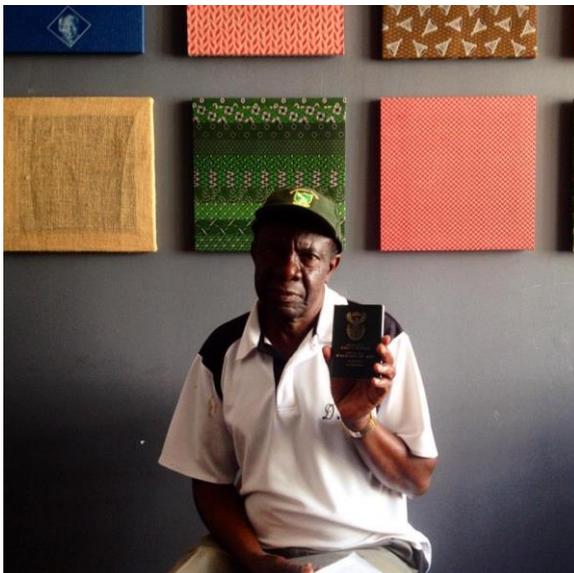
George finally acquired a nationality thanks to the legal assistance of Lawyer of Human Rights in South Africa © LHR

Through its implementing partners, UNHCR has litigated on several cases in the last years. In 2020, a High Court confirmed the equal right of unmarried fathers to register the births of their children born out of wedlock, which according to the disputed provision in the relevant legislation, such children should be registered by their mother, or with her consent. This successful outcome enables single fathers to have the same right as single mothers when registering the birth of a child born out of wedlock (Case: Naki & others v the Minister of Home Affairs & others)

Still in 2020, the Constitutional Court of South Africa heard the case of 5 persons at risk of statelessness as a result of a law which retrospectively deprived persons born outside of South Africa to South African parents, before 2013, of citizenship. (Case: Chisuse & Others v the Director General, Department of Home Affairs).

Birth Registration

As highlighted above, birth registration rate at regional level is below 50%. Without a birth certificate, individuals cannot exercise a wide range of rights. In particular, they cannot apply for an identity document or be confirmed a citizen. This creates a risk of statelessness that is heightened depending on conditions, such as, migration, forced displacement and lack of registration of parents themselves.

School girl finally obtains a birth certificate. @unhcr

In the Republic of Congo, the government has conducted a census for the purpose of identifying anyone without birth registration on the territory. The government further committed to registering and issuing birth certificates to those found unregistered, and to this end has adopted a special legislation to ease evidence requirements.

Collecting Statelessness Data

It is crucial to understand the sources of statelessness in order to design policy for the purpose of eradicating statelessness. Similarly, it is important to measure statelessness and profile populations at risk to influence policy. UNHCR has finalized a study highlighting the main risks of statelessness in the SADC region and profiling groups affected by statelessness. In the meantime, several qualitative studies have been initiated in 2019 and 2020 in Zambia, Angola, Namibia, Madagascar and Eswatini. The main objective of these studies is to pinpoint sources of statelessness and estimate size of the population affected by statelessness.

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LINKS
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