

Joint Submission to the
Human Rights Council

Universal Periodic Review

40th Session

3rd Cycle

January - February 2022

Zimbabwe

Zimbabwe Lawyers for Human Rights (ZLHR)
Institute on Statelessness and Inclusion

15 July 2021



Joint Submission
to the Human Rights Council
at the 40th Session
of the Universal Periodic Review.

Zimbabwe

Introduction

1. Zimbabwe Lawyers for Human Rights¹ and the Institute on Statelessness and Inclusion² make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Zimbabwe.
2. This submission focuses on:
 - I. Birth Registration, civil documentation, and (risks of) statelessness
 - II. Children's right to a nationality
 - III. Arbitrary deprivation of nationality
 - IV. Descendants of migrants and risks of statelessness
 - V. Lack of adequate protection of stateless persons and statelessness determination procedures

Previous UPR of Zimbabwe under the First and Second Cycle

3. Zimbabwe was previously reviewed during the 12th and 26th session of the UPR in 2011 and 2016 respectively.
4. During the 12th session, Zimbabwe received the following recommendations:

¹ Zimbabwe Lawyers for Human Rights (ZLHR) is a not for profit human rights organisation whose core objective is to foster a culture of human rights in Zimbabwe as well as to encourage the growth and strengthening of human rights at all levels of Zimbabwean society through observance of the rule of law. ZLHR is committed to upholding the unimpeded administration of justice, the free flow of information, respect for the rule of law, and the protection of constitutional rights and freedoms in Zimbabwe and the surrounding region. For more information, see <https://www.zlhr.org.zw>.

² The Institute on Statelessness and Inclusion (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made over 80 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 38th UPR Sessions. For more information, see <https://www.institutesi.org/>.

- I. Ratify the 1961 Convention on the Reduction of Statelessness (Slovakia);³
- II. Amend expeditiously the Births and Deaths Registration Act to ensure that all children born in Zimbabwe, regardless of their parents' origin, are issued with birth certificates (Slovakia);⁴
- III. Undertake a review with a view to ensuring a coordinated system bridging gaps, especially with respect to the provision of birth certificates (South Africa)⁵

Zimbabwe accepted the first and third recommendation and noted the second.

5. During the 26th session, Zimbabwe received the following recommendations:

- I. Continue to adopt measures to increase the rate of issuance of birth certificates, especially in rural areas and in low-income households (Turkey);⁶
- II. Increase prompt access to birth registration and public awareness for the same (Kenya);⁷
- IV. Reinforce policies to ensure that all children born in Zimbabwe, regardless of their parents' origins, are issued with birth certificates (Holy See);⁸
- V. Consider amending the existing legislation to ensure that all children born in Zimbabwe, regardless of their parents' origin, are issued with birth certificates and ensure the paternity rights of children born out of wedlock (Namibia);⁹
- VI. Scale up efforts to ensure that all children are issued with a birth certificate (Mexico);¹⁰

Zimbabwe accepted all above recommendations.

Zimbabwe's International obligations

6. Zimbabwe is not a State party to the 1961 Statelessness Convention; however, it has acceded to the 1954 Statelessness Convention with no reservations.
7. Zimbabwe has international obligations to protect the right to a nationality and to protect the rights of stateless persons on the basis of other UN and regional treaties to which it is party. These include, among others, the International Covenant on Civil and Political Rights (Article 24(3) ICCPR), the International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3 ICESCR), the Convention on the Rights of the Child (Article 2, 3, 7 and 8 CRC), the Convention on the Elimination of All Forms of Discrimination against Women (Article 9 CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(iii) CERD), and the

³ A/HRC/19/14, recommendation 94.9.

⁴ A/HRC/19/14, recommendation 94.30.

⁵ A/HRC/19/14, recommendation 93.49.

⁶ A/HRC/34/8, recommendation 131.61.

⁷ A/HRC/34/8, recommendation 131.62.

⁸ A/HRC/34/8, recommendation 132.78.

⁹ A/HRC/34/8, recommendation 132.79.

¹⁰ A/HRC/34/8, recommendation 132.80.

Convention on the Rights of Persons with Disabilities (Article 18, CRPD). The right to a nationality is also protected in the Universal Declaration on Human rights under Article 15 (UDHR). Zimbabwe does not have any reservations to these treaties.

8. Zimbabwe is not a party to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) nor to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which stipulate children's right to a nationality.¹¹
9. Zimbabwe is party to the following regional conventions, which includes provisions on the right to nationality:
 - I. The African Charter on Human and Peoples' Rights, which calls for the elimination of all discrimination on the basis of sex;
 - II. The 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Article 6);
 - III. The 1990 African Charter on the Rights and Welfare of the Child (Article 6).
10. In 2016, the CRC Committee recommended that Zimbabwe undertakes measures so that all children born in its territory have the right to be registered at birth regardless of the parents' citizenship status or their country of origin and that they have equal access to health care, protection, education and other social services.¹² Also, Zimbabwe was recommended to consider the ratification of the 1961 Convention on the Reduction of Statelessness and amend its domestic legislation with regards to nationality to ensure for all children to enjoy the acquisition of a nationality.¹³ The Committee also recommended Zimbabwe to seek technical assistance from the UNHCR and UNICEF to implement these recommendations.¹⁴ Regarding birth registration more specifically, the Committee recommended Zimbabwe to "ensure that the Births and Deaths Registration Act (2005) is implemented in a manner that promotes the best interests of the child and simplifies the administrative requirements for the registration and issuance of birth certificates; equip decentralized government authorities and health facilities at the local level to register births and issue birth certificates; strengthen and expand mobile birth registration to reach universal coverage, in particular for registering children born outside of health facilities and children who have never been registered; increase public awareness of the importance of birth registration and the process by which births are registered".¹⁵
11. In 2000, the CERD recommended that Zimbabwe review its citizenship laws in order to eliminate any form of discrimination. It also invited Zimbabwe to provide additional information in the periodic report ahead of the 40th session, on the relevant legislative measures available to ensure the protection of rights.¹⁶

¹¹ Article 29 ICMW, Article 15(4) ICPPED.

¹² Concluding observations on the second periodic report of Zimbabwe, CRC/C/ZWE/CO/2, 7 March 2016, recommendation 37(a). Committee noted its concern about reports that children born on territory to parents with indeterminate nationality have been denied the right to birth registration and acquisition of Zimbabwean nationality, affecting their access to health care, education and other social services. The Committee further noted the absence of legislative provisions to ensure that children born stateless in Zimbabwe can acquire a nationality.

¹³ Concluding observations on the second periodic report of Zimbabwe, CRC/C/ZWE/CO/2, 7 March 2016, recommendation 37(b).

¹⁴ Concluding observations on the second periodic report of Zimbabwe, CRC/C/ZWE/CO/2, 7 March 2016, recommendation 37(c).

¹⁵ Concluding observations on the second periodic report of Zimbabwe, CRC/C/ZWE/CO/2, 7 March 2016, recommendation 35.

¹⁶ Consideration of reports submitted by states parties under article 9 of the Convention, CERD/C/304/add.92, 19 April 2000, para.12.

12. At the UNHCR's High Level Segment on Statelessness (HLS) in October 2019, Zimbabwe pledged the following:¹⁷
- I. By 2021, undertake and publish a qualitative and quantitative study to better understand the situation of stateless groups and individuals living in its territory with a view to finding a solution to their situation.
 - II. Include a question or questions in its next national census in 2022 to identify stateless persons living in its territory.
 - III. Based on the findings of the study, develop a National Action Plan by 2022 in ending statelessness by 2024.
 - IV. By 2023, establish a dedicated statelessness determination procedure to identify stateless persons within the territory and grant them protection status with an aim to solutions.
 - V. Conduct consultations with relevant stakeholders towards the accession to the 1961 Convention on the Reduction of Statelessness by 2023.
 - VI. By 2023, complete the ongoing process of aligning its Citizenship Act [Chapter 4:01] and Births and Deaths Registration Act [Chapter 5:02] with the new Constitution (Constitution of Zimbabwe Amendment (No. 20) Act. 20 1.1) in ensuring the proper safeguards in preventing statelessness.
 - VII. By 2024, simplify and improve access to birth registration procedures, including issuance of birth certificates to descendants of former migrant workers and failed asylum seekers to ensure universal birth registration.
13. As part of its efforts to realise commitments to its UNHCR HLS Pledge as set out in the previous paragraph under point I, the Zimbabwe Human Rights Commission (ZHRC) launched an Inquiry on Access to Documentation in Zimbabwe and issued a Report in September 2020.¹⁸ The Parliamentary Portfolio Committee on Defence, Home Affairs and Security also issued a report on challenges in accessing primary documents in the Matabeleland South Province in August 2019.¹⁹ Both reports issue extensive recommendations to the state to address issues of statelessness by, among others, the introduction of regular mobile registration exercises, amending discriminatory provisions in national legislation to ensure registration of children born out of wedlock, and ensuring that all children born in Zimbabwe are registered (including children born of indeterminate nationality).
14. In terms of its other commitments under the UNHCR HLS Pledge, Zimbabwe is yet to implement a National Action Plan to end statelessness. A joint taskforce on statelessness has been established, which includes the Department of the Registrar-General (DRG), UNHCR, members of civil society and members of academic institutions. The DRG and the UNHCR conducted a Desk Study report on statelessness in 2019, which was validated by the taskforce in October 2020. The taskforce also intends to conduct an empirical study across the country to identify persons at risk of statelessness: to conduct statelessness determination procedures, to document those who are at risk of stateless, and to resolve issues of non-documentation where possible. Based on the

¹⁷ See: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

¹⁸ Zimbabwe Human Rights Commission, *Report on: National Inquiry on Access to Documentation in Zimbabwe*, April 2020, available at: <http://citizenshiprightsafrika.org/wp-content/uploads/2020/10/ZHRC-National-Inquiry-on-Access-to-Documents-Report-2020.pdf>.

¹⁹ Parliamentary Portfolio Committee on Defence, Home Affairs and Security, 27 August 2019, [Zimbabwe: Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents](https://citizenshiprightsafrika.org/zimbabwe-report-on-the-gwanda-community-youth-development-trust-petition-on-access-to-primary-documents/), Accessible at: <https://citizenshiprightsafrika.org/zimbabwe-report-on-the-gwanda-community-youth-development-trust-petition-on-access-to-primary-documents/>.

recommendations of the Desk Study report, there are also questions to be infused into the 2022 Census Questionnaire to try to pick up data on status of statelessness in Zimbabwe.

Snapshot of Statelessness in Zimbabwe

15. UNHCR has estimated in 2016 that there are approximately 300,000 people at risk of statelessness in Zimbabwe.²⁰ There is no official data available on the number of stateless people in the country. Different groups have been affected by statelessness, including hundreds of thousands of migrant workers from neighbouring countries (Malawi, Mozambique and Zambia) who were brought in by colonial powers to work on farms and mines and their descendants who were settled and born in the country pre-independence in 1980.
16. The main causes of statelessness are attributed to systemic discrimination and exclusion of ethnic minorities and persons of foreign origin, changes and gaps in the nationality framework, lack of safeguards for otherwise stateless children born on the territory, and restrictive and discriminatory legal and administrative framework for birth notification, birth registration and access to identification documentation.²¹
17. Between 1983 and 1987, an estimated 20,000 people were killed during the Gukurahundi Massacres in Matabeleland and Midlands provinces. People were forced to flee their homes and many forcibly displaced people lost their identity documents and were unable to replace them. As a result, those born in the following months and years were unable to be registered. Those who lost their relatives are still experiencing challenges in obtaining their death certificates and this prevents descendants from providing evidence of their Zimbabwean nationality and registering for birth certificates and consequently national identity cards. In cases where witnesses are required to support the application of documentation, many are often scared to testify about the death of their relatives for fear of reprisals.²²
18. Marginalised communities like the Doma people from Kanyemba in Mbire and other border areas around the country are also affected by non-documentation and are at increased risks of statelessness. In these populations, the lack of documentation is passed from one generation to the next, limiting social mobility and economic opportunities for entire families. The closer to the border the community is, the further the Registrar General's offices are, restricting access to documentation processes. Applicants are also often assumed to be migrants from neighbouring countries but are unable to access citizenship from either country.²³ In border communities where people regularly cross borders to trade and access economic benefits from neighbouring countries, such as Botswana, many children born in neighbouring countries do not have

²⁰ UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: Zimbabwe*, (March 2016), available at: <https://www.refworld.org/docid/57f650ee4.html>. Currently, a study is being pursued to provide a revised estimate of this figure. For more information please see: <https://www.unhcr.org/2020-global-trends-annex-table-statelessness>.

²¹ Ibid. p.50.

²² Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), pages 10 and 16, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

²³ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), section XVI, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.PAGE

birth records, and therefore cannot access primary documents when they return with their parents to Zimbabwe²⁴.

19. Refugee and asylum seeker communities in Zimbabwe are also at risk of statelessness. Failed asylum seekers in refugee camps remain undocumented, and their children do not receive birth certificates. Former Rwandan refugees who have refused to repatriate to Rwanda due to continuing fear of persecution in their country, are also undocumented, together with their children. More than one thousand Mozambican asylum seekers who fled from Mozambique due to internal conflicts have not yet received refugee status. In the meantime, temporary resident permits cannot be issued to them, they cannot receive identity documents, and their children born in Zimbabwe cannot receive birth certificates.²⁵
20. Following the devastating effects of Cyclone Idai in 2019, the Registrar General's offices conducted mobile registration exercises in the Chimanimani District to assist victims who had lost their national documents²⁶. Unfortunately, not all affected by the cyclone were able to have their documents replaced or processed. The ZHRC reported that officials still required national identity card or birth entry numbers: those who could not remember their numbers could not be assisted on the spot as verification had to be done through fingerprints. There was no follow up process to go back to areas where mobile registration exercises were conducted to assist people they had served and to issue the documents they had applied for.
21. Inter-sex persons also face registration challenges under Zimbabwe's law. Their documented gender is chosen by their parents before puberty and there are only male and female categories. As such, when inter-sex people grow up, if they wish to change their gender in their identity documents to reflect their correct self-identified gender, or to register as inter-sex, Zimbabwe's national law does not allow them to do so²⁷. This can create risks of statelessness.
22. Children born out of wedlock, or whose parents have separated, or who are not present due to migration or other circumstance, face risks of statelessness as they are barred from birth registration. National law particularly discriminates against men attempting to register children in the absence of mothers, as highlighted in more detail below.²⁸

National Law

23. No legal definition of 'stateless' person is found in national law, and no dedicated statelessness determination procedure has been established. The biggest gaps in national legislation, creating (increased risks of) statelessness is that the Citizenship of

²⁴ Parliamentary Portfolio Committee on Defence, Home Affairs and Security, 27 August 2019, [Zimbabwe: Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents](https://citizenshiprightsafrika.org/zimbabwe-report-on-the-gwanda-community-youth-development-trust-petition-on-access-to-primary-documents/), Accessible at: <https://citizenshiprightsafrika.org/zimbabwe-report-on-the-gwanda-community-youth-development-trust-petition-on-access-to-primary-documents/>.

²⁵ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), section XVI, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

²⁶ Zimbabwe Broadcasting Corporation, 12 November 2019, available at: [Zimbabwe: 3 000 Cyclone Idai survivors issued new identity documents](http://citizenshiprightsafrika.org/zimbabwe-3-000-cyclone-idai-survivors-issued-new-identity-documents/), available at: <http://citizenshiprightsafrika.org/zimbabwe-3-000-cyclone-idai-survivors-issued-new-identity-documents/>, New Zimbabwe, 25 November 2019 [Zimbabwe: Cyclone Idai survivors get free ID replacement](http://citizenshiprightsafrika.org/zimbabwe-cyclone-idai-survivors-get-free-id-replacement/), available at: <http://citizenshiprightsafrika.org/zimbabwe-cyclone-idai-survivors-get-free-id-replacement/>

²⁷ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), section XIV, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

²⁸ Id.

Zimbabwe Act 1984 has not been aligned to the 2013 Constitution, and subsidiary policies to avoid and protect stateless people remain inexistent.

24. In terms of protection measures against statelessness, the Constitution of Zimbabwe is a robust human rights instrument. It guarantees the right to equality and non-discrimination²⁹; the best interests of the child³⁰; the right to birth certification, identity documentation, passports and other travel documents³¹; and protects the right to dual citizenship for citizens by birth³². In practice, however, there are no subsidiary laws or regulations in place to implement these constitutional rights and protect against statelessness. The substantive provisions of the 1984 Citizenship of Zimbabwe Act (Chapter 4:01) remain in conflict with the Constitution in several aspects, as will be discussed below.³³
25. The Cabinet approved a Citizenship Bill in 2019³⁴ to revoke the discriminatory Citizenship of Zimbabwe Act, and to align subsidiary legislation with the Constitution. The Bill effectively incorporates constitutional provisions on citizenship, including for stateless foundlings under 15 to be recognised as citizens by birth; removes arbitrary and discriminatory provisions for deprivation of citizenship, particularly affecting persons of foreign origin, under the current Citizenship Act; provides for restoration of citizenship for persons previously rendered stateless under the Act; and provides protection against revocation of citizenship for those who would be rendered stateless. The Bill does not go so far as to provide a definition of statelessness, establish a statelessness determination procedure, or provide that *any* stateless person born or permanently resident in Zimbabwe should be entitled to register as a Zimbabwean citizen. Since 2019, there has also been no action taken to implement the Citizenship Bill, and it is yet to be adopted by parliament.³⁵

Issue I: Birth registration, civil documentation and (risks of) statelessness

26. In Zimbabwe, birth registration is the first step towards nationality acquisition, and accessing services and human rights.³⁶ Having a birth certificate enables Zimbabweans to apply for a passport, and to obtain a national identity card (ID), once they reach the age of 16, in terms of the National Registration Act. An ID enables access to civil, political, social and economic rights, including access to voting, enrolling in tertiary institutions,

²⁹ Constitution of Zimbabwe Amendment No. 20, section 56.

³⁰ Constitution of Zimbabwe Amendment No. 20, Section 81(2).

³¹ Constitution of Zimbabwe Amendment No. 20, Section 35(3)(b)-(c).

³² Constitution of Zimbabwe Amendment No. 20, Sections 36, 39 and 42(e).

³³ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 6, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

³⁴ Citizenship Bill, 2018, available at: <http://www.ca-lr.org/download/zimbabwean-citizenship-bill/>.

³⁵ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 17, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

³⁶ In 2021, ZLHR conducted a mobile legal clinic providing legal aid and enhancing awareness on the Bill of Rights for members of the Mgodimasili community. The Mgodimasili community is one of four wards in Tsholotsho where the, now less than 3000, San people can still be found. This is a community where the San people feel very marginalised and their Tshwao language is considered as one that will be extinct, while the majority of the community remains undocumented. Information was provided on issues of citizenship and national documentation. The provisions of Section 43 of the Constitution were explained vis-à-vis the regulations at the registry offices across the region and how documents are tied to full enjoyment of right to education, health, property rights and even marriage rights and the impact these then have on inheritance. During consultations, the main issues identified regarding lack of access to documentation and birth registration were administrative barriers, lack of knowledge of the requirements, corrupt practices by officials and financial challenges.

marriage and divorce, opening bank accounts, registering the birth of one's children and other important services.

27. Section 81(1)(c) of the Constitution provides for the prompt provision of birth certificates for all children born in Zimbabwe, and all children born outside Zimbabwe who are Zimbabwean citizens by descent. Section 35 of the Constitution also provides that all citizens are entitled to birth certificates, passports, travel documents, and other identity documents.³⁷ After one year, births may only be registered with the written authority of the Registrar-General, the Minister of Home Affairs, or by order of court. Notification and registration of births are compulsory in terms of the BDR Act.³⁸
28. The National Registration Act (Chapter 10:17) provides for the compulsory registration of all residents in Zimbabwe, age 16 and above, by the Registrar-General's Office, and for the issuance of identity documents, which establish the citizenship status of all residents. In the absence of proof of citizenship such as the correct birth registration documents, including birth certificates correctly identifying people as citizens, Zimbabwe citizens may be deprived of registration or wrongly registered as 'Aliens' on these documents.³⁹
29. While the legislature's intention was to ensure that every child born in Zimbabwe is registered, and every person documented, in practice there remain significant legal and administrative barriers to registration.
30. The ZHRC's National Inquiry on Access to Documentation in Zimbabwe uncovered that birth registration is particularly difficult for people in remote areas because the Registry Offices are centralised. Those without funds, and those with disabilities, face challenges in travelling to register their children at the time of birth. Late applications for birth registrations are often rejected when applicants fail to provide proof of birthplace, residence, and parentage. Applicants who do not have a living witness bearing the same surname as them to testify to circumstances of their birth continue to face difficulties.⁴⁰
31. Registry officials have also been reported of discriminatory conduct restricting registration.⁴¹ Applicants with a foreign parent, or suspected of being foreigners, are often denied registration and subjected to derogatory terms and ill-treatment.⁴²
32. Section 12 of the BDR Act also places significant barriers for registration on children born out of wedlock.⁴³ Fathers of children born out of wedlock are unable to register their children without the mother present, unless evidence is presented that the mother of the child is dead or has abandoned or deserted the child.⁴⁴ This has been misinterpreted by officials of the Department of the Registrar General, to place an obligation on fathers

³⁷ Section 35 (3) (b) and (c) & 81, Constitution of Zimbabwe.

³⁸ Section 10, Births and Deaths Registration Act. Notification and registration of birth are compulsory, pursuant to Section 10 of the BDR Act. Notification of birth should take place within 42 days from the day of birth with the Registrar-General's office and registration should take place within a year from the date of birth. Failure to do so come with a penalty of USD \$300 fine and/or up to 12 months imprisonment.

³⁹ National Registration Act [Chapter 10:17] available at: <https://www.law.co.zw/download/1744/>.

⁴⁰ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 18, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁴¹ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), page 20, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁴² Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 22, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁴³ Births and Deaths Registration Act, Section 12.

⁴⁴ GLOBALCIT, Report on Citizenship Law: Zimbabwe, 2019,

https://cadmus.eui.eu/bitstream/handle/1814/60436/RSCAS_GLOBALCIT_CR_2019_01.pdf?sequence=1&isAllowed=y.

to bring maternal relatives to attest to the maternity of the children, but these relatives may be unknown, their whereabouts may be unknown, or they may refuse to cooperate.⁴⁵ In cases of births and adoptions outside Zimbabwe, section 13(1) of the BDR Act and section 7(5) of the Citizenship Act, also discriminate against married women, and the children of female Zimbabwean citizens, in that citizenship may only be conferred by the father.

33. Studies have shown an increase in the number of home births due to the plummeting economic hardships restricting access to healthcare in Zimbabwe. Such births are difficult to register due to lack of evidence of the birth and witnesses (such as unregistered midwives) willing to come forward. Even those who give birth at hospitals have reported that hospitals are unlawfully withholding birth records due to non-payment of fees.⁴⁶
34. The Covid-19 pandemic has heightened the documentation crisis. The births and deaths registry stopped issuing out birth certificates for children born after 30 March 2020 when the government imposed a lockdown to fight the spread of the virus. The department has not provided information on the full extent of the backlog and the measures they will take to solve the crisis. Although the registry opened in May 2021 after the easing of the lockdown, the Department reported that they were only issuing about 80 - 90 birth certificates per day in major towns.⁴⁷
35. Zimbabwe lacks clear guidelines and national procedures to address statelessness and risks of statelessness due to registration and documentation challenges. Due to the absence of a clear national policy framework on this matter, Zimbabwe's authorities have not yet established internal institutional policies and (subsidiary) regulations.⁴⁸ There is no policy to ease registration requirements where it is impossible for applicants to meet the requirements, and where a failure to do so would result in statelessness. The lack of an effective policy framework has led to the development of internal policies governing births and deaths registration which are being implemented inconsistently and in a discriminatory manner by different offices across the country.⁴⁹ A significant number of people who technically qualify for birth and citizenship registration under the law continue to be prevented from exercising their rights due to a failure to meet the unclear bureaucratic requirements imposed on them.

Issue II – Children's right to a nationality

36. According to the 2013 Constitution, a child born in Zimbabwe automatically acquires Zimbabwean citizenship if their parent is a Zimbabwean citizen, or if any of their grandparents is a citizen by birth or descent. A child born outside Zimbabwe can acquire nationality by descent if either of the parents is a citizen and "ordinarily resident" in

⁴⁵ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁴⁶ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 18, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁴⁷ Xinhua, 'Zimbabwe starts issuing birth certificates to children born under lockdown', Big News Network, (May 2021), available at: <https://www.bignewsnetwork.com/news/269225450/zimbabwe-starts-issuing-birth-certificates-to-children-born-under-lockdown>.

⁴⁸ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), page 48, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁴⁹ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), page 48, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

Zimbabwe or working for the Zimbabwean state or for an international organisation. For citizenship by registration, a child can acquire Zimbabwean nationality based on continuous and lawful residence for at least ten years; or adoption by a Zimbabwean citizen.⁵⁰ Section 43(2) of the Constitution also provides that persons born in Zimbabwe before 2013 to a SADC national parent, residing in Zimbabwe in 2013, are citizens by birth.⁵¹

37. The Citizenship Act, however, still refers to the former Constitution and fails to establish the requirements for, and rights of, citizenship by birth. While Section 43(2) of the 2013 Constitution provides that residents born in Zimbabwe before 2013 to SADC national parents are Zimbabwean citizens by birth,⁵² this has not been implemented into the Act. Also, Section 36(3) of the 2013 Constitution corrects the absence of a provision on foundlings in the Citizenship Act and stipulates that a child found in Zimbabwe who is, or appears to be, less than fifteen years of age, and whose nationality and parents are not known, is presumed to be a Zimbabwean citizen by birth.⁵³ However, the Citizenship Act fails to accord foundlings their constitutional right to Zimbabwean citizenship by birth.⁵⁴ There is also no provision and procedure for the registration of Zimbabweans by descent or by registration, in terms of sections 37 and 38 of the Constitution.⁵⁵
38. In Zimbabwe, it is common for grandparents raise their grandchildren in the absence of their parents, who may have died or left to neighbouring countries for economic reasons. They, similarly to fathers, struggle to register births and apply for birth certificates for their grandchildren, particularly where the mothers are unavailable.⁵⁶

Issue III - Arbitrary deprivation of nationality

39. While states have broad discretion to regulate nationality matters, including deprivation of nationality, international law prevents states from having absolute discretion. Certain standards and principles must be respected and complied with. The Principles on Deprivation of Nationality as a National Security Measure⁵⁷ and the UNHCR Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality⁵⁸ provide important guidance

⁵⁰ Section 35, Constitution.

⁵¹ Constitution of Zimbabwe Amendment No. 20, Section 43(2).

⁵³ Constitution of Zimbabwe Amendment No. 20, Section 36(3).

⁵⁴ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 28, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁵⁵ Constitution of Zimbabwe Amendment No. 20, Sections 37 and 38.

⁵⁶ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), page 29, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁵⁷ Principles on Deprivation of Nationality as a National Security Measure, March 2020:

<https://files.institutesi.org/PRINCIPLES.pdf>. The Principles were drafted by The Institute on Statelessness and Inclusion in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP. They were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the field of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas. At the time of submission, they have been endorsed by over 100 individual experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians and diplomats. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice. They articulate the international law obligations of States and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure. More information is available here: <https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

⁵⁸ UNHCR, Guidelines on Statelessness No.5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05: <https://www.refworld.org/docid/5ec5640c4/html>. The Guidelines provide guidance on the interpretation of Articles 5 – 9 of the 1961 Convention on the Reduction of Statelessness. They draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October-1 November 2013 (“Tunis Conclusions”)

on the question of deprivation of nationality. Accordingly, state discretion in this area is subject to the individual right to a nationality⁵⁹, the prohibition of arbitrary deprivation of nationality⁶⁰, the prohibition of non-discrimination⁶¹, and the obligation not to render a person stateless⁶². Further, the impact of nationality deprivation must be taken into consideration when assessing the legality of nationality deprivation. This includes, among other, the right to private and family life, legal personhood, and the rights of the child.⁶³ Any measure to deprive nationality must also comply with due process and the right to a fair trial.⁶⁴

40. Section 39 of the Constitution stipulates grounds upon which Zimbabwean citizenship can be revoked, such as fraud, misrepresentation or concealment of a material fact or, for citizens by registration, if a person has unlawfully traded or communicated with an enemy country.⁶⁵ It also stipulates an explicit prohibition on revocation of Zimbabwean nationality to result into statelessness. However, once again, the Zimbabwean Citizenship Act (Section 11) does not comply with the Constitution. The Ministry of Home Affairs continues to use the Citizenship Act, whereby registered citizens can be deprived of Zimbabwean citizenship for arbitrary and vague grounds including ‘disloyalty’ or ‘disaffection’ to Zimbabwe; for ‘acting in a manner prejudicial to public safety or public order’; for being convicted and sentenced to a serious offence *after* registration; and for having been a ‘prohibited person’ in terms of the Immigration Act at the time of registration. Section 11(3)(b) stipulates that nationality deprivation in the above circumstances, where it is ‘conducive to the public good’, can result into statelessness.⁶⁶
41. Being declared a ‘prohibited person’ in terms of the Immigration Act can be based on subjective and discriminatory grounds⁶⁷ such as:
 - i. Being an ‘undesirable inhabitant due to standards or habits of life’;
 - ii. Having ‘infirmity of mind or body’;
 - iii. Being ‘epileptic or mentally disordered or defective’;
 - iv. Being deaf, dumb, blind or otherwise physically incapacitated;
 - v. Being infected with or suffering from a prescribed disease (including being a prostitute, or being homosexual); and
 - vi. Being the wife, child, or other dependant, of a person who falls into any of these categories.

and the Expert Meeting on Developments related to Deprivation of Nationality held in Geneva, Switzerland on 5-6 December 2019.

⁵⁹ Human Rights Council Resolution 7/10, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/7/10 (27 March 2008); Human Rights Council Resolution 10/13, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/10/13 (26 March 2009); Human Rights Council Resolution 13/2, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/13/2 (24 April 2010); Human Rights Council Resolution 20/4, The right to a nationality: women and children, UN Doc A/HRC/RES/20/4 (16 July 2012); Human Rights Council Resolution 20/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/20/5 (16 July 2012); Human Rights Council Resolution 26/14, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/26/14 (11 July 2014); Human Rights Council Resolution 32/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/32/5 (15 July 2016).

⁶⁰ Principles on Deprivation of Nationality as a National Security Measure, March 2020: <https://files.institutetsi.org/PRINCIPLES.pdf>, Principle 7. See also, the Draft Commentary to the Principles: https://files.institutetsi.org/PRINCIPLES_Draft_Commentary.pdf.

⁶¹ Ibid. Principle 6.

⁶² Ibid. Principle 5.

⁶³ Ibid. Principle 9.

⁶⁴ Ibid. Principle 8.

⁶⁵ Constitution of Zimbabwe Amendment No. 20, Section 39.

⁶⁶ Citizenship of Zimbabwe Act [Chapter 04:01], section 11(3).

⁶⁷ Immigration Act [Chapter 04:02], section 14.

42. These provisions of the Citizenship Act and Immigration Act have enabled the discriminatory deprivation of citizenship of many persons of foreign origin in Zimbabwe, as highlighted in more detail below.

Issue IV – Descendants of migrants and risks of statelessness

43. Zimbabwe has a long history of immigration from neighbouring SADC countries such as Malawi, Mozambique and Zambia, particularly of labourers coming to work on the commercial farms. These migrants and their descendants have been repeatedly subjected to arbitrary and discriminatory deprivation of Zimbabwean nationality due to their foreign origin.
44. While migrants were initially allowed to retain their original nationality and acquire Zimbabwean citizenship as dual citizens, the 1984 Citizenship Act introduced a requirement for those with dual nationality to renounce any foreign citizenship in order to retain their Zimbabwean citizenship. From 2000, following successful campaigns and growing popularity of the opposition party Movement for Democratic Change (MDC), which was supported by the white commercial farmers and their farm workers, the Registrar General's Office began arbitrarily refusing Zimbabwean citizenship to individuals who had the right to acquire another citizenship, even if those individuals had not claimed and had no intention to claim such a right.⁶⁸ In 2001, the Citizenship Act was again amended giving people of foreign origin six months to renounce any claim to a foreign nationality or lose their Zimbabwean citizenship.⁶⁹ The law unfairly targeted migrant workers and their children, as many no longer had ties with their countries of origin, had no documents to travel to those countries, and could not renounce a foreign citizenship to which they were not entitled.⁷⁰ The law was abused to withdraw citizenship and remove these perceived political opponents from the voters' roll.⁷¹
45. A further amendment to the Citizenship of Zimbabwe Act in 2003 allowed descendants of migrant workers from the SADC region to ask for confirmation of Zimbabwean citizenship upon renouncing any potential entitlement to foreign citizenship.⁷² However, due to bureaucratic barriers, many applications for registration were unsuccessful.⁷³
46. In 2013, section 43 of the Constitution awarded Zimbabwean citizenship by birth to persons born in Zimbabwe to a SADC national parent.⁷⁴ Despite the existence of this constitutional provision, there is still no subordinate legislation to implement it. Many who attempt to register are often still directed to renounce citizenship of their parents or grandparents' country of origin, which may be impossible in practice. While

⁶⁸ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 6, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁶⁹ Citizenship Rights In Africa Initiative, *Zimbabwe*, <http://citizenshiprightsafrika.org/region/zimbabwe/?fwppaged=6>.

⁷⁰ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 11, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁷¹ Rumbidzai Dube, "Identity, Citizenship, and the Registrar General: The Politicking of Identity in Zimbabwe" (RAU, 2012), available at http://citizenshiprightsafrika.org/wp-content/uploads/2016/04/Dube_Zim_Identity-Citizenship-and-the-Registrar-General-July-2012.pdf.

⁷² Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 11, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁷³ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 15, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>.

⁷⁴ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), page 58, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

attempting to regularise their status, many have also suffered from corrupt practices by officials at the Registrar General's office charging extortionate regularisation fees of ZWL \$5000.00 instead of the prescribed ZWL \$40.⁷⁵ Many are also not aware of their constitutional rights, and/or do not have the required documentation or funds to register.

47. As a result of these barriers to documentation, many descendants of migrants are still unlawfully designated as 'Aliens' on their IDs, their children have been designated as such on their birth certificates, and they have been deprived of citizenship rights such as the right to obtain travel documents and the right to vote.

Issue V - Lack of adequate protection of stateless persons and statelessness determination procedures

48. Identifying stateless people in the country is a necessary first step to provide them a secure legal status, and protecting and ensuring their enjoyment of basic human rights. As mentioned, despite the ZHRC's, Parliamentary Portfolio Committee on Defence, Home Affairs and Security Services' and the joint taskforce's recommendations in their reports on access to documentation, there is still no dedicated statelessness determination procedures in place to identify stateless persons, to establish the extent of the stateless population in the country, and to fast-track and ease birth registration and citizenship application processes for those affected. The ZHRC's National Inquiry Report found that lack of documentation impacts other rights such as right to education, access to health and social services, political rights, freedom of occupation, trade and profession, right to administrative justice and freedom of movement and residence, among others.⁷⁶ Given the barriers that stateless people face in accessing their human rights, it is important to determine statelessness to ensure that laws and policies do not directly or indirectly discriminate against stateless people in the enjoyment of human rights.
49. Section 27 of the Constitution of Zimbabwe provides that the state must take all practical measures to promote compulsory basic education for children including higher and tertiary education.⁷⁷ However, stateless children without birth certificates and IDs face challenges in accessing education, in terms of being unable to register for school, or register for public examinations, thereby limiting their prospects of future employment. While examination students are now being prioritised for issuance of identity cards, hundreds of secondary school students across the country failed to sit the Zimbabwe School Examination Council (ZIMSEC) examinations in December 2020 due to failure to obtain national identity cards. The lockdown and the failure to decentralise government powers had led to congestion of the Registrar's office in Harare from students having to travel from other provinces to seek national IDs.⁷⁸ In March 2021, the Parliamentary Committee of Defence's fact-finding mission reported

⁷⁵ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), section XV, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁷⁶ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁷⁷ Constitution of Zimbabwe Amendment No. 20, Section 75.

⁷⁸ Emmanuel Kafe, 'Pupils in Zimsec nightmare', the Sunday Mail, (December 2020), available at: <https://www.sundaymail.co.zw/pupils-in-zimsec-nightmare>.

that 300 out of 700 learners at a primary school in Kezi, Matabeleland South province, had no identity documents.⁷⁹

50. Stateless people also struggle to access health care services because of lack of national identity documents. They are excluded from membership of medical societies and life insurance and cannot seek medical health care outside Zimbabwe. Pregnant stateless women, in particular, face barriers accessing services such as assistance during labour, and give birth outside of hospitals, further increasing the risk of their children not receiving documentation and being left stateless.⁸⁰ On 22 February 2021, the government launched the National COVID-19 Vaccination Program⁸¹ which requires identity documents to register for the COVID-19 vaccine. The ID requirements have placed stateless people outside of the protection of the lifesaving Covid-19 vaccine.
51. Undocumented people, or those misrepresented as 'Aliens' (foreign citizens) on their identification documents⁸² are also excluded from participation in electoral processes such as voting, standing for elections into public offices, and joining and forming political parties. Fair trial rights are also negatively impacted, for instance, children without documents to prove their age are at risk of being tried as adults, and may be denied speedy trials and placed outside of the Pre-trial Diversion Programme.⁸³ Prisoners without birth certificates and national identity cards are also at risk of not being granted bail, are prevented from accessing rehabilitative opportunities such as education and vocational skills training, and are ineligible for age-related Presidential amnesties, at a time when there is a critical need to decongest prisons during the Covid-19 pandemic.⁸⁴

Recommendations

52. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Zimbabwe:
 - I. Align the Citizenship of Zimbabwe Act to the Constitution, establishing the requirements for Zimbabwean citizenship, allowing for dual citizenship, implementing protections for stateless persons, and removing all discriminatory provisions.
 - II. Ratify the 1961 Convention on the Reduction of Statelessness and domesticate its provisions through nationality/citizenship laws to ensure that every child enjoys the right to acquire a nationality.
 - III. Amend the Citizenship of Zimbabwe Act to ensure that all stateless persons born in Zimbabwe and permanently resident in Zimbabwe are granted Zimbabwean citizenship.

⁷⁹ Bulawayo 24, 'Shock over high numbers of stateless learners in Matabeleland', (March 2021), available at: <https://bulawayo24.com/index-id-news-sc-national-byo-201127.html>.

⁸⁰ Amnesty International, *We Are Like 'Stray Animals'. Thousands Living on the Margin due to Statelessness in Zimbabwe*, Amnesty International, (April 2021), page 33, available at: <https://www.amnesty.org/en/documents/afr46/3932/2021/en/>

⁸¹ *Gradual Increase in Covid-19 Vaccination*, 12 March 2021, Ministry of Health and Child Care, Zimbabwe http://www.mohcc.gov.zw/index.php?option=com_content&view=article&id=352:gradual-increase-in-covid-19-vaccination&catid=84&Itemid=435.

⁸² Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), page 44, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁸³ Zimbabwe Human Rights Commission, *Report on National Inquiry on Access to Documentation in Zimbabwe*, (April 2020), page 45, available at: <http://www.zhrc.org.zw/wp-content/uploads/2020/11/NI-Report-1.pdf>.

⁸⁴ Zimbabwe Daily, 11 November 2019, [Zimbabwe: 'Stateless' prisoners rot in jail](#).

- IV.** Amend the Births and Deaths Registration Act to align with the Constitution and international and regional treaty obligations, particularly removing discriminatory provisions that affect registration of children born out of wedlock.
- V.** Develop regulations in terms of the Births and Deaths Registration Act, easing registration requirements to assist marginalised people and historically discriminated groups, protecting against statelessness, and facilitating effective registration of all births in Zimbabwe.
- VI.** Formulate and implement policies to ensure the right to Zimbabwe nationality and accelerated registration of all special interest groups such as persons with disabilities, Gukurahundi affected communities, minority groups, inter-sex persons, refugees and failed asylum seekers in protracted situations, and disaster affected communities.
- VII.** Ensure that the dedicated task force commences to identify and assist stateless persons and persons at risk of statelessness in Zimbabwe.
- VIII.** Introduce a definition of stateless persons in national law, in line with the 1954 Statelessness Convention, Article 1(1).
- IX.** Amend laws to ensure the establishment of a statelessness determination procedure, and to ensure specific assistance and protection is provided to stateless persons to assist them in accessing citizenship rights.
- X.** Implement a policy prohibiting health institutions from withholding birth confirmation records for failure to pay hospital fees.
- XI.** Implement a policy allowing schools to enrol children without birth certificates pending birth registration, and to assist with registration of undocumented children.
- XII.** Remove unnecessary ID requirement barriers for the Covid-19 vaccine and take all necessary steps to ensure that stateless people are equally included in COVID-19 responses, that their particular contexts are recognised and addressed, their rights are upheld, and that they should not be penalised in any way, due to their lack of documentation or legal status, or any other aspect of their identity.⁸⁵

⁸⁵ 2021 joint statement, Building back better for stateless people, An urgent call to States, UN agencies, donors and other stakeholders to learn lessons from the COVID-19 pandemic and take sustained action to correct past mistakes and prioritise protection stateless people's rights and the right to nationality, <https://www.institutesi.org/news/isi-joins-105-csos-to-issue-the-statement-building>.