

**STATELESSNESS AND ISSUES RELATING TO
NATIONALITY IN ZAMBIA
FINAL REPORT
(21 NOVEMBER 2016)**

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Abbreviations and Acronyms

AAHZ	Action Africa Help Zambia
COR	Office of the Commissioner for Refugees
DNRPC	Department of National Registration Passports and Citizenship Office
HRC	Human Rights Commission
ICESCR	International Covenant on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
IOM	International Organisation for Migration
IPU	Inter Parliamentary Union
MCDMCH	Ministry of Community Development Mother and Child Health
NRC	National Registration Card
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIP	United National Independence Party
UNFPA	United Nations Population Fund

Executive Summary

This study was commissioned by the Zambian government with support from the United Nations High Commissioner for Refugees (UNHCR) following government's pledge to become party to the 1961 Convention on the Reduction of Statelessness at the Ministerial meeting held in Geneva in December 2011, in commemoration of the 60th anniversary of the 1951 UN Refugee Convention and the 50th anniversary of the 1961 Convention. This is in line with government's recognition of the need to strengthen the country's legal framework on citizenship. Results of the study were meant to inform state action to become party to the 1961 Convention and to develop a strategy to deal with statelessness in the country either for populations already affected or at risk of becoming stateless.

The objectives of the study were to assess the root causes of statelessness or the risk of becoming stateless in Zambia; to review the current national legal, policy and administrative framework on nationality in Zambia and its conformity with the 1961 Convention on the Reduction of Statelessness and other international standards relevant to the prevention and reduction of statelessness; to recommend necessary changes to Zambia's legislation on nationality in order to conform it to the 1961 Convention and other relevant international standards; and to recommend practical steps to implement Zambia's pledge to accede to the 1961 Convention.

The study was exploratory in nature given that not much was known about statelessness issues in Zambia. The sources of information included officials in relevant organisations in government and outside government concerned with nationality issues, and people at risk of becoming stateless both among migrant groups and non-migrant groups. A review of current laws on citizenship in Zambia was also done.

From the findings, there is no organisation which has the primary responsibility of dealing with the issue of statelessness apart from UNHCR due to its formal mandate. However, there are other organisations that collaborate with UNHCR in trying to address the issue of statelessness in Zambia including IOM, UN Women, UNICEF, UNFPA and OHCHR. Generally, findings show that cases of statelessness in Zambia are and that there are no statistics available currently on statelessness in Zambia. However, three suspected cases of statelessness were identified. In all the three cases, the main problem was lack of identity documents for the people concerned. In spite of the rare occurrence of statelessness, it was found that the risk of becoming stateless in Zambia is very high, both among migrant such as refugees and former refugees, and non-migrant populations. For migrant populations the risk arises due to lack of proper identity documents especially passports and residence permits. Lack of identity documents also extended to the children of refugees and former refugees. Worse still, rates of birth registration, and possession of birth certificates were found to be low among the children of refugees and former refugees.

Lack of knowledge of nationality laws was also found to be a problem likely to put foreign nationals resident in Zambia at risk of becoming stateless. This is mainly because of the misconception that being born in Zambia automatically guarantees someone Zambian citizenship. But without taking steps to safeguard their nationality or apply for Zambian citizenship, such people could find themselves stateless should their countries of origin not recognise them as nationals. For non-migrant populations in Zambia, among the major factors for the risk of statelessness is lack of national identity documents especially birth certificates and national registration cards.

The recommendations of the study are that there is need to establish procedures for the identification, protection of legal status and acquisition

of citizenship by stateless persons, and to ratify the 1961 Convention on the Reduction of Statelessness in the light of the international instruments to which Zambia is a state party (which are discussed in detail in the report).

1. BACKGROUND

Zambia is a party to the 1954 Convention Relating to the Status of Stateless persons but has not domesticated its provisions in national law. Zambia is not party to the 1961 Convention on the Reduction of Statelessness. There are no provisions for maintaining statistical information regarding the number of stateless and potentially stateless persons in the country. Zambia has sufficient nationality legislation¹ including within the Constitution² through which persons seeking nationality of Zambia can acquire it. In addition, the country does have legislation dealing with birth registration³ for all births on the Zambian territory. The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act, 2016⁴ provisions for the grant of citizenship to foundlings, which is consistent with Article 2 of the 1961 Convention on the Reduction of statelessness. The inclusion of a similar provision to that of the current Constitution on the conferral of citizenship to children born on board a ship or aircraft, which is consistent with Article 3 of the 1961 Convention, demonstrates Zambia's commitment to comply with international standards. However, other gaps in terms of prevention and reduction of statelessness still remain.

1

Citizenship Act No. 33 of 2016

2

See part 4 of the Constitution of Zambia, Chapter 1 Articles 33-44

3

The Births and Deaths Registration Act, Chapter 51 of the Laws of Zambia

4

Act No. 2 of 2016

The Government of Zambia and the United Nations High Commissioner for Refugees (UNHCR) are in agreement on the need to strengthen the country's legal framework on citizenship.⁵ In this regard, steps are being taken on many fronts to enact legislation that is line with international standards. At the Ministerial meeting held in Geneva in December 2011, in commemoration of the 60th anniversary of the 1951 Convention and the 50th anniversary of the 1961 Convention, the government pledged to take all necessary measures to become party to the 1961 Convention on the Reduction of Statelessness (UNHCR, 2014).

To implement the pledge, the government with the support of UNHCR commissioned a study on the issue of statelessness in the country. Results of the study were going to inform state action to become party to the 1961 Convention and to develop a strategy to deal with statelessness in the country either for populations already affected or at risk of becoming stateless.

2. RESEARCH OBJECTIVES

- 2.1. To assess the root causes of statelessness or the risk of becoming stateless in Zambia.
- 2.2. To review the current national legal, policy and administrative framework on nationality in Zambia (i.e. Constitution, citizenship laws, regulations, practices, procedures and guidelines), and its conformity with the 1961 Convention on the Reduction of Statelessness and other international standards relevant to the prevention and reduction of statelessness.

5

UNHCR 2012, Submission by the UNHCR for OHCHR Compilation Report Universal Periodic Review: Zambia

- 2.3. To recommend necessary changes to Zambia's legislation on nationality in order to conform it to the 1961 Convention and other relevant international standards.
- 2.4. Recommend practical steps to implement Zambia's pledge to accede to the 1961 Convention.

3. METHODOLOGY

3.1. Research Design

The study was exploratory and descriptive in nature because not much was known about the issue of statelessness in Zambia in terms of its causes or the factors that account for the risk of becoming stateless in Zambia.

3.2. Target Group

The sources of information included officials in relevant institutions concerned with nationality issues (and statelessness) in Lusaka including the Department of National Registration, Passport and Citizenship Office (DNRPC), Office of the Commissioner for Refugees (COR), Department of Social Welfare, Human Rights Commission (HRC), International Organisation for Migration (IOM), United Nations Children's Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR), and Action Africa Help Zambia (AAHZ) as key informants. Information was also gathered from people at risk of becoming stateless both among migrant groups and non-migrant groups. For migrant groups, the study focused on refugees and former refugees still living in Zambia but without proper identity documents (such as passports and residence permits), while for non-migrant groups, it focused on adult Zambian citizens without National Registration Cards (NRC). The refugees and former refugees who were interviewed were from Chawama, Lusaka at a transit centre run by AAHZ;

Ukwimi in Petauke (a former refugee settlement) and Mayukwayukwa refugee settlement in Kaoma.

3.3. Sample and Sampling procedure

Respondents comprised key officials from the Department of National Registration, Passport and Citizenship Office (DNRPC), Office of the Commissioner for Refugees (COR), Department of Social Welfare, Human Rights Commission (HRC), International Organisation for Migration (IOM), United Nations Children’s Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR), and Action Africa Help Zambia (AAHZ) and people at risk of becoming stateless among migrant and non-migrant populations. The officials comprised high level and middle level officers who regularly dealt with matters relating to nationality. The people at risk of statelessness were selected with the help of officials in the mentioned sites i.e. AAHZ officials in Lusaka, UNHCR in Kaoma, and the Immigration office and Department of Resettlement in Petauke.

3.4. Data Collection Techniques

Data were collected from both primary and secondary sources. To start with, a review of Zambia’s laws in relation to citizenship and statelessness was done with the aim of identifying gaps which could lead to people becoming stateless in Zambia, and assessing whether Zambia’s citizenship laws were in conformity with international standards. A review of existing literature on statelessness followed. In-depth interviews were then conducted with officials from the DNRPC, COR, Department of Social Welfare, HRC, IOM, UNICEF, UNHCR, and AAHZ. Thereafter, Focused Group Discussions were held with refugees and former refugees in Lusaka and Mayukwayukwa as well as with former refugees at Ukwimi. Focused Group Discussions were also held with adult Zambian citizens without National Registration Cards (NRC) in Nyawa, Kazungula.

3.5. Data Analysis

Data analysis was done manually in line with key variables/themes in the research objectives i.e. causes of statelessness or factors for the risk of statelessness in Zambia; current national legal, policy and administrative framework on nationality in Zambia; and necessary changes to Zambia's nationality laws (to conform to the 1961 Convention on the Reduction of Statelessness, and other relevant international standards).

4. LITERATURE REVIEW

According to Article 1 of the 1954 Convention relating to the Status of Stateless persons, “a stateless person is someone who is not considered a national by any state under the operation of its law”. From literature reviewed, the precise number of stateless persons around the world is unknown. This is because of the challenges involved in collecting comprehensive data on stateless persons. Among these challenges is how to identify stateless persons since they are often mixed with the general population (Manby, 2014). Other challenges are that states are often unwilling to provide accurate data; few have mechanisms for registering stateless persons; and there is no clear requirement to report on the numbers of stateless persons in many countries (UNHCR, 2014).

However, according to UNHCR’s Global Trends report on forced displacement in 2015, it is estimated that at least 10 million people around the world live without any nationality, and despite efforts by many states to prevent or reduce statelessness, new cases of statelessness continue to arise (UNHCR, 2015:46). There are conflicting views among authors regarding the amount of attention the issue of statelessness has been given in the recent past. According to the 2005 Handbook for Parliamentarians on Nationality and Statelessness, it is observed that there has been increased focus on statelessness as can be seen through the number of countries establishing statelessness determination procedures. Manby (2014) also observes a growing interest in statelessness in the last few years which offers the possibility of encouraging collective action to reduce statelessness. However, she still argues that the issue of statelessness has been largely ignored by scholars, practitioners and government officials since World War II, which is in stark contrast to attention given to refugees, asylum seekers, and immigrants. Similarly, the 2014 Handbook on Statelessness observes that the issue of statelessness does not seem to be

a top priority among the international community hence so far, statelessness has not been given the attention it deserves.

4.1. Root causes of statelessness

There are various causes of statelessness cited in literature. Among the major causes is deprivation of nationality by a person's national Government. It has been observed that this often happens through protracted marginalization of specific groups within society leading to denial or stripping of nationality of such people on racial, religious or ethnic grounds (Gyulai, 2014; Manly, 2014; UNHCR, 2005; UNHCR, 2014). This can happen through manipulation of political systems by national leaders as a way of strengthening their hold on power. Examples of deprivation of nationality include the denationalization of Jews in Germany before and during the Second World War (De Groot, 2014). Bronwen (2009) also makes a similar observation in post-colonial Africa where hundreds of thousands of people have been denied citizenship by their governments, sometimes resulting in conflicts between those persons and their respective Governments. In some instances, denial of citizenship has been used to prevent specific individuals from seeking political positions or to silence those who criticize government. "At one time it seemed as though half of the most important politicians in Africa were allegedly not citizens of the country where they lived and worked" (Bronwen, 2009:2). Examples include Kenneth Kaunda of Zambia and Alassane Quattara of Cote d'Ivoire.

Although deprivation of nationality is often done arbitrarily, it has been observed that sometimes it may be done on legitimate grounds. Under Article 8 of the 1961 Convention on the Reduction of Statelessness for example, loss of nationality by a naturalized person may occur on account of residence abroad for a period, not less than seven consecutive years,

specified by the law of the Contracting State concerned if the person fails to declare to the appropriate authority that person's intention to retain that persons' nationality.

Further, a national of a Contracting State, born outside its territory, who, if required by the law of that State to retain the state's nationality after the expiry of one year from that person attaining the age of maturity, conditional upon residence at that time in the territory of the State or registration with the appropriate authority, may lose their nationality for failure to comply with the stated requirements. Particularly under Article 8 (2) (b) of the 1961 Convention, a person may lose that person's nationality if the nationality was obtained by misrepresentation or fraud.

In a briefing paper for a UNHCR Regional Conference on Statelessness in Southern Africa held in 2011, Manby identifies two main intertwined causes of statelessness in southern Africa and the rest of the continent. These include failure to integrate migrants (whether forced or voluntary) and their descendants, and discrimination in law or in fact on the basis of gender, race or ethnicity. The latter applies to both migrants and non-migrants.

Statelessness also occurs due to administrative obstacles in acquiring nationality such as lack of birth registration. It is argued that birth is a critical moment to guarantee a person's right to a nationality. Otherwise, one risks being stateless for many years, or even a lifetime with serious consequences. In spite of this, new cases of childhood statelessness surface around the world every day due to lack of birth registration (De Groot, 2014; Manby, 2014)

With reference to the causes of statelessness among migratory groups, Nonnenmacher and Cholewinski (2014), argue that a close connection

exists between statelessness and migration because statelessness is often a consequence and cause of migration. Certain patterns of migration contribute to statelessness, while statelessness equally contributes to migration. Migrants may enter another country with an effective nationality but they may lose their nationality due to irregular stay abroad.

Also, one may lose their nationality through the operation of laws. This may arise as a result of change in one's status through marriage, termination of marriage, adoption, acquisition of another nationality, or through renunciation of nationality for the purpose of acquiring another nationality. (Edwards and Waas, 2014)

In addition, children may be put at risk of statelessness by their migrant parents especially in cases where women are not allowed to transfer their nationality to their children born abroad, as is the case under the Malaysian nationality law. In addition, a child born abroad may be left stateless if action is not taken by the parents in accordance with nationality laws, including those of the countries of origin. At greater risk of becoming stateless according to Nonnenmacher and Cholewinski are unaccompanied minors, children who are abandoned, orphaned or separated from their parents or legal guardians, without clear indication of parentage and nationality. However, it should be noted that a large number of jurisdictions that are states parties to the convention have in place legal provisions to ensure that children do not become stateless.

Other causes of statelessness from the reviewed literature, are dissolution of states e.g. what happened in Europe in the 1990s, and during the period of decolonization of many African states in the 1960s and 1970s (Ziemele, 2014), and redrawing of international borders. Statelessness is further being raised as an issue in the climate change discussions regarding the status of persons who may no longer have a physical territory to live on should it submerge under rising tides. (Manby, 2014)

5. FINDINGS AND DISCUSSION

This section contains key findings and discussions of the cause of statelessness or the risk of statelessness in Zambia and the existing legal framework on statelessness in Zambia.

5.1. Causes of Statelessness/factors for the Risk of becoming Stateless in Zambia

It was found that cases of statelessness are rare in Zambia and that there are virtually no statistics on stateless people. One of the challenges of identifying stateless people is that they are often hidden from the authorities and rarely reveal their status. Among migrant groups for instance, some asylum seekers may lie that they are of a certain nationality yet their actual nationality may be in doubt. There are also those who think that since they were born in Zambia, they should automatically be granted citizenship.

The rare occurrence of and the non-availability of statistics on statelessness in Zambia can be attributed to the fact that very few organisations, whether under government or outside government deal with the issue of statelessness as part of their formal mandate. Consequently, there is no systematic mechanism for collection of data on statelessness in Zambia. There are government departments that may be in a position to collect information on statelessness e.g. the department of Immigration, but they do not do so because it is not their mandate. In spite of having a mandate on statelessness, UNHCR also have no statistics on statelessness because they rely on government institutions for statistics. Part of this study is therefore meant to provide a definitive assessment of the statelessness situation in Zambia. Also, the lack of statistics on statelessness may be a result of lack of awareness among officials in relevant government organisations on the issue of statelessness.

5.2. Cases of Potential Statelessness

Four cases of potential statelessness were found. One of them is a case of a young girl in Mansa at the Department of Social Welfare shelter for victims of trafficking and Gender Based Violence. The girl who is about 8 years was spotted in Mansa in 2014 whilst travelling with a certain man from Mwense to an unknown destination. In Mansa, people got suspicious when they saw the man with the young girl. When they approached the man, he ran away leaving the child behind. She was taken to the police who later took her to the Department of Social Welfare shelter. When she was asked where she came from, the girl claimed that she was from Mwense. The police in Mwense were contacted by their Mansa counterparts, and some investigations were carried out to establish where the girl came from but to no avail. Announcements were made on radio for those who could have lost a child to come forth. Some people appeared claiming to be her relatives but when they were asked to produce documented evidence, none of them was able to and they never came back. To date, her origins remain unknown.

The girl was kept at the shelter for about a year, then it was decided that she should be admitted to an orphanage. She is currently at Fatima orphanage in Mansa. Her nationality status remains unknown. At the time of collecting data, there were plans to find a lasting solution regarding her nationality before she reaches the age of maturity.

The second case of suspected statelessness was reported by IOM, and it concerns a former refugee who claims to have come from South Africa during the time of the freedom struggle. He is in possession of an old refugee identity card. The Zambian authorities have not regularised his stay in the country by issuing him with relevant documentation, and the High Commission of South Africa after verification of the information he has provided to them regarding his South African citizenship, have denied

him South African national identity documents. He has been detained several times by the Zambian Immigration authorities and released after UNHCR's intervention.

According to the Senior Protection Officer at the UNHCR Country Office in Zambia, another case has been brought to the attention of UNHCR of a man who suffers mental disability and speech impairment. He was intercepted by Immigration authorities at Chirundu border point without proper documentation. For the moment, he is being treated in a community centre that supports people with mental disabilities. IOM has been dealing with the case for many years trying to establish contact with family members without success. The question about his nationality is a secondary issue for now and IOM have been advised to help him get a national registration card so that he is documented as a person resident in Zambia.

The fourth case which is said to have occurred towards the end of 2015, involves a minor of between the age 9 and 12 also discovered at one of the borders points in Zambia. He also claims to have come from South Africa with an uncle who was a truck driver. They were going somewhere past Zambia but within the region. The boy ran away from the uncle when he realised that they had travelled too far. The boy was referred to Immigration authorities in Zambia and later on to IOM. Officials in both organisations were not able to get information about which part of South Africa he comes from. He is not able to remember many details because he claims he left South Africa when he was still young. However, he remembers the names of his parents.

Considering that the study did not focus on the extent of statelessness in Zambia, and also that it was largely confined to Lusaka, it is highly likely that more cases could be discovered in a study with wider coverage e.g. a country-wide survey.

5.3. The Risk of Statelessness in Zambia

In spite of the isolated cases of potential statelessness cited above, it was found that the risk of becoming stateless in Zambia is very high, both among migrant and non-migrant populations. Various factors were found to contribute to this.

Migrant Populations

Among migrant populations, refugees and former refugees are at risk of becoming stateless due to lack of proper identity documents. A number of them do not want to go back to their countries of origin because of fear of persecution back home, and the strong ties they have established in Zambia. However, they do not have the required documents to enable them continue living in Zambia legally. There are different reasons that came out for the lack of identity documents. Some former refugees from Rwanda for instance, are scared of applying for passports (which is one of the requirements for them to become locally integrated) because they are suspicious as to why they have to apply for passports to the same government that persecuted them. They fear that this may expose them to possible harm at the hands of the Rwandese government.

“For me, getting a passport means my days here are numbered” (A former refugee in Ukwimi)

Former refugees therefore consider passports to be a barrier to their integration and freedom in Zambia. They believe that since they came as refugees, they do not require passports. So they would prefer that government gives them some other identity documents to enable them become integrated.

Lack of identity documents was also found to have an effect on the status of children of refugees and former refugees. Since their parents do not have proper documents, the children are in many instances also without proper documents. Some parents complained that even children born in Zambia

are not treated as Zambians. For example, they cannot access scholarships or other educational facilities even with good school results. Worse still, once children reach 20, they are expected to go and live in a refugee settlement.

“It is not fair, government has to give citizenship to our children who were born here. They do not even know our language, all they speak are Zambian languages. In case I die today, how are they going to be treated, as Rwandese or Zambians?” (A former refugee mother in Lusaka)

In addition to the above, it was found that refugee and former refugee children are at risk of becoming stateless because of low rates of birth registration and acquisition of birth certificates among refugees and former refugees in Zambia. Among the reasons cited for this are the restrictions on movement that refugees are subjected to especially in refugee camps and settlements. It therefore becomes difficult for them to leave the settlements and go to register at the registration office in the nearest town. The other reason is that birth registration is too centralised and the process too bureaucratic in Zambia that some people give up. Also, some of them do not see the importance of birth registration.

It must be noted that the nationality of the refugees and former refugees was known and therefore not under dispute. However, the problem is the lack of proper documents to prove their nationality and secure their continued stay in Zambia. Whether the refugees’ or former refugees’ failure to acquire the required documents (especially the passports) is out of fear, failure of administrative processes or ignorance, the end result is the same i.e. an insecure nationality status. Worse still, it also directly affects the children of refugees and former refugees because as long as the status of the parents is not regularised by getting the necessary documents, the children’s nationality also hangs in the balance.

It is crucial to emphasise the importance of administrative processes in facilitating access to the required identity documents. For example the refugees and former refugees interviewed in Mayukwayukwa had the required documents, while most of their counterparts in Ukwimi did not have. This maybe a result of administrative failure on the part of the authorities in the case of the latter especially considering that it is no longer a refugee settlement. There is a possibility that former refugees at Ukwimi do not receive as much attention from relevant authorities compared to those at Mayukwayukwa which is still an active settlement. Whatever the case, the lack of identity documents exposes former refugees at Ukwimi to the risk of becoming stateless.

Among migrant populations, it was also found that the risk of statelessness arises on account of lack of knowledge of nationality laws. This was evident in Ukwimi where former refugees seemed ignorant of the need to get passports in order for them to be legally integrated in Zambia. Lack of knowledge of nationality laws was also cited as being among the major factors that could put migrant workers at risk of becoming stateless. According to the Deputy Chief Passports Officer in Lusaka, most people think being born in Zambia automatically guarantees them Zambian citizenship, but the constitution requires that at least one of the parents must be Zambian. Therefore, foreigners resident in Zambia are at risk of becoming stateless should their countries of origin not recognise them as nationals and they happen not to have secured Zambian citizenship. The case of Malawians who have lived in Zambia for a long time was given as an example. This is because Malawi does not automatically recognise third generation children born outside as its citizens. So, if second generation Malawian parents resident in Zambia do not secure Malawian citizenship or Zambian citizenship for their children, those children (third generation) could find themselves in limbo.

In addition, statelessness among migrant populations may arise on account of changes to citizenship laws in countries where people of Zambian origin are resident. An example can be given of what happened in Zimbabwe when the Zimbabwean government abolished dual citizenship through the introduction of the Citizenship Amendment Act of 2001. Migrants of Zambian origin, like other migrants in Zimbabwe who had dual nationality were required to renounce their other nationality, if they were to qualify for Zimbabwean citizenship henceforth. This effectively left many migrant populations, those of Zambian origin included, in limbo. At that stage, they were neither considered Zimbabweans nor could they be considered Zambians until they had met certain legal requirements to restore their Zambian nationality (Manby, 2016).

Non-migrant Populations

For non-migrant populations in Zambia, among the major factors for the risk of statelessness is lack of national identity documents especially birth certificates and the NRC. This was said to be very common among those who live near borders and in remote rural areas. It was found that many children in Zambia are at risk of becoming stateless due to the low rates of birth registration and possession of birth certificates. It is for this reason that most people rely on affidavits when they are required to produce a birth certificate. Among the major factors for low rates of birth registration and possession of birth certificates among Zambians is distance to health facilities and registration centres. This was clearly established in Nyawa, Kazungula where many children have no birth records on account of low health facility deliveries in the area. Another reason is that some people were reluctant to get birth certificates because of the bureaucracy involved. Also, others were reluctant because they did not see the importance of acquiring one.

Lack of documentation also puts foundlings at risk of becoming stateless. Without any documentation or any way of tracing such children to their

mothers or relatives, these children are at risk of becoming stateless. Related to foundlings are children under institutional care and street children. Lack of birth registration can jeopardise their ability to secure their nationality through the acquisition of a national registration card and a passport. (MCDMCH, 2014)

Lack of national registration cards is a crucial factor contributing to the risk of non-migrant groups becoming stateless in Zambia. This was clearly established in Nyawa, Kazungula where many people have no NRCs. According to Chief Nyawa, of the 110,000 inhabitants in his area, about 7,000 do not have NRCs. The Chief argued that this could easily be verified from village registers. There were several reasons given for this situation, with the major one being the long distance to the registration office in Kazungula. With the high poverty levels in Nyawa, it is difficult for many people, (some of whom are orphans), to find money to travel to Kazungula to get NRCs. One needs a lot of money for transport and lodging. Worse still, one may be required to go there more than once before they can finally acquire an NRC. This situation is worsened by the fact that many people do not know that it is possible for them to get their NRCs from other places apart from Kazungula e.g. Choma or Kalomo which were closer. Because of the long distance to Kazungula, the Chief has in fact since 2006 been appealing to government to have Nyawa realigned to Zimba district which is closer to the chieftdom.

Another reason is that, like for other parts of the country, the provincial registration office in Choma does not allow issuance of NRCs to people who are above 25 years. It is contended that there are ample opportunities for people to get NRCs hence there is no reason for someone not to have an NRC by the age of 25. It therefore means that someone who fails to get an NRC (for various reasons), can no longer hope to get an NRC once they reach the age of 25. This in effect is to condemn such people to a life of disputed nationality.

Another reason for failure to get NRCs has to do with the way the mobile issuance of NRCs is often done in Nyawa. With reference to the most recent one (2015), it coincided with the school calendar hence some people could not get NRCs as they were away at school at the time of registration. People in Nyawa also complained that the mobile registration exercise was not extensive enough hence it left many parts of the chiefdom uncovered. It was reported that people in some remote areas of the chiefdom did even know that there had been a mobile national registration card exercise.

Then, there were those who lost their cards, and could not be issued with new ones because they could not remember their NRC numbers.

The attitude of some officials at the national registration office also discouraged people from getting NRCs. It was reported that applicants were sometimes denied NRCs on very flimsy grounds such as one's appearance. An example was cited of a young man who was about 16 years but was denied an NRC because in the official's view, he was too tall for that age. The challenge with such cases is that the next time there is mobile issuance of NRCs, the people concerned will have become much older and therefore more likely to be denied getting an NRC again.

The other reason was that issuance of NRCs has been politicized in Zambia. Being in an opposition stronghold, it was suspected that there were deliberate moves not to have many people in Nyawa registered so that the number of eligible voters could be reduced. As the chief put it,

"I am not a politician, I just want my people to get NRCs."

In addition, the reason why so many people had no NRCs in area was that some of them did not consider an NRC to be important, hence they made very little or no effort to get one. Furthermore, it was reported that there were a good number of foreigners without proper documentation in Nyawa. Like many other districts in southern province, Nyawa shared an

international boundary which was quite porous with Namibia, Zimbabwe and Botswana. So it was easy for people from outside the country to gain entry and claim Zambian citizenship.

The case of Nyawa with its attendant challenges is not peculiar to Nyawa, but it is a reflection of what is obtaining in many parts of Zambia, especially remote rural areas. This is a serious indictment on our national registration system.

5.4. The Legal Context of Statelessness in Zambia

The concept of statelessness under international law is legally a situation where a person “is not considered as a national by any State under the operation of its law.”⁶ This phenomenon is commonly associated with refugees and persons who may suffer displacement as a result of conflict. In Zambia, nationality is determined through the constitution and the relevant laws relating to citizenship and the status of refugees.

Zambia is a state party to various regional and international instruments relating to human rights, statelessness, displacement and related matters, which encompass the right to a nationality. These will be examined in detail and any reservations that were stated by the country will also be specified.

The instruments to which Zambia is a state party which address the right to a nationality are the 1954 Convention Relating to the Status of Stateless

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Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons.

Persons, the 1951 Convention relating to the Status of Refugees, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Convention on the Rights of Persons with Disabilities, all of which shall be examined in greater detail under the review of the legal framework.

Zambia like many other Jurisdictions, is a State Party to the 1954 Convention relating to the Status of Stateless Persons, which the Country ratified on 1st November 1974.⁷ The Convention generally provides a framework for the protection of people rendered stateless.

Although Zambia is a state party to the Convention relating to the Status of Stateless Persons, the country made a number of reservations at the time of ratification of the Convention. The first reservation Zambia made relates to Article 22 (1), which deals with Public education. The Article provides that-

The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

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Convention relating to the Status of Stateless Persons at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en#EndDec accessed on 6th January, 2016.

Zambia in making its reservation to Article 22 (1) stated that-

The Government of the Republic of Zambia considers paragraph 1 of article 22 to be a recommendation only, and not a binding obligation to accord to stateless persons national treatment with respect to elementary education;

At the time of the reservation, the education system of the country was still in its infancy and the development of the education system was determined to be a priority for citizens, first and foremost because of the low levels of education. According to John Mwanakatwe,⁸ at Independence, Zambia only had one hundred graduates out of a population of approximately 3.4 million people. Since Zambia is now a state party to the CRC, ICESCR and the African Charter on the Rights and Welfare of the Child, this reservation is no longer valid and Zambia is bound by Article 13 of the ICESCR, Article 28 of the CRC and Article 11 of the African Charter on the Rights and Welfare of the Child respectively. Although the reservation remains because it has not been formally withdrawn, it has effectively been overtaken by events.

The second reservation made by Zambia related to Article 26, dealing with freedom of movement. Article 26 provides that-

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to

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John Mwanakatwe, The Growth of Education in Zambia, Since Independence: Oxford University Press, 1974

any regulations applicable to aliens generally in the same circumstances.

The government of Zambia stated in its reservation that “the Government of the Republic of Zambia reserves the right under article 26 to designate a place or places of residence for stateless persons”.

A third reservation that Zambia made relates to the issuance of travel documents. Under Article 28, state parties have the following obligation:

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

In relation to this Article, the reservation made by Zambia was to the effect that-

The Government of the Republic of Zambia does not consider itself bound under article 28 to issue a travel document with a return clause in cases where a country of second asylum has accepted or indicated its willingness to accept a stateless person from Zambia;

A fifth reservation that Zambia made relates to Article 31. This Article provides that-

1. The Contracting States shall not expel a stateless person lawfully staying in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Zambia made a reservation in relation to Article 31. In making the reservation, Zambia stated that-

The Government of the Republic of Zambia shall not undertake under article 31 to grant treatment more favourable than that accorded to aliens generally with respect to expulsion.

Following the various reservations made by the country, the remainder of the provisions of the Convention were adopted by Zambia. Since Zambia

is a dualist nation, the country does not automatically implement international agreements but has to incorporate various provisions into domestic law. The country however still remains internationally bound as long as it remains a state party to the international agreements. Further, the country still remains bound by the obligation to domesticate the instruments to which it is a state party and report progress on the implementation of the applicable instruments to which it is a state party.

5.5. Zambia's International Obligations on the Right to Nationality and Domestic Legal Framework impacting on Statelessness

The legal framework of Zambia recognises the phenomenon of stateless persons and the need to ensure the reduction or elimination of statelessness among these persons, and they are found within the territorial jurisdiction of Zambia. To this end, Zambia is a state party to various international instruments that recognise the right to a nationality within various contexts and has been reviewing its legal framework with the objective of enhancing the protection of the rights of stateless persons, particularly within the context of the right to Nationality.

International Obligations on the Right to Nationality

Zambia as a member of the international community has ratified various international instruments on human rights which include instruments on the right to nationality. These instruments will be examined in turn in relation to their impact on the legal framework of Zambia.

Zambia is a state party to the Universal Declaration of Human Rights of 1948. In relation to the right to nationality and the obligation that Zambia has, Article 15 of the UDHR provides that-

- 1. Everyone has the right to a nationality.*

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Zambia is further a state party to the 1954 Convention relating to the Status of Stateless Persons although it is not yet a state party to the 1961 Convention on the Reduction of Statelessness. Article 32 of the 1954 Convention on Statelessness provides for naturalisation of stateless persons and states that-

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Another international instrument that Zambia has obligations under is the International Covenant on Civil and Political Rights. Article 24(3) of the Covenant deals specifically with the right to nationality of children and states that-

Every child has the right to acquire a nationality.

The provisions of the ICCPR in relation to the right to nationality are further complemented by the Convention on the Rights of the Child, in particular, Articles 7 and 8 provide for the right of children to nationality as follows:

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the

relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

The Convention on the Elimination of all Forms of Racial Discrimination also applies to Zambia as a state party. Article 5(d) (iii) of the Convention also deals with the right to nationality.

The Convention on the Elimination of All Forms of Discrimination against Women, to which Zambia is a state party, provides in Article 9 that-

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

The Convention makes it very clear that the right to nationality of women should be granted by state parties on the basis of non-discrimination. The elimination of non-discrimination against women based on sex was dealt with by the courts in Zambia in the case of Edith Zewelani Nawakwi

(Female) V The Attorney-General⁹ in which the High Court held in part that the mother of an illegitimate child had as much authority over the affairs of her child as the father.

The African Charter on the Rights and Welfare of the Child has specific provisions on the right to nationality for children. The Convention is binding on Zambia and provides under Article 6 that every child has the right to be named and registered at birth. This right necessarily entails that the child should be registered and have a nationality assigned to that child at birth.

Zambia, through the Ministry of Justice and the Ministry of Community Development is in the process of domesticating the Conventions related to children.

Zambia is a signatory to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Articles 6(g) and 6(h) of the protocol state that-

g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;

h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;

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(1990 - 1992) Z.R. 112 (H.C.)

Zambia has ratified the Convention on the Rights of Persons with Disabilities and has domesticated it through the Persons with Disabilities Act.¹⁰ Article 18 of the Convention on Persons with Disabilities states that-

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

In implementing the provisions of Article 18 of the Convention, the Citizenship Act¹¹ has repealed the provision that disqualified a person from

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Act No. 6 of 2012

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Act No. 33 of 2016

obtaining citizenship of Zambia on account of mental disability, that had existed under section 17 of the repealed Citizenship Act¹².

Legal Framework Affecting Stateless Persons in Zambia

The legal framework of Zambia in relation to the municipal laws of the country relating to stateless persons deals with the issue from the perspective of refugees caused statelessness and other statelessness that is not based on conflict. An analysis of the domestic legal framework of Zambia will be undertaken in the following discussion.

The Constitution, as amended in December, 2015 which took effect on 5th January, 2016 preserved the existing citizenship and statues of persons by providing that-

33. A person who was a citizen of Zambia, immediately before the commencement of this Constitution, shall continue to be a citizen of Zambia and shall retain the same citizenship category from the date the citizenship was acquired.

Article 34 of the amended constitution specifies the mechanisms through which citizenship may be attained by a person. An additional category of citizenship introduced by the amendment is citizenship by adoption. Article 34 provides that-

34. Citizenship may be acquired by birth, descent, registration or adoption in accordance with this Part.

Article 35 of the constitution of Zambia as amended now provides for a person to be considered a citizen by birth if at least one parent of the

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Chapter 124 of the laws of Zambia, repealed by Act No. 33 of 2016.

person is a citizen. The provision additionally provides for the nationality of foundlings as provided under Article 14 of the Hague Convention, which provides that-

*A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known. A foundling is, until the contrary is proved, presumed to have been born in the territory of the State in which it was found.*¹³

Article 35 specifically provides that-

35. (1) *A person born in Zambia is a citizen by birth if, at the date of that person's birth, at least one parent of that person is or was a citizen.*

(2) *A child found in Zambia who is, or appears to be, of not more than eight years of age and whose nationality and parents are not known, shall be presumed to be a citizen by birth.*

(3) *For the purposes of this Part, a person born aboard-*

(a) *a registered ship or aircraft of a country, shall be deemed to have been born in the country of registration of the ship or aircraft; or*

(b) *an unregistered ship or aircraft of a country, shall be deemed to have been born in that country.*

Article 35(3) additionally provides that persons born on registered or unregistered foreign ships or aircraft are deemed to be born in the country

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The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted in 1930.

of origin of the ship or aircraft or in the country of registration of the ship or aircraft, respectively in line with the principle of *jus soli*. As an unconditional basis for citizenship, it is the predominant rule in the Americas, but is rare elsewhere. A study in 2010 found that only 30 of the world's 194 countries grant citizenship at birth to the children of undocumented foreign residents, although definitive information was not available from 19 countries.¹⁴

Article 36 of the Constitution of Zambia also provides for citizenship by descent. Article 36 provides that-

36. A person born outside Zambia is a citizen by descent if, at the date of that person's birth, at least one parent of that person is or was a citizen by birth or descent.

The requirement for citizenship by descent under Article 36 reduces the risk of statelessness because it requires that only one parent should have been a citizen in order for the affected person to be recognised as a citizen.

The Constitution of Zambia also provides for the registration of citizenship under Article 37 and notably provides that a person who is, or was married to a citizen, for a period of at least five years, is entitled to apply to be registered as a citizen of Zambia, which is an innovation in the legal framework that did not previously exist.

Article 38 of the Constitution provides that a child who is not a citizen becomes a citizen once adopted by a citizen of Zambia. The procedure for

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Jon Feere "Birthright Citizenship in the Unit (2010) Center for Immigration Studies.

adoption is provided under the Adoption Act Chapter 54 of the laws of Zambia.

Article 39 of the Constitution goes on to provide that-

A citizen shall not lose citizenship by acquiring the citizenship of another country.

The implication of Article 39 is that a citizen of Zambia can now enjoy dual citizenship and thus the likelihood of becoming stateless significantly diminishes especially with respect to person who will be holders of dual citizenship. It has been noted that “in recent years, many African states have either changed their rules to allow dual nationality or are considering such changes”.

Article 40 of the Constitution provides for renunciation of citizenship. This arises when a citizen makes a conscious decision to take on the citizenship of at least one other country and then divest themselves of the citizenship of Zambia. Article 40 of the Constitution specifically provides that-

40. (1) *A citizen-*

(a) *may renounce citizenship as prescribed; or*

(b) *shall be deprived of citizenship if that citizenship was acquired by means of fraud, false representation or concealment of a material fact.*

(2) *The process and procedures to be followed by the Citizenship Board of Zambia when granting or depriving a person of citizenship shall be prescribed.*

Apart from the Citizenship provisions of the Constitution, the Citizenship Act¹⁵ regulates matters relating to the acquisition, renunciation and loss of citizenship. The Act generally provides for cessation, deprivation and renunciation of citizenship of Zambia. It must be noted that there is no recorded case in Zambia where the renunciation of citizenship has resulted in statelessness but the law now makes it clear under what circumstances renunciation may not be granted, including where such renunciation would result in statelessness. From the research findings, the only case of deprivation of citizenship that resulted in a declaration of statelessness was in the case of Dr Kenneth Kaunda, although the declaration of statelessness was subsequently overturned.

In relation to deprivation of citizenship, the Citizenship Act provides for the deprivation of citizenship where a person obtained that citizenship fraudulently. Section 28(1) of the Act provides that-

The Board shall, where a person obtained the citizenship by means of fraud, false representation or concealment of a material fact, at least twenty-one days before an order is made, issue to that person, a notice of intention to deprive the person of the citizenship.

Section 28 when dealing with the deprivation of citizenship generally operates within the permissible parameters required under the 1961 Convention on Statelessness, despite the fact that the Convention has neither been ratified by Zambia nor integrated into Zambia's domestic legal framework. This is one of the reasons why Zambia's ratification of the 1961 Convention is necessary as it is already effectively part of the legislative and policy direction that the country has taken and continues to take.

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Act No. 33 of 2016, came into operation on 7th June, 2016 following Presidential assent on 6th June, 2016.

In specifically addressing the issue of statelessness in relation to the renunciation of citizenship, section 32(4) of the Citizenship Act (4) (b) provides that; the [Citizenship] Board may decline to register a declaration of renunciation of citizenship of Zambia where the person making the declaration fails to satisfy the Board that, after renouncing the citizenship of Zambia, that person will become a citizen of another country. This provision is meant to ensure that persons who renounce their Zambian citizenship do not become stateless as a result of that renunciation.

The citizenship Act in section 25 provides for dual citizenship. The section provides as follows:

25. (1) A citizen may apply for dual citizenship in the prescribed manner and form.

(2) Subject to Article 39 of the Constitution and this Act, a citizen who acquires the citizenship of another country is entitled to retain the citizenship of Zambia.

(3) A dual citizen shall, subject to the limitations contained in the Constitution, be entitled to a passport and other travel documents and to such other rights that citizens are entitled to.

The Passport Act No. 28 of 2016¹⁶ defines a stateless person as “a person who is not considered as a national by any State under the operation of its law”. The Act further provides in section 6(3)(c) that a travel document may be issued to a stateless person for the purpose of exiting Zambia. The difficulty with this provision is that it envisages a situation where a travel document is given to a stateless person to exit Zambia. The Act does not provide for the circumstances of the exit but merely provides for the

¹⁶ Act No. 28 of 2016

issuance of a travel document. Further clarity would therefore need to be provided to ensure that these powers are not exercised in a manner that results in the forcible repatriation of stateless persons, who are already at risk by their very status.

Section 6(4) of the Passports Act further provides that “a travel document shall be issued to a Stateless person for travel to a specified country on the direction of the Minister.” This provision confers the discretion on the Minister to direct the issuance of a travel document to a stateless person for travel to a specified country without specifying specific criteria for the application of this discretion, in order to provide a clear safeguard in its use.

The Zambian courts have had occasion to deal with issues of statelessness and have dealt with them in different ways. There are two prominent cases in which the courts were called upon to make determinations relating to the citizenship status of individuals in the country. In the case of William Steven Banda v The Chief Immigration Officer and The Attorney General,¹⁷ William Steven Banda, a member of the United National Independence Party (UNIP), was detained pending deportation for allegedly being a Malawian national and illegally in Zambia. He later brought an application under Article 28 of the Zambian constitution before the High Court seeking declarations to the effect that his fundamental right to personal liberty was contravened; that the period the appellant stayed in detention was long and therefore infringed Article 13 and that the purported deportation

¹⁷ (1994) S.J. 82 (S.C.)

Order was null and void.¹⁸ The High Court dismissed the application and Mr Banda appealed to the Supreme Court, which held that-

- (i) the finding by the trial court that Mr Banda and his parents were not Zambians could not be faulted as it was based on sound logic;
- (ii) the deportation warrant signed by the Deputy Minister was valid for all intents and purposes; and
- (iii) Mr Banda neither proved that he was born in Northern Rhodesia nor that one of his parents was born in Northern Rhodesia and therefore the provisions of section 3 appendix 3 of vol. X of the Laws of Northern Rhodesia did not apply to him.¹⁹

One of the arguments advanced by Mr Banda was that since the state had not adduced evidence as to his country of origin, he could, in the alternative be deemed to be stateless and therefore not deportable. This submission was premised on the argument that if he was stateless then both under International Law and Domestic Law he was not deportable because it is was impossible to execute the warrant of deportation since Mr Banda could not be admitted to any other country. The court however stated in passing that “as to whether or not a stateless person cannot be admitted entry into another country we are not in a position to say.” The court noted in dismissing the appeal that once it was determined that Mr Banda was a Malawian national, there was no way it could be claimed that the Mr Banda would be a stateless person if it were held that he was not a Zambian.²⁰

¹⁸

See Donald G. McNeil Jr., “Founder of Zambia Is Declared Stateless In High Court Ruling” The New York Times, 1 April, 1999.

¹⁹ Ibid

²⁰ Ibid

Another case that dealt with statelessness in Zambia is the case of the former Zambian President, Dr Kenneth Kaunda. In that case Dr Kaunda was declared stateless by High Court Judge Chalendo Sakala. The court stated in Dr Kaunda's case that Dr Kaunda is not a Zambian citizen under the Constitution because his parents were from the former British Nyasaland, now called Malawi and that Dr Kaunda had renounced his Malawian citizenship when he was President, thus rendering him effectively stateless.²¹ The decision of the High Court was however set aside by the Supreme Court a few months later.

5.6. An Analysis of the need for Zambia to Ratify the 1961 Convention on the Reduction of Statelessness

In order for Zambia to make an informed decision on whether or not to ratify the 1961 Convention on the Reduction of statelessness, it is necessary to examine the specific provisions of the Convention and determine whether they contain any provision that would contradict the constitutional framework of the country.

The 1961 Convention consists of 21 Articles designed to reduce statelessness by international agreement. Article 1 generally requires a contracting State to grant its nationality to a person born in its territory who would otherwise be stateless. The grant of nationality operates either by law or by registration. Article 2 deals with the nationality of foundlings. It must be noted that the provisions of Article 2 are already part of the Citizenship Act of Zambia by virtue of section 16 as has been earlier observed. Article 3 provides for the determination of nationality of persons born on ships or in aircraft. This Article already forms part of Zambia's

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Donald G. McNeil Jr., "Founder of Zambia Is Declared Stateless In High Court Ruling" The New York Times, 1 April, 1999.

domestic legal framework as has already been noted by virtue of Article 35 of the Constitution.

Article 4 of the 1961 Convention further provides for the grant of nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of that person's parents at the time of the person's birth was that of that State. This provision of the Convention is also provided for under Article 36 of the Constitution. Article 5 deals with loss of nationality as a result of change in personal circumstance such as marriage or adoption and requires that the change of status should not result in a loss of nationality. This provision is also part of Zambian law as has been earlier indicated in relation to the prohibition of renunciation of citizenship that would result in statelessness.

In terms of Article 6 of the Convention, the laws of Zambia do not permit the deprivation of the nationality of a spouse or a child as a result of the loss of nationality of a parent. Article 7 related to renunciation of citizenship has also been provided for under section 32 of the Citizenship Act. Article 8 of the Convention further prohibits a country from depriving a person of nationality of such deprivation would render the person stateless. Article 9 of the 1961 Convention is also catered for through the constitutional provisions of Zambia in Article 23 that prohibit discrimination on the basis of their nationality on racial, ethnic, religious or political grounds. Articles 10 to 21 are mainly administrative issues that require to be implemented in order to support the core provisions of the 1961 Convention.

From the analysis of the 1961 Convention relating to Statelessness, it is apparent that the Constitutional amendments of Zambia have begun to integrate the requirements of the 1961 Convention into the legal

framework of Zambia in line with the aspiration of the Country to implement principles of international law, particularly with regard to statelessness. Zambia's ratification of the 1961 Convention on the Reduction of Statelessness should therefore be considered, encouraged and recommended since the legal framework of Zambia has already implemented the main requirements of the 1961 Convention.

With the anticipated changes to the laws of Zambia regarding Citizenship, Refugees, and Immigration among others, anticipated as a result of the revision of the Constitution, the issues provided for under the 1961 Convention will be taken into account as a result of the Constitutional changes that have occurred within the Republic of Zambia.

5.7. Socio-economic Implications of Zambia's Ratification of the 1961 Convention on the Reduction of Statelessness

The main reason why the Zambian Government should ratify the 1961 Convention is because it has already recognised that the issues of statelessness are serious and as a result it has already voluntarily implemented a significant proportion of the obligations in the 1961 Convention. The Zambian government should also ratify the 1961 Convention because there are very few cases of potential statelessness in the country, hence allowing such people a path to acquiring Zambian citizenship by ratifying the 1961 Convention is not likely to have any serious socio-economic implications.

In addition to the above, there are six reasons outlined by UNHCR in its campaign to encourage States to accede to the Statelessness Conventions (UNHCR, 2010) which also apply to Zambia.

Firstly, the 1961 Convention on the Reduction of Statelessness together with the 1954 Convention on the Status of Statelessness provide the legal basis at the global level for addressing the causes and consequences of statelessness, which are not addressed in any other treaty. The 1961 Convention is about preventing statelessness from occurring and hence reducing it over time. The convention sets clear rules which States should follow when granting nationality to children so that they do not become stateless at birth. It also prevents statelessness later in life, for example, when people become stateless as a result of failed attempts to become naturalized.

Secondly, the Statelessness Conventions help to resolve conflict of laws, and prevent individuals from falling through gaps between citizenship laws. This is crucial as more and more people are faced with complex legal requirements to establish citizenship in this era of increased international migration and intermarriages between citizens of different States.

The third reason identified by UNHCR is that acceding to the Statelessness Conventions contributes to international peace and security and prevents forced displacement. For instance, a dispute may occur between States over the nationality of certain individuals e.g. those in border areas in countries that have experienced a lot of migration. From the findings of this study, it is clear that such a scenario could easily occur in the case of Zambia given that it has experienced a lot of migration flows involving people from within the region including refugees and migrant workers. As a result, the country is likely to have large populations with no clear nationality especially in border areas e.g. the area bordering Zambia, Malawi and Mozambique.

The fourth reason is that acceding to the Statelessness Conventions can contribute to social and economic development. Under the 1961

Convention, States will be required to identify potential statelessness populations hence they will have a more accurate picture of those in need of assistance as well as those who can contribute to the economic and social development of the country. Therefore, acceding to the 1961 Convention is likely to have a positive impact by allowing more people to fully participate in the country's social and economic development agenda. UNHCR makes reference to various studies that confirm the relationship between citizenship, providing legal identity, and social and economic development e.g. studies commissioned by the Asian Development Bank, the Inter-American Development Bank, and the European Commission. However, efforts must be made to ensure that opportunities available to stateless or potentially stateless people are available to citizens too, otherwise citizens are likely to become resentful of stateless or potentially stateless people if they are perceived to receive preferential treatment in terms of access to opportunities e.g. for employment, access to basic services such as education and health care.

UNHCR contends that efforts to reduce statelessness are not necessarily costly as only simple legislative and administrative reforms may be required. This is in agreement with the findings of this study in that Zambia already has an institutional framework capable of dealing with issues of statelessness. The mandate of dealing with statelessness can be given to one of the departments whose responsibilities are closely related to citizenship issues such as the Commissioner for Refugees, Immigration Office and Passports Office without significantly affecting such a department financially, legally and administratively. There are also other organisations outside government whose activities involve statelessness issues such as UNHCR and IOM that can work with government on Statelessness issues.

Other reasons cited by UNHCR are that acceding to the Statelessness Conventions promotes the rule of law and contributes to better regulation of international migration; and that it is also a clear demonstration of a State's commitment to human rights.

5.8. Steps required to be taken in order to ratify the 1961 Convention on the Reduction of Statelessness

The ratification of international instruments by Zambia is regulated by the Ratification of International Agreements Act.²² The Act provides among other things for the general responsibility over international agreements, consideration of Cabinet memoranda by Cabinet, approval of the proposal for ratification by National Assembly, ratification of amendment to, or modification of, international agreements, and the domestication process.

The general responsibility for the subject matter in accordance with section 3 of the Ratification and International Agreements Act lies with the Minister responsible for the subject matter. A Cabinet memorandum for the request for approval of Cabinet and subsequent authorisation by Parliament therefore in relation to the 1961 Convention will have to be originated by the Ministry responsible for Home Affairs. According to section 3(2) of the Ratification of International Agreements Act, the Minister is required to take into account-

- (a) the object of the international agreement;
- (b) whether existing legislation adequately addresses the object of the international agreement;
- (c) the impact of implementing any measure specified in the international agreement; and

²² Act No. 34 of 2016

- (d) any legislative measures that may be required to give effect to the international agreement

Further, subsection (3) provides that where, in the opinion of the Minister, it is in the best interest of the State to ratify an international agreement, the Minister shall, in consultation with the Attorney-General, initiate the process of ratification by way of a Cabinet Memorandum to the Cabinet seeking approval in principle of a proposal to ratify the international agreement. Once a Cabinet memorandum has been prepared by the Ministry responsible for Home Affairs, it is sent to Cabinet in accordance with section 4 for consideration and approval.

A cabinet memorandum for the ratification of the 1961 Convention once prepared will have to set out various issues that will now be elaborated in detail. Firstly, the objectives and subject matter of the international agreement have to be specified in the Cabinet memorandum.

An additional issue that would have to be included in the Cabinet memorandum would include an analysis of the constitutional implications of the ratification including the consistency of the international agreement with the Constitution and the legislation that may need to be amended or enacted in order to give effect to the agreement in question. The cabinet memorandum would also have to specify the national interests which may be affected by the ratification of the international agreement, such as social, economic, security and public order and public health interests as permitted in the constitution, without regard to extraneous considerations that do not have a bearing on the ability of Zambia to ratify the convention.

The cabinet memorandum would also have to specify the obligations imposed on the State by the international agreement and what the requirements are for implementation of the international agreement. This

includes the obligations relating to state reporting, complaints mechanisms and various means envisaged for ensuring compliance with the convention. The cabinet memorandum should also specify the policy considerations that need to be taken into account by the government as well as the financial implications of the ratification and domestication of the convention. If the costs involve the creation of institutions, appointment of personnel or indeed construction of infrastructure, these costs should be specifically mentioned in order to present a clear perspective of what is expected to be expended.

The cabinet memorandum will also indicate the Ministry under which the Convention will be administered and the date of signature of the international agreement by the State, the date of entry into force of the international agreement and the number of States that are party to the international agreement. The cabinet memorandum should also, indicate whether the international agreement sought to be ratified permits reservations, any recommendations on reservations, and declarations which have been made by the State or other States. The memorandum should also specify the proposed text of any reservations that should be entered when ratifying the international agreement in order to safeguard the interests of the State.

Once Cabinet approves the Cabinet memorandum, it will then be submitted to the National Assembly for approval in accordance with section 5 of the Act. Once this approval has been granted, the Minister responsible for foreign affairs would then have to prepare an instrument of ratification for deposit with the United Nations treaty depository responsible for the 1961 Convention on the reduction of statelessness.

Once the ratification process has been concluded, the domestication of the 1961 Convention on Statelessness will have to be done in accordance with

section 12 of the Ratification of International Agreements Act, which provides that-

12. (1) Where the National Assembly has approved the ratification of an international agreement in accordance with section five, the Ministry responsible for the subject matter of the international agreement shall, where necessary, initiate the domestication process.

(2) An international agreement may be domesticated by-

- (a) an Act that sets out the international agreement in a schedule;
- (b) setting out salient provisions of the international agreement, in the substantive part of an Act, that will require specific interventions or measures to be undertaken, and annexing the international agreement to the Act;
- (c) rephrasing the terms of the international agreement in an Act and annexing the agreement to the Act;
- (d) adopting, in an Act, the terms of the international agreement in its entirety; or
- (e) the use of any other enforceable means, where applicable.

The process for the ratification of the 1961 Convention and the consideration to be made are therefore as have been highlighted and are mainly the responsibility of the Ministry responsible for Home Affairs, in consultation with the various stakeholders concerned and subject to the approval of the National Assembly.

6. CONCLUSIONS

6.1. Causes of statelessness in Zambia/factors for the risk of becoming stateless in Zambia

The cases of potential statelessness found in Zambia are a result of lack of identity documentation for the people concerned to prove their nationality and legitimise their stay in Zambia. So, in spite of them claiming to be nationals of certain countries, it is difficult to prove that they are indeed from those countries especially when the same countries have actually denied them.

The risk of becoming stateless in Zambia is due to a number of factors. Among migrant groups e.g. refugees and former refugees, the risk of becoming stateless is due to lack of proper identity documents showing their nationality, and allowing them to continue living in Zambia legally. Although many refugees and former refugees would like to continue living in the country and become integrated, a number of them do not have the required documents such as passports and residence permits.

There are many reasons for the failure by some refugees and former refugees to acquire identity documents including fear of exposing their whereabouts to their national governments as they apply for passports; ignorance about the need to acquire identity documents; and administrative failures on the part of the authorities to facilitate the acquisition of these documents.

Children of former refugees are also at risk of becoming stateless on account of their parents not having identity documents. In addition to this, they are at risk of becoming stateless because of low rates of birth registration and acquisition of birth certificates among refugees and former refugees. Reasons for this include restrictions on movement refugees are

subjected to especially in refugee camps and settlements making it difficult for them to leave the settlements and go to register; and the slow pace of issuance of birth certificates in Zambia which discourages parents from getting birth certificates. Others may not see the importance of birth registration and birth certificates and therefore do not make any effort to acquire the documents.

In addition, the risk of becoming stateless for migrant populations arises due to lack of knowledge of nationality laws among foreigners resident in Zambia. While some of them think being born in Zambia automatically guarantees them Zambian citizenship, the constitution requires that at least one of the parents must be Zambian. Foreign nationals resident in Zambia are therefore at risk becoming of stateless should their countries of origin not recognise them as nationals and they happen not to have secured Zambian citizenship.

For non-migrant populations in Zambia, among the major factors which may put people at risk of becoming stateless is lack of national identity documents such as birth certificates and NRCs, especially among people living in border areas and in remote rural areas.

Many children in Zambia are at risk of becoming stateless due to the low rates of birth registration and possession of birth certificates. Among the major factors for low rates of birth registration and possession of birth certificates among Zambians is the long distance to health facilities and registration centres; some people are reluctant to get birth certificates because of the bureaucracy involved; while others are reluctant because they do not see the importance of acquiring one.

Lack of national registration cards is a crucial factor contributing to the risk of becoming stateless in Zambia among non-migrant groups. There are several reasons for the lack of national registration cards among

certain individuals including long distance to registration offices; timing, coverage as well as sensitisation of mobile issuance of NRCs.

Another reason is that people who are above 25 years cannot be issued an NRC. Also, there are those who have lost their NRCs and do not remember their NRC numbers, hence they cannot be issued with new ones. The attitude of some the officials responsible for issuing NRCs also hinders the acquisition of NRCs in that they deny people NRCs sometimes on apparently flimsy grounds such as one's appearance.

Another reason is that the issuance of NRCs has in recent times been highly politicised. It is suspected that there are deliberate moves by the national registration office not to have many people registered in opposition strongholds so that the number of voters is reduced.

In addition, some people do not consider an NRC to be important, hence the little they make to get one. Furthermore, it is suspected that there are a good number of foreigners in certain parts of the country e.g. border areas who claim to be Zambian but they have no proper documentation. As a result, they cannot be issued NRCs.

6.2. Current national legal, policy and administrative framework on nationality in Zambia

Having highlighted the salient provisions of the legal system of Zambia, a number of risks of statelessness are inherent in the current legal framework. Currently under the laws of Zambia, although dual nationality has now been permitted, the appropriate legal revisions to give effect to the applicable provisions of the constitution with regard to a more detailed mechanism for the reduction of statelessness have not yet been enacted

beyond the revisions of the Citizenship Act and the passports Act of Zambia.

The legal framework of Zambia is in substantial conformity with the requirements under the 1961 Convention on the reduction of statelessness and therefore requires consolidation through the ratification of the 1961 Convention on Statelessness as well as the establishment of specified legislative procedures for dealing with statelessness by various government departments and other agencies.

7. RECOMMENDATIONS

Having examined the issues relating to the root causes of statelessness or the risk of statelessness in Zambia, and the legal framework in relation to statelessness in Zambia, there are areas that require to be addressed in order to deal with the issue of statelessness. The issues that need to be resolved are as follows:

1. There is need to ensure that the legislative framework of Zambia protects stateless persons and provides mechanisms that allow stateless persons to apply for citizenship;
2. There is need to establish procedures for the identification, protection of legal status, non-returnability and acquisition of citizenship by stateless persons;
3. There is need to sensitise officials in relevant government departments in order to ensure that they deal with statelessness issues in a manner that protects stateless persons to the greatest extent possible;
4. There is need to ratify the 1961 Convention on the Reduction of Statelessness and to domestically implement both the 1954 Convention and the 1961 Convention in their entirety in order to ensure that Zambia fully complies with the requirements of the Conventions;
5. There is need to sensitise people on the importance of national identity cards i.e. birth certificates and NRCs in relation to safeguarding one's citizenship;
6. There is need for improved management of records on NRCs and birth certificates so that it is easy for someone who has lost their NRC or birth certificate to have their details verified and have the lost document replaced;

7. There is need for more regular mobile issuance of NRC exercises to particularly cater for people in remote rural areas, instead of only having issuance of mobile NRCs when elections are about to take place;
8. Measures should be taken to make birth certificates more accessible e.g. by decentralising issuance of these documents in health centres as well as capturing information about births occurring outside health centres for subsequent issuance of birth certificates;
9. Efforts must be made by relevant authorities to facilitate issuance of the required identity documents for refugees and former refugees, and also educate refugees and former refugees on the importance of identity documents with regard to safeguarding their nationality.

The way forward towards ratification and domestication of the 1961 convention on statelessness

The protection of stateless persons through the ratification and domestic implementation of the 1954 Convention relating to the Status of Stateless Persons requires to be undertaken as a matter of urgency by Zambia.

According to section 5 of the Ratification of International Agreements Act,²³ once cabinet provides approval for the ratification of the Convention, the proposal requires to be tabled before the National Assembly through a motion and once the motion is approved, the Convention can then be ratified and the necessary integration into municipal law undertaken. The expected timeline from the approval of a motion to ratify the Convention to the enactment of domesticating legislation can be undertaken within a period of six months or less, depending on how expeditiously the Ministry responsible undertakes all the preparatory work it is required to. The domestic implementation of the Convention may be done through the

²³ Act No. 34 of 2016.

enactment of legislation and implementation of various administrative measures where necessary.

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9. APPENDICES

Appendix 1: Interview Guide for Key Informants

Background

1. Name of organisation:
2. Position of official:
3. How long have you worked for this organization?
4. What role if any, does your organization/department play in relation to nationality issues?
5. What are some of the main pieces of legislation which guide you in your work?

Scope of statelessness

6. Do you sometimes have cases of people with no nationality or with questionable nationality? (*Ask for any statistics if available e.g. for 2015*)
7. Do you have any mechanism or specific procedures in place for identifying and keeping information about stateless people or people at risk of becoming stateless
8. If so, describe the mechanism or procedure.

Root causes of statelessness

9. Of the people who are stateless or with questionable nationality whom you have come across, what are some of the common reasons why their nationality has been in doubt?

Profile of stateless people in Zambia

10. What are the common countries they claim to come from?
11. Have there been any claiming to be Zambian but with no evidence of nationality?
12. Which provinces or districts seem to have the highest numbers of people with questionable nationality in Zambia?
13. Are there any categories of people in Zambia in terms of racial, ethnic, religious, historical background etc. whom you consider to be at high risk of being stateless? If so, specify.

Recommendations

14. In your view does Zambia have sufficient legal/administrative provisions to identify stateless people or people at risk of becoming stateless?
15. If not, what are your suggestions on how to establish a systematic method of identifying and keeping records on statelessness in Zambia?

End of interview, thank you

Appendix 2: FGD guide for people at risk (non-migrant populations)

16. Location:
17. Age range.....
18. How long have you lived in this area?
19. Where were you born?
 - District, at home or health center
20. Do you have a birth certificate?
21. If not, why
22. Do you have an NRC?
23. If so, why?
24. Where are you supposed to get an NRC?
25. Why didn't you get an NRC during the mobile issuance of NRCs?
26. Are there any difficulties you experience due to lack of an NRC?
27. What would you recommend to the authorities to enable people have NRCs?

End of discussion, thank you

Appendix 3: FGD guide for people at risk (migrant populations)

A brief introduction of the study

Assure confidentiality

Age range

Level of education

Occupation

Countries of origin

How long have you lived in Zambia? Probe if born or migrated to Zambia.

What is your long term plan? Is to settle in Zambia or go back to your country of origin?

Explain why.

What is your nationality?

If uncertain what have you done to regularise it e.g. renounced citizenship of country of origin, applied for Zambian citizenship etc.

Probe what national identities they have e.g. NRC, passport.

Do you have any children?

What is the nationality of your children?

What would suggest to the authorities to safeguard your citizenship status?

End of discussion, thank you