



# WE ARE LIKE “STRAY ANIMALS”

THOUSANDS LIVING ON THE MARGINS DUE TO STATELESSNESS IN ZIMBABWE

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**Cover photo:** A woman carrying the official national identity card of Zimbabwe which is required for any adult Zimbabwean to be recognized as a legal citizen. © Amnesty International/Tsvangirai Mukwazhi.



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# 1. EXECUTIVE SUMMARY

According to the United Nations High Commissioner for Refugees (UNHCR), the exact number of stateless people globally is not known.<sup>1</sup> However, the UN Refugee Agency estimates that there are many millions globally – of which approximately one third are children. The agency further states that “statelessness may occur for a variety of reasons, including discrimination against particular ethnic or religious groups or on the basis of gender; the emergence of new States and transfers between existing States; and conflict of nationality laws.”

In Zimbabwe approximately 300,000 people are currently at risk of statelessness, according to the UNHCR. Lack of official data means that the exact number of people affected by statelessness is unknown. Hundreds of thousands of migrant workers from neighbouring countries who were brought in by colonial authorities to work on farms and mines around the country from Malawi, Mozambique and Zambia, and their descendants who settled or were born in Zimbabwe before independence in 1980 face barriers to acquiring citizenship in the country and have effectively been rendered stateless.

In addition, generations of ethnic Ndebele people, and largely settled in the Matabeleland and Midlands provinces, whose families were killed or disappeared during the Gukurahundi massacres, in early to mid-1980's, are also affected by statelessness. During Gukurahundi and its aftermath, many thousands died, lost family members and were forced to flee their homes in the affected areas in Matabeleland and the Midlands. Many inevitably lost their identity documents. As a result, those born in the ensuing months and years were unable to be registered because they could not provide the death certificates of their parents required to prove Zimbabwean nationality, thereby rendering them stateless.

This report reveals how these population groups have been deprived for decades of their rights as citizens. Denied the documentation enabling them access to education, work, health care and other basic rights, hundreds of thousands of people have been rendered stateless, stripped of any legal status in the country where they have raised families and which they regard as home.

The government's failure over many years to remove the administrative obstacles to the enjoyment of these rights, particularly to descendants of migrants who migrated to Zimbabwe before independence and to victims of Gukurahundi and their descendants, has forced people into daily struggles to live freely. As a consequence, these two groups of the population have been pushed to the margins of society.

The situation that many stateless Zimbabweans find themselves in is contrary to the Constitution of Zimbabwe. Section 43 of the Constitution provides that “every person who was born in Zimbabwe before the publication day [of the Constitution] is a Zimbabwean citizen by birth if one or both of his or her parents was a citizen of a country which became a member of SADC in 1992 and is resident in Zimbabwe.” This means that any person who was born in Zimbabwe to parents with a claim to citizenship of any SADC state, including Malawi, Mozambique, Zambia or South Africa, and is residing in Zimbabwe is a Zimbabwean citizen by birth.

Although different groups have been affected by statelessness, including thousands of white commercial farmers, this report focuses on its impact on migrants and descendants of victims of Gukurahundi, both of them historically marginalized categories of people.

Stateless people are restricted from participating in the economy, accessing jobs, opening a bank account, buying a house, opening their own businesses or entering into legally recognizable marriages or family unions. They are also poor, marginalized, discriminated against, disenfranchised and politically excluded.

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<sup>1</sup> Statelessness around the world <https://www.unhcr.org/statelessness-around-the-world.html>

This population group has over the years been negatively affected by multiple changes to the nationality laws in Zimbabwe, especially in the period between 1963 and 2003.

At independence in 1980, full citizenship was accorded to everyone born in Zimbabwe (formerly Southern Rhodesia). Dual or multiple citizenship was permissible and many people qualified who were from other Southern African countries and lived in Zimbabwe.

In 1983, the right to dual citizenship was removed from the Lancaster House Constitution and Zimbabweans with dual citizenship were required to renounce their foreign citizenship if they wanted to remain citizens of Zimbabwe. Many descendants of Malawian, Zambian and Mozambican migrants were affected as they could no longer claim citizenship both of Zimbabwe and of their country of descent. Thus, if they chose to retain their foreign citizenship, they ceased to be Zimbabwean nationals and vice versa.

From around 2000 the Registrar General's Office, which is responsible for civil registration, identity documents (IDs), citizenship and the voters' roll, began to refuse Zimbabwean citizenship to people who had the potential right to another citizenship, even if they had never sought to claim that right. A number of court cases successfully challenged these provisions, albeit with no effect on the general practice of arbitrarily refusing citizenship. As a result, people were faced with insurmountable barriers when they tried to access social services such as health care and education.

Stateless people in Zimbabwe without birth certificates and IDs have struggled to access education, including being excluded from sitting for secondary school and other public examinations, thereby limiting their prospects of future employment.

The African Charter on the Rights and Welfare of the Child (African Children's Charter) to which Zimbabwe is state party, provides for the child's right to a name, birth registration and nationality, and imposes an obligation on State Parties to take legislative measures to prevent statelessness among children.

The Zimbabwean authorities have passed discriminatory legislation over the years that has effectively excluded, marginalized and disenfranchised specific groups of people. For example, the Citizenship of Zimbabwe Act 23/1984 was used to arbitrarily deprive persons of foreign origin of their right to a Zimbabwean nationality even though most of them were entitled to citizenship. While states have a right to determine their citizenship laws, these laws must be in conformity with International Human Rights Law. As such, domestic law and practices must not be discriminatory and must conform to obligations to not render anyone stateless.

Migrant workers located on mines and farms lost Zimbabwean nationality by operation of the law in 2001. While many were still considered Zimbabwean at the time of the 2001 amendment, the law required them to renounce their ancestral nationality within six months of the law entering into force. Many were unable to do so because they did not hold identity documents showing they were nationals of those other countries.

Amnesty International is, among others, recommending that Zimbabwe adopts reasonable and inclusive administrative policies to ensure universal registration, including late registration, of descendants of victims of Gukurahundi in Matabeleland North and South Provinces, Bulawayo and the Midlands, which were sites of the Gukurahundi violence and the killings which presently host some of the stateless people, without the requirement to produce their parents' death certificates. The organization is also calling on the government to take adequate measures to ensure the registration and restoration of Zimbabwean nationality to all who are entitled to it, including all those born in Zimbabwe to foreign parents.

# 2. METHODOLOGY

This report is based on field visits to Zimbabwe by Amnesty International researchers between October 2018 and remote research in November 2020, due to the lockdowns imposed by governments across the SADC region to mitigate against the spread of COVID-19, in the provinces of Mashonaland, Matabeleland North, Matabeleland South and Manicaland. These are some of the areas where most migrant workers settled before independence in 1980 and they remain home to many of the Ndebele ethnic minority members who were subjected to state persecution and subsequently became stateless.

Researchers conducted around 100 interviews with people affected by statelessness and carried out 10 focus group interviews, including with individuals directly affected by statelessness. The team further conducted interviews with academics, government officials, lawyers, the Zimbabwe Human Rights Commission, the UN High Commissioner for Refugees (UNHCR) in both Zimbabwe and South Africa, the Office of the Registrar General of Zimbabwe and other relevant organizations and individuals. In total, around 150 people from these sectors were interviewed.

The report also analyses a number of documents, including successive citizenship laws, the Constitution of Zimbabwe and UNHCR reports, as well as the March 2016 submission to the Universal Periodic Review during its 26<sup>th</sup> Session. Furthermore, Amnesty International researchers worked with local non-governmental organizations (NGOs) to identify communities deprived of nationality and therefore affected by statelessness. The organization is grateful for the support and trust offered by these partners. Amnesty International also thanks the Office of the Registrar General and the Ministry of Justice, Legal and Parliamentary Affairs for providing answers to our questions.

All interviews were conducted after informed consent. To protect individuals who participated in the research the report will, where necessary, use anonymity or pseudonyms in line with the organization's research ethics. Amnesty International thanks everyone who took their time to talk to us during our research, including people directly affected by statelessness, NGOs who volunteered their time and information, and government officials who assisted in our journey of compiling this report.

# 3. BACKGROUND AND CONTEXT

Hundreds of thousands of migrant workers from neighbouring countries and their descendants who settled or were born in Zimbabwe before independence in 1980 face barriers to acquiring citizenship and have effectively been rendered stateless.

In addition, generations of ethnic Ndebele people, regarded as minority and largely settled in the Matabeleland and Midlands provinces, whose families were killed or disappeared during the Gukurahundi massacres, are also affected by statelessness. Gukurahundi, a Shona language term which loosely translates to “the early rain which washes away the chaff before the spring rains”, was a series of violent episodes perpetrated in the early 1980s<sup>2</sup> by the Zimbabwe National Army against Ndebele civilians and opposing Zimbabwe African People’s Union (ZAPU) dissidents who were perceived as not supporting the Zimbabwe African National Union (ZANU) government. In the ensuing violence after Korean-trained Fifth Brigade forces were sent into Matabeleland and the Midlands in the early 1980s to eliminate the perceived dissidents, more than 20,000 people were killed.

As a consequence, these two groups of the population have been pushed to the margins of society. Their lack of identification documentation along with a succession of discriminatory nationality laws has rendered them stateless and forced them into daily struggles just to live their lives. Countless citizens are restricted from participating in the economy, accessing jobs, opening a bank account, buying a house, opening their own businesses or entering into legally recognizable marriages or family unions.

Stateless people are poor, marginalized, discriminated against, disenfranchised and politically excluded. This population group has over the years been negatively affected by multiple changes to the nationality laws in Zimbabwe, especially in the period between 1963 and 2003.

According to UNHCR, the UN refugee agency, approximately 300,000 people are currently at risk of statelessness in Zimbabwe.<sup>3</sup> Lack of official data means that the exact number is unknown. They include migrants from Mozambique, Malawi and Zambia who were brought in by colonial authorities to work on farms and mines around the country.

While the Zimbabwean authorities have never acknowledged that statelessness is a consequence both of the Gukurahundi massacres and the arbitrary changes to laws that have affected migrants, some positive steps have been taken which suggest an official awareness of the problem. They include the establishment of a government task force to document stateless people in the country and an acceleration of birth registration.<sup>4</sup>

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<sup>2</sup> Sabelo J. Ndllovu-Gatsheni and Wendy Willems. (2009). *Journal of Southern African Studies*, December 2009, Vol. 35, No. 4 (December 2009), pp. 945-965. “Making Sense of Cultural Nationalism and the Politics of Commemoration under the Third Chimurenga in Zimbabwe”

<sup>3</sup> Submission by the UN High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: 2nd Cycle, 26th Session ZIMBABWE

[http://www.veritaszim.net/sites/veritas\\_d/files/Constitution%20of%20Zimbabwe%20Amendment%20%28No.%2020%29.pdf](http://www.veritaszim.net/sites/veritas_d/files/Constitution%20of%20Zimbabwe%20Amendment%20%28No.%2020%29.pdf)

<sup>4</sup> *Sunday Times* (2019). Task force established to start counting undocumented people in Zimbabwe <https://www.timeslive.co.za/sunday-times/news/2019-11-17-task-force-established-to-start-counting-undocumented-people-in-zim/>



## 3.1 MIGRANTS EXPLOITED IN THE LABOUR SYSTEM

Although cheap and sometimes slave labour was a feature of the colonial state, World War II was a watershed moment when “under the guise of support for the British war effort, undercapitalized settler producers, who were unable to attract an adequate supply of labour through a dependence on market forces, used their political power to influence the [British] state to coerce Africans into wage employment in order to take advantage of unprecedented opportunities presented by the expansion of internal and external markets.”<sup>5</sup>

This labour force worked under chronically poor conditions, often for little or no payment. The environment was characterized by high accident and morbidity rates, brutalization and abuse of workers, poor diet and inadequate accommodation. Workers had predominantly migrated from neighbouring territories and were therefore much more vulnerable to exploitation.<sup>6</sup> The effects of this exploitation are still felt acutely by current generations.

At independence in 1980, full citizenship was accorded to:

- everyone born in Zimbabwe (formerly Southern Rhodesia), whether before or after 1980, other than children of foreign diplomats, enemy aliens, illegal immigrants, or foreign residents;
- everyone born outside Zimbabwe, if his or her guardian parent was a citizen (but not if the guardian parent was a citizen by descent) or a non-citizen resident of Zimbabwe;
- everyone who acquired citizenship by registration (i.e. became a naturalized Zimbabwean).

Dual or multiple citizenship was permissible and many people qualified who were from other Southern African countries and lived in Zimbabwe.

In 1983, the right to dual citizenship was removed from the Lancaster House Constitution and Zimbabweans with dual citizenship were required to renounce their foreign citizenship if they wanted to remain citizens of Zimbabwe. Many descendants of Malawian, Zambian and Mozambican migrants were affected as they could no longer claim citizenship both of Zimbabwe and of their country of descent. Thus, if they chose to retain their foreign citizenship, they ceased to be Zimbabwean nationals and vice versa. However, from 1985 many people of foreign descent (mainly children of migrant workers from the Southern African Development Community (SADC)) region who had been in Zimbabwe before or after 1980 were given certificates of citizenship which recognized their Zimbabwean citizenship and enabled them to vote. This “Certificate of Registration as a Citizen of Zimbabwe” conferred the rights, privileges and duties attaching to citizenship of Zimbabwe.

Despite being issued with a certificate of citizenship, affected persons were also given a Zimbabwean identity document inscribed “Alien”, implying that they were not first-class citizens of Zimbabwe. It was widely believed that they were only recognized as citizens for the purpose of voting, as long as they were perceived to be voting “correctly” by authorities.

From around 2000 the Registrar General’s Office, which is responsible for civil registration, identity documents, citizenship and the voters’ roll, began to refuse Zimbabwean citizenship to people who had the potential right to another citizenship, even if they had never sought to claim that right. A number of court cases successfully challenged these provisions, albeit with no effect on the general practice of arbitrarily refusing citizenship.<sup>7</sup> As a result, people were faced with insurmountable barriers when they tried to access social services such as health care and education.

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<sup>5</sup> David Johnson, *World War II and the Scramble for Labour in Colonial Zimbabwe, 1939-1948*. Harare: University of Zimbabwe Publications, 2000

<sup>6</sup> “The Exploitation and Abuse of African Labour in the Colonial Economy of Zimbabwe, 1903-1930: A lopsided Struggle Between Labour and Capital”, EP Makambe, *Trans African Journal of History* Vol.23 (1994) pp 81-104

<sup>7</sup> See *Carr v Registrar-General 2000 (2) ZLR 433 (5)*; *Petho v Minister of Home Affairs, Zimbabwe and Another SC-80-2002*; *Tsvangirai v Registrar-General and Others HH-29-2002*; *Todd v Registrar General of Citizenship and Another HH-76-2002*; *Ricardo Manyere v Registrar-General HH-87-02*; *Job Sibanda v Registrar-General of Citizenship and Others HH-02*.

## 3.2 GUKURAHUNDI MASSACRES

Simmering political tensions between the Robert Mugabe-led ZANU-PF and the Joshua Nkomo-led Zimbabwe African People's Union (ZAPU) came to a head in 1983 when the friction erupted into violence. Government-led Fifth Brigade security forces cracked down on ZAPU supporters in Matabeleland and the Midlands, where ZAPU support, much of which came from the minority Ndebele people, was strong. The operation was codenamed Gukurahundi. Between 1983 and 1987, when security forces targeted thousands of Ndebele people with torture, detention and summary execution, an estimated 20,000 people were killed. Amnesty International documented the torture and killings in various reports and letters to the government.<sup>8</sup>

During Gukurahundi and its aftermath, many thousands died, lost family members and were forced to flee their homes in the affected areas in Matabeleland. Many inevitably lost their identity documents. As a result, those born in the ensuing months and years were unable to be registered, thereby rendering them stateless. Prominent scholars have argued that when ZANU-PF came to power in 1980, the state deployed violence against those such as PF-ZAPU and former cadres of the Zimbabwe People's Revolutionary Army (ZIPRA)<sup>9</sup> who happened to be construed as enemies of the state. Some have argued that Gukurahundi was a political strategy rooted in "confrontation" and "embracing violence as a legitimate political tool in fighting for independence and the political destruction of opponents and enemies."<sup>10</sup>

## 3.3 PROOF OF NATIONALITY AND BIRTH REGISTRATION

In order to prove that they are a citizen of a particular country and obtain their birth certificate, individuals in most countries across Southern Africa need to provide evidence that they were born in a certain area in the country, together with their parents' identity documents. The birth certificate serves as an identity document for minors, allowing them to obtain national identity documents (IDs) and travel documents when they are older.

The UNHCR sets out the crucial importance of obtaining proof of nationality and birth registration, and the problems which arise later when this is not possible:<sup>11</sup>

**"The systems for proof of nationality are in practice often as important as the provisions of the law on the qualifications in principle. If there are onerous requirements or costs attached to proof of nationality, or discrimination in practice means that proof is not obtainable, then the fact that a person actually fulfils the conditions laid down in law may be irrelevant. In principle, recognition of citizenship should start immediately after birth, with registration of the birth itself. Birth registration establishes in legal terms the place of birth and parental affiliation, which in turn serves as documentary proof underpinning acquisition of the parents' nationality (*jus sanguinis*), or the nationality of the state based on where the child is born (*jus soli*). Birth registration (while not itself conferring citizenship) is usually fundamental to the recognition of nationality itself, and thus of all other citizenship rights: lack of birth certificates can prevent citizens from registering to vote, putting their children in school or entering them for public exams, accessing health care, or obtaining identity cards, passports, and other important documents. Yet according to UNICEF, the UN Children's Fund, 55% of African children under five years old have not been registered, with the situation much worse in rural areas."<sup>12</sup>**

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<sup>8</sup> See letter from Amnesty International's Secretary General Pierre Sané to President Robert Mugabe concerning the need for public discussion and action on the disturbances in Matabeleland and the Midlands in the 1980s, 23 May 1997 (AFR 46/02/97). The letter details Amnesty International's involvement in documentation of the torture, disappearances and killings that took place.

<sup>9</sup> Zimbabwe People's Revolutionary Army (ZIPRA) was the military wing of the Zimbabwe African People's Union (ZAPU).

<sup>10</sup> Ndlovu-Gatsheni, Sabelo J. "Rethinking 'Chimurenga' and 'Gukurahundi' in Zimbabwe: A Critique of Partisan National History." *African Studies Review*, vol. 55, no. 3, 2012, pp. 1–26. JSTOR, [www.jstor.org/stable/43904846](http://www.jstor.org/stable/43904846). Accessed 3 June 2020

<sup>11</sup> Bronwen Manby (2011.) *Statelessness in Southern Africa* <https://www.refworld.org/pdfid/50c1f9562.pdf>

<sup>12</sup> UNHCR. (2011). *Statelessness in Southern Africa*

## 3.4 DISCRIMINATORY AND ARBITRARY LAWS

The Zimbabwean authorities have passed discriminatory legislation over the years that has effectively excluded, marginalized and disenfranchised specific groups of people.<sup>13</sup> The Citizenship of Zimbabwe Act 23/1984 was used to arbitrarily deprive persons of foreign origin of their right to a Zimbabwean nationality even though most of them were entitled to citizenship by birth.<sup>14</sup> While states have a right to determine their citizenship laws, these laws must be in conformity with International Human Rights Law. As such, domestic law and practices must not be discriminatory and must conform to obligations to not render anyone stateless.

Migrant workers and members of their families, including from neighbouring SADC countries who had settled in Zimbabwe prior to independence, found themselves at the receiving end of arbitrary and discriminatory provisions of the nationality legislation. Migrant workers located on mines and farms lost Zimbabwean nationality by operation of the law in 2001.<sup>15</sup> While many were still considered Zimbabwean at the time of the 2001 amendment, the law required them to renounce their ancestral nationality within six months of the law entering into force. Many were unable to do so because they did not hold identity documents showing they were nationals of those other countries.

In 2003 the Citizenship of Zimbabwe Act was once again amended to allow people born in Zimbabwe, but whose parents came as unskilled workers from another country in the SADC region, to apply for “confirmation” of their citizenship of Zimbabwe and at the same time sign a form renouncing their potential entitlement to foreign citizenship.<sup>16</sup> In 2009, the Constitution was amended to extend the right of citizenship to children born in Zimbabwe with one parent or grandparent who is or was a citizen (by birth or descent only), and removed the restriction on transmission of citizenship to children born outside the country.

Following the promulgation of the 2013 Constitution, and in line with international human rights standards, Zimbabwean citizenship must not be revoked if a person would be rendered stateless.<sup>17</sup> The 2013 Constitution also allows people to claim Zimbabwean citizenship before this Constitution came into force if at least one of their parents was from a SADC country.<sup>18</sup> Although these provisions could potentially resolve statelessness for many people, no subsidiary legislation has been enacted to date and many people are left in limbo as a result.

Although different groups have been affected by statelessness, including thousands of white commercial farmers, this report focuses on its impact on migrants and descendants of victims of Gukurahundi, both of them historically marginalized categories of people.

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<sup>13</sup> Citizenship of Zimbabwe Act 23/1984. Section 7 deprived citizenship to persons from countries such as Malawi, Mozambique and Zambia. Without citizenship many of these persons could not exercise citizenship rights such as the right to vote as their IDs were endorsed with the inscription “Alien”. This disenfranchisement meant that most migrants were prevented from voting in several general elections in Zimbabwe.

<sup>14</sup> Section 7 provides for the 2001 amendment of the Citizenship of Zimbabwe Act 23/1984. The amendment required persons of foreign nationality to renounce their foreign citizenship if they wished to retain Zimbabwean citizenship. The failure to renounce foreign citizenship within six months resulted in many persons originally from neighbouring Southern Africa Development Community (SADC) states losing their Zimbabwean nationality.

<sup>15</sup> The 2001 amendment gave people of foreign origin 6 months to renounce their foreign nationality. Any person who failed to complete the renunciation within 6 months would automatically lose their Zimbabwean nationality. The law unfairly targeted migrant workers, many of whom no longer had ties with their countries of origin.

<sup>16</sup> See Citizenship of Zimbabwe Amendment Act No. 12 of 2003, introducing section 9A to the Citizenship of Zimbabwe Act.

<sup>17</sup> Article 39(3) Constitution of Zimbabwe

<sup>18</sup> Article 43 Constitution of Zimbabwe

# 4. MIGRATION AND STATELESSNESS

Statelessness in Zimbabwe is largely driven by colonial history, migration, displacement and contrived political agendas.

## 4.1 PRE-INDEPENDENCE MIGRATION

Colonial settlement in Southern Rhodesia (Zimbabwe) was largely dependent on cheap African labour, both native and migrant, in agriculture, mining and other industries. To force native Africans to seek wage employment, the colonial government imposed rents and taxes that were to be paid in cash.<sup>19</sup> Despite this, labour remained scarce and the introduction of migrant labour from neighbouring territories was mooted as early as 1892. Large-scale migration from 1903 was organized through the Rhodesian Native Labour Bureau, a British colonial government-sponsored labour organization designed to coerce migrant labour to work in the mines and later in white settler-owned farms. This was later replaced by the Rhodesian Native Labour Supply Commission in 1946.

Nyasaland (Malawi) and Northern Rhodesia (Zambia) were regarded as labour reservoirs for farm work and mining respectively. Just before World War I, Mozambique became a third source of labour after supplies diminished from northern territories (present-day Zambia and Malawi). Bechuanaland (Botswana) provided substantive labour.<sup>20</sup>

World War II brought shortages in imported goods and provided the impetus for industrialization in Southern Rhodesia to substitute imports. Industrialization provided more opportunities for migrants to move to urban areas. To harness investment and economic dividends, the Central African Federation (1953-1963) was formed, comprising Southern Rhodesia, Northern Rhodesia (Zambia) and Nyasaland (Malawi). Southern Rhodesia (Zimbabwe) dominated the Central Africa federation economically and militarily and it had the largest population of the white settler community.<sup>21</sup> From that period, there was an increase in foreign contract labour and a decrease in indigenous labour supplies. By 1954, Southern Rhodesia employed around half a million Africans, of whom half were native and half were migrants from neighbouring territories, mainly Northern Rhodesia, Nyasaland and Mozambique.<sup>22</sup> The migrant labourers were issued with Rhodesian identity cards or registration certificates and classified as “native aliens” or non-indigenous

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<sup>19</sup> G. Arrighi, Labour Supplies in Historical Perspective: A Study of the Proletarianization of the African Peasantry in Rhodesia. *Journal of Development Studies*, 6, 3, 1970

<sup>20</sup> Peter Scott, Migrant Labor in Southern Rhodesia, *Geographical Review*, Jan. 1954, Vol. 44, No. 1, Taylor and Francis, (Jan. 1954), pp. 29-48

<sup>21</sup> Southern Rhodesia Constitution (Order in Council), 1961

<sup>22</sup> Peter Scott, Migrant Labor in Southern Rhodesia, *Geographical Review*, Jan. 1954, Vol. 44, No. 1, Taylor and Francis, (Jan 1954), pp. 29-48

natives.<sup>23</sup> That alien identity, a stereotype created by the colonial state, persisted after independence in 1980,<sup>24</sup> with implications for the lives of the workers and their descendants.

## 4.2 “ALIENS” DEPRIVED OF NATIONALITY

Zimbabwe’s Constitution allowed for dual citizenship following independence in 1980. The 1979 Constitution acknowledged the migrant population from SADC countries by allowing citizenship by birth to children whose parents were either citizens, ordinary residents or became permanent residents after their birth. The right to dual citizenship was removed from the Constitution in 1983,<sup>25</sup> just before the enactment of the Citizenship Act in 1984 when the government abolished dual citizenship and asked Zimbabwean nationals to renounce any foreign citizenship by the end of 1985.<sup>26</sup> Despite this, migrant workers were granted special dispensation allowing them to vote in 1990, 1995 and 2005.

As mentioned above, Section 9(6) of the Citizenship Act (1984) states that any person who acquired citizenship by registration in 1985, and was on the voters’ roll in that year, was deemed to have retained Zimbabwean citizenship despite not renouncing their foreign citizenship.

By 2000, then-President Robert Mugabe and his ZANU-PF party faced significant political opposition.<sup>27</sup> With a crucial presidential election coming up in 2002,<sup>28</sup> identity was politicized along the contours of ancestry, citizenship, belonging and the nation-state.<sup>29</sup> The government became increasingly intolerant and began targeting commercial farmers mainly believed to be supporters of the opposition Movement for Democratic Change (MDC). The land reform programme was rolled out which saw white-owned farms expropriated<sup>30</sup> and farm workers, many of them migrants, dispersed. Many moved to peri-urban communities such as Epworth, Goromonzi and Hatcliffe near the capital, Harare, and Penhalonga, near Mutare.

The immigrant population, especially those whose parents and ancestors had migrated to Zimbabwe in search of employment from neighbouring countries and who were perceived to be largely pro-opposition MDC supporters, became a target as the country prepared for both the 2000 parliamentary election and the crucial 2002 presidential election. Authorities disparagingly referred to the migrant population as “totemless aliens” and sought to deliberately exclude them from voting via citizenship legislation. The ZANU-PF government responded by tightening rules against dual citizenship through the Citizenship Amendment Act of 2001.<sup>31</sup> This amendment to the Citizenship Act of Zimbabwe required any person of foreign nationality to renounce that nationality within six months. Those who failed to do so lost their Zimbabwean citizenship, reducing many migrants and their descendants to non-citizens and rendering them effectively stateless.

Many believe this political act was targeted at the white minority who were perceived to support the opposition.<sup>32</sup> In reality, it affected hundreds of thousands of descendants of migrant workers and their families. The vast majority of the so-called “totemless” people had no claim to citizenship in any other country. For example, migrants from Malawi could not renounce their natural citizenship since by that time they had lost their Malawian nationality through operation of that country’s citizenship law. This provided that any person who left Malawi for another country automatically lost Malawian citizenship upon reaching the age of 21.<sup>33</sup>

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<sup>23</sup> Peter Scott, *Migrant Labor in Southern Rhodesia*, *Geographical Review*, Jan., 1954, Vol. 44, No. 1, Taylor and Francis, (Jan., 1954), pp. 29-48; Anusa Daimon ‘Mabhurandaya’: *The Malawian Diaspora in Zimbabwe: 1895 to 2008*, Doctoral thesis in the faculty of humanities at the for Central African Studies at the University of Free State.

<sup>24</sup> R. Parry, ‘Culture, Organization and Class: The African Experience in Salisbury: 1892-1935’, in Raftopoulos and T. Yoshikuni, (eds), *Sites of Struggle: Essays in Zimbabwe’s Urban History*, Harare: Weaver Press, 1999, pp. 66- 77.

<sup>25</sup> Constitution of Zimbabwe Amendment Act No 3 of 1983

<sup>26</sup> <https://www.statelessness.eu/blog/denationalisation-and-politics-citizenship-zimbabwe>; Citizenship of Zimbabwe Act, No 23 of 1984 Section 9

<sup>27</sup> Katinka Ridderbos, *Stateless former farm workers in Zimbabwe*, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/statelessness/ridderbos.pdf>

<sup>28</sup> Ibid

<sup>29</sup> Anusa Daimon ‘Mabhurandaya’: *The Malawian Diaspora in Zimbabwe: 1895 to 2008*, Doctoral thesis in the faculty of humanities at the for Central African Studies at the University of Free State.

<sup>30</sup> The Zimbabwe land reform programme has been widely documented. It led to around 4,500 white commercial farmers being dispossessed of their farms and over 300,000 farmworkers losing their jobs. <https://www.centreforpublicimpact.org/case-study/fast-track-land-reform-zimbabwe/> accessed 18 September 2019.

<sup>31</sup> Zimbabwe Country Assessment, October 2002, Country Information and Policy Unit, Immigration and Nationality Directorate Home Office, United Kingdom, <https://www.refworld.org/pdfid/3df4aaf46.pdf>, 47

<sup>32</sup> Ibid, 47

<sup>33</sup> See section 7 of the Malawi Citizenship Act which has been amended but is yet to be implemented.

Using his discretionary powers, in 2002 the Registrar General revoked the citizenship of Judith Todd, daughter of former Prime Minister of Southern Rhodesia, Sir Garfield Todd, as a result of her failure to renounce her claim to New Zealand citizenship in accordance with the 2001 Act. According to the Registrar General, Judith Todd was an “alien” who should have renounced her New Zealand citizenship because her parents were born in New Zealand, even though she was born in Rhodesia. Judith Todd vehemently denied that she was a citizen of New Zealand by descent, arguing that she could not renounce what she did not possess. The High Court ruled in her favour but on appeal the Supreme Court found that she was a citizen of New Zealand by descent and gave her only two days in which to renounce that citizenship. Failure to do so would result in the loss of her claim to Zimbabwean nationality through operation of the law.<sup>34</sup> Whilst the Registrar General did issue her with a temporary passport, he refused to renew it when it expired, rendering Judith Todd stateless. Her father was stripped of his citizenship before his death in 2002.

During the course of its research, Amnesty International came across cases of migrants and descendants of migrants who had held valid Zimbabwean identity documents but found them rejected by the Registrar General’s office when they attempted to renew their passports or replace a missing document. Many people discovered they had lost their Zimbabwean citizenship in 2001 and were unable to obtain a legal identity until they reapplied. Most families interviewed were from SADC countries and were entitled to Zimbabwean nationality under the 2003 amendment to the Constitution.<sup>35</sup> Despite these legal provisions, they have been rendered stateless in practice.

Zimbabwean authorities treated migrants as if they were in possession of a second nationality, yet the countries of their supposed foreign citizenship did not, in fact, regard them as citizens. Most of the people affected were not in possession of a second nationality and neither did they hold citizenship in their parents’ countries, making it impossible for them to renounce it. The government’s interpretation of the 2001 amendment affected not only actual dual citizens but also anyone with a possible claim to citizenship elsewhere. This law was applied arbitrarily and without adequate notice, consultation and public awareness.



*Grandmother sitting with her two grandchildren who are at risk of becoming stateless because their mother has been rendered stateless due to lack of identity document. The two are facing a precarious future, including the prospect of not finishing school if they are not issued with birth certificates or identity documents. © Amnesty International/Tsvangirai Mukwazhi*

<sup>34</sup> *Registrar General of Citizenship vs Judith Garfield Todd* Judgment No. SC 4/03, Civil Appeal No. 158/02

<sup>35</sup> See section 38 of the Constitution which provides for the citizenship by registration and section 43 which provides for citizenship to persons born in Zimbabwe to parents with a claim to citizenship of a SADC state. Section 38(2) provides that any person who has been lawfully and continuously resident in Zimbabwe is entitled to apply for citizenship by registration.

Poor official communication of the 2001 amendment, combined with low literacy rates and poverty, meant that many people were unaware of the requirement to renounce their foreign nationality within six months. Many others could not prove any foreign ties and did not know their parents' or grandparents' village of origin in either Malawi, Mozambique or Zambia. Most descendants of migrant workers were born in Zimbabwe and did not have any legal connection with their parents' countries of origin.

Two cases illustrate some of the frustrations faced by descendants of migrant workers who were required to renounce their foreign citizenship.

**Orlando's\*** parents migrated to Zimbabwe in the 1960s and worked at Muriel Mine in Mutorashanga, Mashonaland Central Province. Orirando was born at the mine a few years later and had a good education. Nevertheless, he was deprived of his citizenship in 2001 along with many others who had migrated from SADC states. According to Orirando, his parents were forced to renounce their Mozambican citizenship before the 1985 elections and were issued with Zimbabwean citizenship certificates as a "reward", ostensibly to allow them to vote. Orirando was technically stateless for two years. He completed his renunciation forms in 2003 and was only issued with a certificate in 2005. After 14 months he was told that he could apply for a Zimbabwean passport

**Irene Amos** was born in Zimbabwe to parents who arrived from Malawi before independence in 1980. When she attempted to claim Zimbabwean nationality, she was referred to the Malawian Embassy to renounce her Malawian citizenship, even though she had never been to the country. She could not afford the renunciation fee of US\$120 and as a result has been unable to claim either Zimbabwean or Malawian citizenship. Irene Amos remains stateless and must pay US\$50 to confirm her Zimbabwean citizenship and obtain a certificate. Such sums are beyond the reach of most migrant workers, including farmworkers, who currently earn on average the equivalent of US\$30 per month.

In 2003 the government promulgated the Citizenship of Zimbabwe Amendment Act, providing a special procedure for migrant workers from SADC states.<sup>36</sup> Any person whose parents migrated from a SADC state before 1980 and settled in Zimbabwe was permitted to apply to the Registrar General at any time for renunciation of citizenship of that SADC state and confirmation of his/her status as a Zimbabwean citizen. This amendment exempted people of SADC parentage who may be citizens of those countries by descent from losing Zimbabwean citizenship if they complied with the administrative requirements without being subjected to a restrictive six months window period. It allowed anyone who was a descendant of a migrant worker who came to Zimbabwe from a Southern African state prior to 1980, and who had resided in Zimbabwe continuously from birth, to qualify for nationality and certification of citizenship.

However, administrative hurdles frustrated many applications. A certificate of citizenship could only be issued after the Registrar was satisfied that the applicant had fulfilled the bureaucratic requirements, procedures for which were unclear.<sup>37</sup>

In addition, denial of citizenship did not conform to international law (see Chapter 8, International Legal Framework below). This was discriminatory and designed to exclude and disenfranchise a targeted and specific group of people, leading to them being rendered stateless or placed at risk of statelessness. It was inspired by the ruling party's interests to consolidate its power and people were not consulted before the amendments entered into force.

In the course of conducting interviews and researching this report, Amnesty International did not meet any individuals who had benefited from the 2003 amendment due to difficulties accessing them. The organization only had access to the victims of the amendment process. However, this procedure may be used by some of the stateless people affected by the 2001 amendment.

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<sup>36</sup> Section 9(a) of the Citizenship of Zimbabwe Act

<sup>37</sup> Section 9(a) of the Citizenship of Zimbabwe Act

# 5. GUKURAHUNDI AND STATELESSNESS

## 5.1 STATE-SANCTIONED VIOLENCE

After 10 years of the liberation war, marked by problems and divisions between the Mugabe-led ZANU-PF and the Nkomo-led ZAPU parties, Zimbabwe was a divided nation at independence in 1980.<sup>38</sup> Tensions led to an eruption of violence between forces of the Zimbabwe African National Liberation Army (ZANLA) and the Zimbabwe People's Revolutionary Army (ZIPRA), the respective military wings of ZANU-PF and ZAPU.

By early 1982 authorities were cracking down with extreme violence on gangs of dissidents, mainly from ZIPRA forces in Matabeleland.<sup>39</sup> Special forces of the Zimbabwe National Army Fifth Brigade were deployed who carried out atrocious attacks against not only the dissidents but also ZAPU officials and unarmed civilian supporters.<sup>40</sup> The political tensions spilled into mass atrocities against the Ndebele people and an estimated 20,000 civilians were killed. Thousands were tortured and abducted, women raped and homes destroyed. The strategy - known as operation Gukurahundi - aimed to silence political opposition and create a climate of fear.

Throughout 1983 and 1984 Amnesty International documented political killings of civilians by the army during its operations against armed groups in Matabeleland and Midlands provinces.<sup>41</sup> The persecution placed many at risk of statelessness, since without their parents' death certificates they could not produce evidence of their Zimbabwean nationality. Death certificates for people killed in the Gukurahundi operation were not issued, meaning that those who were orphaned as a result of the violence had no way of proving their parents' nationality.

Related factors leading to statelessness, particularly for descendants of the Gukurahundi victims, include the loss of birth records. Many no longer had these because of displacement, demolition or burning of homes, births outside registered clinics or hospitals, births as a result of rape and birth in a foreign country for some who fled during the disturbances. Others whose parents died or disappeared were issued with death certificates with incorrect information, including falsification of circumstances of their deaths, thereby making it difficult for them to access their birth records.

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<sup>38</sup> CCJP Breaking the silence, Building true peace: Summary Report page 7-8.

<sup>39</sup> CCJP Breaking the Silence, Building true peace, Summary Report

<sup>40</sup> CCJP Report n 67 above.

<sup>41</sup> Open letter from Amnesty International to His Excellency the President Robert Mugabe concerning the need for public discussion and action on the disturbances in Matabeleland and the Midlands in the 1980s  
<https://www.amnesty.org/download/Documents/156000/afr460021997en.pdf>



# 6. ADMINISTRATIVE BARRIERS

Those lacking identity documents in Zimbabwe face challenging problems. They are necessary to access services, for personal and professional development, and to claim one's rights. Birth certificates serve as the primary form of identification for all citizens. The national identity card, which all Zimbabwean nationals must apply for when they reach 16, is needed to enjoy a wide variety of civil, political, social and economic rights. Identity cards are required to: sit school exams, enrol in tertiary institutions, vote and run for political office, open a bank account and acquire or transfer property, apply for a passport, make a sworn statement before a judge, get married or divorced, and register the birth of one's children. With no access to a birth certificate and identity papers, stateless people are prevented from fully exercising their human rights.

One person interviewed by Amnesty said:

**“denying us identity documents as migrants does not only affect adults’ rights but denies our children their rights. It is not only destroying parents but the next generation.”**

Numerous administrative hurdles frustrate people's efforts to obtain Zimbabwean citizenship. Many marginalized descendants of migrant farm workers are still required to renounce citizenship of their country of origin because of the non-existence of enabling legislation related to the current Zimbabwean Constitution which allows for dual citizenship. In February 2019, the Zimbabwean cabinet approved amendments to the Zimbabwe Citizenship Act to allow dual citizenship in order to align it with the 2013 Constitution. However, as of the time of writing, these were still to be tabled in parliament.

## 6.1 BIRTH REGISTRATION AT THE HEART OF IDENTITY

Birth registration is the key to nationality in Zimbabwe. An unabridged birth certificate containing information such as the parents' names, nationality, date of birth, ID number and the beneficiary's details is required to ascertain proof of nationality. In Zimbabwe the Registrar General's office is the administrative branch that registers births and deaths and is governed by the Births and Deaths Registration Act (BDRA).<sup>42</sup> The BDRA provides for the compulsory registration of any birth that occurs after 20 June 1986.<sup>43</sup> According to this law, it shall be the duty of the mother or father to give notice of the birth or death of any person.<sup>44</sup>

In the case of death or unavailability of the mother or father, notice may be given by the occupier of the house where the birth occurred, the person in charge of the hospital where the birth took place, the headman for the community in which the birth took place, the adult person who has custody of the child or any adult person who witnessed the birth. Such notice must be given within 42 days of the birth. There is no requirement for corroborating evidence or witnesses.


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<sup>42</sup> . (BDRA)11/1986, Cap. 5 :02.

<sup>43</sup> Section 10, BDRA

<sup>44</sup> Section 11 BDRA



  A woman carrying a copy of her fading birth registration. © Amnesty International/Tsvangirai Mukwazhi

According to the BDRA, no birth or death which occurs after 20 June 1986 shall be registered after the expiry of one year, except with the written authority of the Registrar General.<sup>45</sup> Notice of a birth or death which occurred in Zimbabwe prior to 20 June 1986 may be given by a person concerned or a responsible person in the case of birth or in the case of death by a responsible person. A responsible person can be anyone with the duty to give notice.<sup>46</sup>

In practice however, the notice of birth is a cumbersome and difficult process for many people, especially in situations where registration has been requested one year after the birth due to other barriers. Late applications for birth registration may be rejected by registry officials. Other applicants may be unable to provide proof of birthplace, proof of residence, proof of parentage and may not have a living witness bearing the same surname as them to testify to circumstances of their birth. For example, Amnesty International interviewed women who struggled to register their children because they had given birth at home. One woman said

**“Sometimes deliveries happen at home because the baby comes early but hospitals are reluctant to give you a birth record. At times they won’t give you proper documentation required by the registrar.”**

Some said that hospitals may withhold birth records due to non-payment of fees, even though they are not allowed to do this legally.

Many interviewees said they were discriminated against and that derogatory terms were used by registry officials. Some applicants were suspected of being foreigners because they “look foreign”<sup>47</sup> or have a parent who is foreign. Some reported that they were unable to register their children’s births because registry officials insisted that only the mother of the child could obtain a birth certificate. Fathers who attempt to do so are required to bring in the mother’s relatives as witnesses, leading to many being forced to give up the registration process. (See Children at risk of statelessness below.)

In the case of descendants of victims of Gukurahundi, individuals have faced difficulties obtaining birth certificates as they do not have their deceased parents’ death certificates. Interviewees told Amnesty International that authorities refused to give them certificates for deaths resulting from killings by the Fifth Brigade. Without these they cannot obtain birth certificates because they cannot prove who their parents

<sup>45</sup> Section 25 of the BDRA.

<sup>46</sup> Section 11 BDRA

<sup>47</sup> Migrants were identified by their language and different tone when speaking the local Zimbabwe dialects.

were. In some instances, they would be required to produce a letter from a headman of the district where they were born and a letter from their school, and would also need to be accompanied by two relatives of both parents. Such impediments result in many giving up their struggle to obtain documentation.

Amnesty International also found that in order to apply for citizenship, some descendants of those who died during Gukurahundi were asked to obtain letters from chiefs and sub-chiefs to confirm that their parents were killed or disappeared. These rules were sometimes changed by officials who then required that people provide commissioned affidavits and not letters.

70-year-old **Anna Mudenda\*** was born in Zimbabwe to a South African mother and Zimbabwean father and therefore qualified under the law as a Zimbabwean national. She lives in Robert Sinyoka village, about 40km from Bulawayo, and has no birth certificate or other ID. She has been to the Msiteli registry offices in Bulawayo on several occasions but they always ask her to bring witnesses with the same surname as her. She explains she is an old woman and she does not know where to find her relatives.

Sibusisiwe Dube, aged 35, also lives in Robert Sinyoka village. She is divorced and her husband returned to South Africa. She told Amnesty International that she was unable to go to school because she had no birth certificate and ID. None of her five children have birth certificates. Sibusisiwe is turned away from the registry office when she visits; she says the officers are arrogant and will only serve people if they pay a bribe.

## 6.2 PROHIBITIVE DISTANCE TO REGISTRATION OFFICES

The Minister of Home Affairs has powers to make regulations on the manner of giving notice, the documents required in the registration process and the locations of registry offices.<sup>48</sup> Many people interviewed complained about the expensive and prohibitive distance they are required to travel to the registration centres.

In a letter to Amnesty International, the Registrar General stated that the Ministry of Home Affairs and Cultural Heritage had decentralized services to the 10 provinces and 62 districts in Zimbabwe.<sup>49</sup> However, people interviewed told Amnesty International that these mobile clinics only operate during election time.

## 6.3 TREATMENT AT REGISTRATION OFFICES

**Ever Ndebele**, aged 67, is from Maphisa in Matabeleland South province. She told Amnesty International that

**“the problem is the attitude of the Registrar General’s officers. They seem not to care about people and at times they just ignore you without providing the needed services.”**

Ever does not have a birth certificate or passport and has given up hope of claiming citizenship because she cannot prove that she was born in Zimbabwe. She has four children who all live in South Africa and obtained South African IDs. Ever went to the registry offices at Kezi township three times in 2018 to try to get identity documents. She was told that she must bring two of her children as witnesses but was not able to do so as their surnames are different from hers and they now see themselves as South African citizens. Ever stated that she doesn’t “feel like a Zimbabwean without the necessary birth certificate and passport.” Without a passport she cannot visit her children in South Africa, violating her right to freedom of movement.

**Efinah Mabhena**, aged 30, does not have a birth certificate or ID and has tried several times to obtain identity documents. When she went to the registry offices in Tsholotsho the district registrar said “you are too beautiful not to have identity documents” and advised her to “sell some of your belongings to raise money to pay the officers so they can assist you.” She told Amnesty International researchers that

**“I don’t feel like I belong in Zimbabwe because without papers I have no identity,”** and added, **“my main fear is if I die I will not have a dignified burial and will be buried like a pauper.”**

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<sup>48</sup> See section 26 of the BDRA, 11/1986

<sup>49</sup> Letter from Home Affairs Ministry in answer to questions from Amnesty International dated 12 June 2019

She stated that she no longer had the courage to go back to the Tsholotsho district registry as the district registrar was impatient and hostile.

Many others complained to Amnesty International about being poorly treated by officials at the Tsholotsho registry offices. One said

**“I fear going to the registry offices because of the officer who is impatient with people. Some of the officers were demanding US\$30 from me to obtain an ID.”**

Another woman said officers demanded US\$500-1,000 for documents. Two other women said they had been paying officials at Tsholotsho to look for their documents - “a job they are paid by the state to do.” According to one of the women, **“they are arrogant, and the way they treat you, you will never want to go back”**. They said that the Tsholotsho office has been collecting their fingerprints since 2018 without issuing them with documents.

In Mazwi village, about 40km from Bulawayo, 49-year-old Jonathan said the registry officials **“chase you like a dog.”** He told Amnesty International that he had given up attempting to obtain identity documents.

Jonathan’s neighbour in the same village said:

**“they are arrogant. When you give them your papers and they see that they are not adequate they just say, ‘next person’ without explaining.”**

She says she has tried more than 20 times to obtain documents. When she went to the Msiteli provincial registry in Bulawayo in February 2018 she was not treated in a dignified manner, and told Amnesty International researchers that **“the officers were so arrogant and mean, and they accused me of lying.”**

In focus group discussions at Arcturus Mine, former migrants and their descendants confirmed poor treatment at the Harare registry offices. They said that their experience was that people of foreign origin did not receive dignified service from officers. Some went to Likwenda House registry office in Harare and were referred to Goromonzi, about 60km away. One of these, Howard Mphande, said that when he arrived at Goromonzi officers demanded US\$40 to correct an error they had made with his surname.

## **6.4 BUREAUCRATIC FAILURES LEAD TO DENIAL OF CITIZENSHIP**

Most people interviewed in Matabeleland were entitled to citizenship under the law but were unable to meet the necessary procedural steps.

**Vaina Ndlovu** is a 68-year-old resident of Tsholotsho who does not have a birth certificate. She told Amnesty International that her father was abducted by Fifth Brigade forces during Gukurahundi in 1983 and the family never saw him again. Vaina’s mother tried to obtain a birth certificate for her in 1985. According to Vaina, before independence in 1980 it was the practice of some people not to register births and marriages and to seek documentation later when required for official business. When she tried to obtain a death certificate for her father, registry office officials told her they needed witnesses to confirm that her father was abducted during Gukurahundi. Her five brothers were unable to help as they had all relocated to South Africa and assumed new names. Without her father’s death certificate, Vaina cannot obtain a birth certificate, which she needs to get a passport. As a descendant of a victim of Gukurahundi, her freedom of movement has been affected by her inability to establish her citizenship.

**Alex Zengeni** is a 31-year-old man who lives in the poor suburb of Epworth, about 20km from Harare. He was born in Zimbabwe and has no birth certificate or ID. His Zimbabwean mother died in 1999 and his Zambian father in 1994. He does not have their death certificates. He does not know his father’s relatives and he cannot apply for any form of identity in Zimbabwe. This prevented him from going beyond Grade 7 at school. Alex has two children, neither of whom have birth certificates because he has no ID. He went to the registry offices in Harare in 2005 to try to obtain identity documents, but officials demanded his parents’ death certificates and two relatives with the same surname as his father. According to an official, in such cases the death certificate of the father and testimonies from two relatives are required “or the person has to

go back where he came from.”<sup>50</sup> This was confirmed by the former registrar who stated that “there are no stateless people; everyone has a country where they come from”. He added that “statelessness is an economic agenda propagated by migrants.”<sup>51</sup>

**“I have no idea how I can locate my parents’ relatives as I have never been to Zambia.”**

Alex Zengeni

Alex has given up any hope of securing a birth certificate and ID and establishing his nationality.

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<sup>50</sup> Interview with Registry official on 23 August 2019

<sup>51</sup> Interview with former Registrar General on 14 September 2019.

# 7. CHILDREN AT RISK OF STATELESSNESS

The UN Convention on the Rights of the Child, to which Zimbabwe is a state party, provides that children shall not be discriminated against based on ethnic, national or social origin.<sup>52</sup> It further provides that every child found on the territory of a state party is entitled to a birth certificate and to acquire a nationality without discrimination or impediment.<sup>53</sup> State authorities must ensure that nationality law does not deprive children of foreign nationality or the right to acquire a Zimbabwean birth certificate, ID and, eventually, citizenship.

Zimbabwe is also a state party to the African Charter and the African Charter on the Rights and Welfare of the Child (African Children's Charter). The African Children's Charter provides for the child's right to a name, birth registration and a nationality<sup>54</sup> and obliges states parties to grant nationality to any child born on its territory if that child is stateless.<sup>55</sup>

**“stateless children often inherit an uncertain future. For instance, they might fail to benefit from protections and constitutional rights granted by the State. These include difficulty to travel freely and difficulty in accessing justice procedures when necessary.”**

The African Committee of Experts on the Rights and Welfare of the Child

According to the Births and Deaths Registration Act (see “Birth registration at the heart of identity” above), it shall be the duty of the father or mother to give notice and register the birth of child.<sup>56</sup> If both parents are deceased or unable to give notice of birth, then it shall be the responsibility of the owner of the house where the child was born, the headman of a village where the child was born or responsible adult who witnessed the birth of the child to give notice of birth.<sup>57</sup>

In practice, however, registry offices prevent fathers from registering the birth of their children in their name without the mother's identity documents. Women can register their children in their name without the

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<sup>52</sup> See article 2 of the Convention on the Rights of the Child (CRC).

<sup>53</sup> Article 7 of the CRC

<sup>54</sup> See article 6 of the African Children's Charter. Zimbabwe is a state party to the African Children's Charter.

<sup>55</sup> See article 6(4) of the African Children's Charter

<sup>56</sup> See section 11 of the BDRA



<sup>57</sup> Section 11 of the BDRA

father's documents. This is a discriminatory practice which has put many children at risk of being stateless, especially in cases where the mother is unable to give notice of birth due to lack of identity documents.

**Stephen Mathe** of Robert Sinyoka village in Bulawayo province has seven children. His wife has left and he cannot obtain birth certificates for his children without her identity documents.

**Brighton Mhangu and Bridget Nhopere**, both 21, are married with a 2-year-old son, Courage. The registry offices in Mutare told Bridget that only she can obtain a birth certificate for her son but she is unable to do so as she does not have any identity documents of her own. Courage faces a precarious future if he is stateless and unable to go to school.



  Legal guardian of a stateless child carrying the birth registration form © Amnesty International/Tsvangirai Mukwazhi

**Flexen Siziba** has been battling to obtain birth certificates for his 11 children.<sup>58</sup> He told Amnesty International that the mother of his children, who also did not have any identity documents, died in 2016 before he had paid her *lobolo* (bride price).<sup>59</sup> Since he was in debt to his in-laws, they refused to vouch for his children at the registry offices. Even though Flexen has his own identity documents, without those of his late wife he cannot obtain birth certificates for his children and they are at risk of statelessness. Flexen told Amnesty International:

**“I fear that my children will not graduate to high school and they will not find meaningful jobs. They will continue with this life of poverty because we have failed to secure birth certificates for them.”<sup>60</sup>**

**Ganizani Chimkonde's** wife was admitted to a mental institution before she could secure birth certificates and IDs for their two children, aged 16 and 14. Ganizani is unable to obtain them and has no identity documents of his own. If his children do not have birth certificates and IDs they will be forced to drop out of school and unable to secure decent employment, trapped in the vicious cycle of poverty and inequality.

<sup>58</sup> <https://nehandaradio.com/2017/10/23/father-eleven-children-battle-birth-certificates/>

<sup>59</sup> A bride price traditionally paid with cattle and cash.

<sup>60</sup> Interview at Robert Sinyoka village on 27 November 2019.

The African Committee of Experts has stated that:<sup>61</sup>

**“While it is always no fault of their own, stateless children often inherit an uncertain future. For instance, they might fail to benefit from protections and constitutional rights granted by the State. These include difficulty to travel freely, difficulty in accessing justice procedures when necessary, as well as the challenge of finding oneself in a legal limbo vulnerable to expulsion from their home country. Statelessness is particularly devastating to children in the realisation of their socio-economic rights such as access to health care and access to education. In sum, being stateless as a child is generally an antithesis to the best interests of children.”**

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<sup>61</sup> Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of *Children of Nubian descent in Kenya v The Government of Kenya* Decision: No 002/Com/002/2009 paragraph 46, in paragraph 86 of General Comment Np. 2, n109 above



# 8. INTERNATIONAL LEGAL FRAMEWORK

The Universal Declaration of Human Rights (UDHR) provides that everyone has a right to a nationality and no-one shall be arbitrarily deprived of that right or the right to change their nationality.<sup>62</sup> Although Zimbabwe has not ratified the 1961 Convention on the Reduction of Statelessness, it is a state party to a range of regional and international human rights treaties relevant in ameliorating the hardships of stateless people as well as reducing statelessness.

## 8.1 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) provides for the equal treatment of all people within a given territory.<sup>63</sup> This means that even stateless people should not be discriminated against because of their national origin. In CCPR General Comment 15, the CCPR Committee emphasizes that in general the rights in the ICCPR apply to everyone, irrespective of his or her nationality or statelessness.<sup>64</sup> The Committee further provides that the rights contained in the ICCPR must be guaranteed without discrimination between citizens and aliens, subject to exceptions<sup>65</sup> which include the possibility of an alien being expelled from their country of residence<sup>66</sup> and the citizen's right to vote, participate in public affairs and access public services.<sup>67</sup>

The ICCPR, to which Zimbabwe is a state party, provides that every child is entitled to a name and a birth certificate and has a right to acquire a nationality.<sup>68</sup> The ICCPR proscribes any discrimination on grounds of ethnicity, nationality or social origin.<sup>69</sup>

## 8.2 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The International Covenant on Economic, Social and Cultural Rights (ICESCR) obliges states parties to guarantee that the rights set out in the ICESCR will be exercised without discrimination of any kind as to

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<sup>62</sup> See Article 15 of the Universal Declaration of Human Rights

<sup>63</sup> Article 2 provides that states parties should respect and ensure the rights of all individuals without distinction of any kind, such as political opinion or national origin. Zimbabwe is a state party to the ICCPR.

<sup>64</sup> Article 1 of CCPR General Comment 15: The position of aliens under the ICCPR.

<sup>65</sup> Article 2 of the CCPR General Comment 15;

<sup>66</sup> See section 13 of the CCPR

<sup>67</sup> See section 25 of the CCPR

<sup>68</sup> Article 24 of the ICCPR

<sup>69</sup> Article 26 of the ICCPR

race, political opinion, national origin or other status.<sup>70</sup> This provision may apply to the state's obligations to provide housing and health care services. The ICESCR Committee provides that discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population and that there should be no discrimination on the basis of birth, including for children of stateless parents and those born out of wedlock.<sup>71</sup>



  Stateless people live in poverty in Zimbabwe including living in poor housing structures. Photo Credit: Amnesty International/Tsvangirai Mukwazhi.

The ICESCR recognizes that “primary education shall be compulsory and available free to all” and provides that “higher education shall be made equally accessible to all.”<sup>72</sup> However, stateless people in Zimbabwe without birth certificates and IDs have struggled to access education, including being excluded from sitting for secondary school and other public examinations, thereby limiting their prospects of future employment.

## 8.3 AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS

Zimbabwe is a state party to the African Charter on Human and Peoples’ Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (African Children’s Charter).

In its interpretation of the ACHPR provisions around citizenship, the African Court on Human and Peoples’ Rights stated in the case of *Anugo Ochieng Anugo v Republic of Tanzania* that “while the granting of nationality falls within the ambit of the sovereignty of states, the power to deprive a person of his or her nationality has to be exercised in accordance with international standards, to avoid the risk of statelessness.”

The African Court listed the conditions under which a person may be deprived of their nationality:

- i) they must be founded on clear legal basis;
- ii) they must serve a legitimate purpose that conforms with international law;

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<sup>70</sup> Article 2(2) of the ICESCR. Zimbabwe is a state party to the ICESCR.

<sup>71</sup> Article 1 and 26 of General Comment 20: Non-discrimination in the ICESCR.

<sup>72</sup> Article 13 of the ICESCR.

- iii) they must be proportionate to the interest protected;
- iv) they must install procedural guarantees which must be respected, allowing the concerned to defend himself before an independent body.

## 8.4 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Charter on the Rights and Welfare of the Child (African Children's Charter) to which Zimbabwe is state party, provides for the child's right to a name, birth registration and nationality, and imposes an obligation on State Parties to take legislative measures to prevent statelessness among children.<sup>73</sup>

In 2014 the African Committee of Experts on the Rights and Welfare of the Child adopted General Comment no. 2 on Article 6 of the African Children's Charter. General Comment no. 2 urges states to treat children without discrimination based on origin or other grounds and also to prevent and/or reduce statelessness, as lack of recognition has a profoundly negative impact on the fulfilment of rights such as those to education, health care and other social services.

The African Committee of Experts states that "The right to a nationality has a central importance for the recognition and respect for other rights: thus, the prevention of statelessness, including the statelessness of children, is a fundamental principle of international human rights law."<sup>74</sup>

## 8.5 UN HUMAN RIGHTS COUNCIL

In its 2012 Universal Periodic Review (UPR) outcome decisions, the UN Human Rights Council (UNHRC) stated that every child has the right to acquire a nationality. It also recognized the special need of children for protection against arbitrary deprivation of nationality and encouraged States that have not acceded to the 1961 Convention on the Reduction of Statelessness to consider doing so.

The UNHRC further emphasized in its 2016 UPR Submission on Zimbabwe the importance of universal birth registration, including late birth registration, as a means for providing an official record of the existence of a person and the recognition of that individual as a person before the law. The UNHRC expressed its concern that unregistered individuals have limited or no access to services and enjoyment of all the rights to which they are entitled and further reiterated that persons without birth registration may be vulnerable to statelessness and associated lack of protection and that registering a person's birth is a vital step towards his or her protection. The universal registration of people is also in the interests of state security as law enforcement institutions are able to trace any persons who may breach any laws as their identity will have been duly recorded.

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<sup>73</sup> Article 6 of the African Charter on the Rights and Welfare of the Child.

<sup>74</sup> Paragraph 83 of the African Committee of Experts on the Rights and Welfare Children General Comment No. 2 on Article 6 of the African Children's Charter.

# 9. NATIONAL LEGAL FRAMEWORK

Section 43 of the Constitution of Zimbabwe provides that “every person who was born in Zimbabwe before the publication day [of the Constitution] is a Zimbabwean citizen by birth if one or both of his or her parents was a citizen of a country which became a member of SADC in 1992 and is resident in Zimbabwe.”<sup>75</sup> This means that any person who was born in Zimbabwe to parents with a claim to citizenship of any SADC state, including Malawi, Mozambique, Zambia or South Africa, and is residing in Zimbabwe is a Zimbabwean citizen by birth.

Persons are citizens by birth, descent or registration.<sup>76</sup> The Constitution states that persons are Zimbabwean citizens by birth if they were both born in Zimbabwe and when they were born either one of the parents was a Zimbabwean citizen or any of their grandparents was a Zimbabwean citizen. Citizenship by birth is also accorded to persons born in the diaspora if either of the parents is a Zimbabwean citizen who is ordinarily resident in Zimbabwe or works for the authorities or an international organization. According to section 36 (3) of the Constitution of Zimbabwe, Amendment No. 20, a child found in Zimbabwe who is, or appears to be, less than 15 years of age, and whose nationality and parents are not known, is presumed to be a Zimbabwean citizen by birth.<sup>77</sup>

All citizens of Zimbabwe are entitled to protection of the state, a passport and a birth certificate, as well as other identification documents issued by the authorities.<sup>78</sup>

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<sup>75</sup> See section 43 2(a) and (b) of the Zimbabwe Constitution, Amendment No. 20/2013.

<sup>76</sup> See section 35 of the Constitution of Zimbabwe, Amendment No. 20/2013

<sup>77</sup> See section 36(3) of the Constitution.

<sup>78</sup> Section 35(3) a-c of the Constitution

# 10. BASIC RIGHTS DENIED BY LACK OF IDENTITY DOCUMENTS

This chapter examines the impact of statelessness on the rights to education, health and employment, all of which Zimbabwe is obliged under international and regional human rights law to respect, protect and fulfil.<sup>79</sup>

## 10.1 RIGHT TO EDUCATION

The right to education is guaranteed under Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 28 and 29 of the Convention on the Rights of the Child (CRC) and Article 17 of the African Charter on Human and People's Rights (ACHPR). Zimbabwe's Constitution states: "the state must take all practical measures to promote ...compulsory basic education for children; (b) higher and tertiary education."<sup>80</sup>

Without the necessary identity documents, many stateless children are unable to access primary, secondary and tertiary education, contrary to Zimbabwe's obligations to provide access to education to all children without discrimination.

Children who do not have birth certificates continue to face major challenges. Thousands are prevented from entering the education system or are forced to drop out. This is particularly pronounced in Matabeleland where the drop-out rate is higher than in any other province in Zimbabwe. According to the 2019 Annual Education Statistics Profile, released in May 2020, Matabeleland South has a 59.72% completion rate for lower secondary school and Matabeleland North a 62.08% rate.<sup>81</sup> This compares to Mashonaland East province which has the highest completion rate at 82.24%, while those in Manicaland and Masvingo provinces are 81.90% and 78.48% respectively.<sup>82</sup>

A senior director in the Ministry of Education attributed the low rates for Matabeleland provinces to high numbers of people migrating to South Africa and the consequent unavailability of birth certificates.<sup>83</sup> The fact that male children were more likely to cross the border into South Africa in search of employment was cited as a possible additional factor.

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<sup>79</sup> This includes but is not limited to the ICESCR, the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights

<sup>80</sup> Constitution of Zimbabwe Amendment (NO. 20). (2013).

<sup>81</sup> Ministry of Primary and Secondary Education Annual Education Statistics Profile 2017, [www.mopse.gov.zw](http://www.mopse.gov.zw)

<sup>82</sup> Ministry of Primary and Secondary Education Annual Education Statistics Profile 2017, [www.mopse.gov.zw](http://www.mopse.gov.zw)

<sup>83</sup> Interview with Amnesty International on 26 July 2019.

The Ministry of Education requires children to produce an identity document such as a birth certificate or ID in order to be allowed to sit for (a) Grade 7, the final year of public examinations in primary school; and (b) Ordinary Level examinations, at the fourth year of secondary education, which qualifies students to attend vocational training or teachers' college to enter the job market.<sup>84</sup> Schools require pupils to provide both a birth certificate and an ID before they are permitted to sit secondary school public examinations.

A principal director in the Ministry of Primary and Secondary Education told Amnesty International that the requirement for identity documents is meant to safeguard the integrity of the Zimbabwe School Examinations Council and prevent incidences of fraud and impersonation.<sup>85</sup> By imposing these requirements without taking into account the problems they cause for stateless children, the authorities are denying education for thousands.

The following are stories from some of the people we spoke to about how the difficulties in obtaining identity documents are affecting young people's right to education.



### BETTY, PENHALONGA DISTRICT

**Betty** lives at Redwing Mine in the Penhalonga district of Manicaland province. Her late parents migrated from Malawi to Zimbabwe to seek employment before independence and she has never been granted identity documents in Zimbabwe. She is married with four children who do not have birth certificates because of her lack of ID.

Betty tried to obtain a birth certificate in 2017 at Mutasa Registry in eastern Manicaland province. She was told to bring her parents' death certificates, a letter from the headman and a letter from her primary school. She was also told that the headman should be present. Although Betty obtained a letter from the headman, officials refused to issue a birth certificate because he was unable to attend in person, as a witness, and she did not have her parents' death certificates.

A headman in Matabeleland South told Amnesty International that registry offices should accept a letter from a traditional leader as sufficient evidence to confirm the applicant's origin. Nevertheless, registry officials repeatedly asked Betty for further documents and primary evidence and told her to travel to Malawi to obtain her parents' death certificates. This attitude was confirmed by a provincial registrar who said that people of foreign origin must trace where they came from and bring the required evidence.<sup>86</sup> However, this does not take into account people in Betty's situation. She does not know anyone in Malawi, as she was born in Zimbabwe and never travelled to her parents' country of origin when they were alive.

Betty's 17-year-old son Tinashe\* was forced to drop out of school since he had no birth certificate. He currently works as an informal artisanal miner because his lack of ID prevents him from obtaining formal employment at Redwing Mine. Out of desperation, Tinashe later obtained a birth certificate using another woman who acted as his mother.

Amnesty International came across several other cases of children obtaining birth certificates using surrogate mothers as a result of the restrictive birth registration laws against migrants and their descendants. Forcing young people to take these measures not only has serious implications for them if they are discovered but also for wider society in terms of identity authentication.

<sup>84</sup> Section 34 of the Zimbabwe School Examinations Council Act provides that the ZIMSEC Board may cancel an examination or annul the results of an examination if there is evidence of impersonation of someone who was supposed to sit for public exam.

<sup>85</sup> See section 34 of the ZIMSEC Act.

<sup>86</sup> Interview with registry official on 23 August 2019. The evidence includes parents' IDs, letter from the village head and at least one relative with the same surname as the applicant.



## ELIZABETH, MAZWI VILLAGE

**Elizabeth**, now living in Mazwi village, was born in Bulawayo to a Malawian father. As a result of her father's foreign status she has no form of identity documentation and is stateless. Her six children were forced to drop out of school because they did not have birth certificates. They were able to obtain these and identity documents as adults in the name of their aunt who acted as a surrogate mother.

Elizabeth is not cited in her children's legal documents, meaning that she cannot legally claim them as her own. Elizabeth was prevented from obtaining an identity document in 1976 because her father did not state her correct name, age and year of birth at the registry offices. When she tried to register through mobile clinics in 2012, she was told to go to Msiteli provincial registry in Bulawayo, about 50km from her village. Officials at Msiteli told Elizabeth to bring two witnesses with the same surname as hers, which she was unable to do because she could not afford their travel to Bulawayo - the equivalent of US\$15. When her son died in South Africa in 2015, she could not repatriate his body because of lack of documentation.

**Lulamani Maphosa**, aged 23, lost her birth records when her house burned down in 2013. She was told she could only be assisted if she had a national ID. A letter of witness from her only surviving relative, a maternal uncle, was rejected by registry officials. Lulamani was unable to sit for national exams as a result and told Amnesty:

**“life has been difficult and painful. I was brilliant at school, but I did not sit my final exams. Now I can't get a decent job.”**

Lulamani's 2-year-old daughter, also without any documentation, is at risk of becoming stateless like her mother.

In focus group discussions in Tsholotsho, four people confirmed that their children had been forced to drop out of school because they lacked birth certificates. Petros could not proceed after Grade 7 because his parents died when he was young and his grandmother was unable to obtain documentation for him.

**“My eldest child in primary school cannot play soccer for the school like other children because he does not have a birth certificate,” he said.**

This is the practice in all public schools and was confirmed by a principal director in the Ministry of Primary and Secondary Education, who stated that the Sports and Recreation Commission has very strict rules against age cheating in all sporting disciplines.<sup>87</sup> The age of every child competing in any sporting activity must be confirmed by producing a birth certificate or ID.

The head of a school in Kezi in Matabeleland South province confirmed that of the 650 pupils enrolled at her school, 300 did not have birth certificates. She said the requirement for candidates to show proof of identity was designed to avoid any impersonation or fraudulent misrepresentation by candidates sitting examinations on behalf of others or to stamp out age misrepresentation during sporting competitions.<sup>88</sup> Although children without birth certificates were enrolled at her school “out of compassion”, they were prevented from sitting public examinations or participating in sporting activities.

**Reverend Ncube** from the Zimbabwe Christian Alliance in Bulawayo works with stateless school children in Matabeleland. He confirmed to Amnesty International the challenges faced by such children in enrolling in state-funded schools and sitting public examinations, and participating in sporting and other extra-curriculum activities.

Habakkuk Trust in Bulawayo helps communities in Matabeleland to access identity documents. The director, Dumisani Nkomo, told Amnesty International that in Ward 13, an administrative area, in Garanyemba, Gwanda, his organization came across 1,500 children without birth certificates; either because they lacked baby health cards or were born outside Zimbabwe to parents who did not have documentation or could not afford the US\$50 fee to register children born outside the country.

<sup>87</sup> Interview with Amnesty International on 26 July 2019

<sup>88</sup> Amnesty International interview in October 2018 in Maphisa.

## **In Wards 19 and 6 in Matobo South, namely Zamanyoni, Bhalagwe and Mahetshe, there are many children whose access to education has been affected due to lack of birth certificates,”**

Dumisani Nkomo.<sup>89</sup>

One school in Matobo South enrolled 450 students, of whom 320 have no birth certificates.

Birth registration and a birth certificate are free for those born in Zimbabwe to parents who are citizens. Before December 2018 the office of the Registrar General charged US\$50 to process birth certificates for children born outside Zimbabwe and US\$25 for a child born in Zimbabwe if neither parent is a citizen. Amnesty International met with the current Registrar General in October 2018 in Harare and raised concerns about the discriminatory fees, pointing out that they leave people at risk of failing to gain the Zimbabwean citizenship to which they are entitled. In January 2019 the office responded positively to these concerns and reduced the fee for children born outside Zimbabwe from US\$50 to US\$5. Amnesty International recognizes the steps taken by the government to reduce birth registration fees for people who are Zimbabwean by descent.

## **10.2 RIGHT TO HEALTH**

The right of everyone to the enjoyment of the highest standard of physical and mental health that will permit them to live with dignity, equal and free from discrimination, is protected by various international human rights instruments to which Zimbabwe is a party. These include Article 12(1) of the ICESCR which guarantees that everyone should enjoy the highest attainable standard of physical and mental health;<sup>90</sup> and Article 24 of the Convention on the Rights of the Child and Article 16 of the African Charter<sup>91</sup> which enjoin States Parties to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.<sup>92</sup> Section 76 of the Zimbabwean Constitution guarantees everyone the right to health care, including reproductive health care services.<sup>93</sup>

Despite these obligations, stateless people in Zimbabwe face barriers to accessing health care. Pregnant women are excluded from critical life-saving services such as antenatal care and assistance during labour. **Botshiwe Dube**, from Tsholotsho, told Amnesty International that because she was unable to access health care and treatment, she “gave birth to her children like goats at the homestead” and she sees her children and grandchildren as “stray animals because they are all undocumented.”

Ngozi Mine Dump site is a slum settlement on the outskirts of Bulawayo. Stateless people who live there in extreme poverty have no access to formal health care facilities. One of them, **Siphilisiwe Tshuma**, told Amnesty International that she has eight children, five of whom were born at Ngozi Mine Dump site. Siphilisiwe says she gave birth in her shack with the assistance only of unqualified and unregistered midwives as she could not afford to go to a hospital and did not have birth registration documents. Because of their own unregistered status, the midwives fear giving birth notices to the registry offices. Consequently, children born in the informal settlement are not registered as legal citizens, putting them at risk of becoming stateless like their parents.

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<sup>89</sup> Interview with Dumisani Nkomo in Bulawayo on 9 October 2018.

<sup>90</sup> International Covenant on Economic, Social and Cultural Rights REF

<sup>91</sup> Also see Article 14 of the African Charter on the Rights and Welfare of the Child on Health and Health Services “to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.” [https://www.un.org/en/africa/osaa/pdf/au/afr\\_charter\\_rights\\_welfare\\_child\\_africa\\_1990.pdf](https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf)

<sup>92</sup> African Commission on Human and People’s Rights [https://www.achpr.org/legalinstruments/detail?id=49\\_REF](https://www.achpr.org/legalinstruments/detail?id=49_REF)

<sup>93</sup> Constitution of Zimbabwe

[http://www.veritaszim.net/sites/veritas\\_d/files/Constitution%20of%20Zimbabwe%20Amendment%20%28No.%2020%29.pdf](http://www.veritaszim.net/sites/veritas_d/files/Constitution%20of%20Zimbabwe%20Amendment%20%28No.%2020%29.pdf)



On 23 April 2013 the then Minister of Home Affairs stated that mothers who give birth at home should be allowed to register their children at registry offices.<sup>94</sup> However, the reality is different for many mothers such as Siphilisiwe. Her children and grandchildren remain without birth certificates and therefore cannot access high school. She told Amnesty:

**“my husband has identity documents, but we were told that only the mother who gave birth to the children can obtain their birth certificates. I feel responsible for my children’s predicament because I am unable to secure their birth certificates as I do not have papers (identity documents) myself.”**

Lack of access to health care provision is not limited to pregnant and stateless women. Stateless people in general also struggle to access other health care services in Zimbabwe because they lack identity documents. Registry offices must relax their regulations on notification of birth to prevent statelessness of poor and vulnerable children whose parents cannot afford their birth registration.

## 10.3 RIGHT TO WORK

Article 6 of the ICESCR provides that everyone has the right to the opportunity to gain their living by work of their choice.<sup>95</sup> However, many stateless people in Zimbabwe face difficulties in exercising the right to decent employment as guaranteed in the ICESCR because their lack of identity documents prevents them from pursuing advanced educational qualifications.

As a result, stateless people find themselves trapped in a vicious cycle of poverty and marginalization due to the lack of employment opportunities. Most can only secure precarious and low paid work on farms or in gold, chrome or nickel mines.

**Margaret Nkomo** from Mazwi village was born to a Malawian father who migrated to Zimbabwe before independence for economic reasons.<sup>96</sup> She therefore has no birth certificate or identity document and has never been to school. Without an ID, she cannot secure any formal employment. She told Amnesty International that:

**“I would only work on a part-time basis for short periods because employers are reluctant to employ a person without an ID. Every time I visited the registry office in Bulawayo I was told to bring my relatives, who are in Malawi. I have given up any hope of securing an ID so that I may be employed.”**

The International Organisation for Migration (IOM) helped Margaret’s family move from the Ngozi slum to Mazwi village, 40kms from Bulawayo, but without an identity document Margaret has no title deed for her home. She fears that **“without title to the house built for me by the local authority in partnership with the IOM I may lose my property.”**

**Lazarus Tshabalala**, who also lives at Mazwi village, is able to obtain only menial and unskilled employment because he does not have an identity document. His late father was from Malawi. He told Amnesty International that:

**“If I had an ID and a birth certificate, I would have also obtained a passport and travelled to South Africa in search of employment.”**

He added: **“I’m tired of my life of poverty in Zimbabwe.”**

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<sup>94</sup> <https://nehandaradio.com/2013/04/24/statement-by-home-affairs-minister-on-civic-registration-of-citizens-in-zimbabwe/> The Minister of Home Affairs also stated that people with IDs endorsed with the classification “alien” should be allowed to vote because they are Zimbabweans and that if a person’s documents are accidentally burnt, they must be replaced without any payment of fees.

<sup>95</sup> See article 6 of the ICESCR

<sup>96</sup> Interview with Margaret Nkomo from Mazwi village

# 11. CONCLUSION

This report reveals how certain sections of the population in Zimbabwe have been deprived for decades of their rights as citizens. Denied the documentation enabling them access to education, work, health care and other basic rights, hundreds of thousands of people have been rendered stateless, stripped of any legal status in the country where they have raised families and which they regard as home.

The government's failure over many years to remove the administrative obstacles to the enjoyment of these rights, particularly to descendants of migrants who migrated to Zimbabwe before independence and to victims of Gukurahundi and their descendants, has forced people into daily struggles just to live freely. They are restricted from participating in the economy, accessing jobs, opening a bank account, buying a house, opening their own businesses or entering into legally recognizable marriages or family unions.

The deprivation of nationality was based on the Citizenship of Zimbabwe Act of 1984 which over the years was amended and used arbitrarily in order to achieve political objectives. It did not conform with international law and therefore did not serve a legitimate purpose. Yet as a direct result, thousands of people targeted and specific groups were rendered stateless or placed at risk of being stateless.

To reduce the number of stateless people caused by some of the discriminatory and restrictive practices, Zimbabwe must take steps towards harmonizing the nationality law with the 2013 Constitution. Amnesty International also urges Zimbabwe to enact enabling legislation to give effect to the 2013 Constitution which allows for dual nationality.

The government's interpretation of the 2001 amendment to the Constitution has affected not only actual dual citizens but also anyone with a possible claim to citizenship elsewhere. This law was applied arbitrarily and without adequate notice, consultation and public awareness. Thus, anyone who was of foreign origin and did not comply with the six-month deadline to renounce their presumed or actual foreign nationality was assumed to have forfeited their Zimbabwean citizenship by January 2002.

The Constitution gives parliament powers to enact a law that allows dual citizenship only to people born in Zimbabwe.<sup>97</sup> This means that any person who is a citizen of Zimbabwe by descent or registration may not enjoy the rights of citizenship of another country. It is only people who are citizens of Zimbabwe because they were born in the country who can claim citizenship of another country. Despite this recognition of dual citizenship, parliament is yet to enact new legislation or amend the current Citizenship of Zimbabwe Act so that it provides for concurrent citizenship of another country for those persons born in Zimbabwe. The people who lost citizenship in 2001 were presumed to be citizens of other countries and were not adequately informed by the government that they needed to renounce their foreign nationality. They became stateless through no fault of their own.

Amnesty International welcomes the encouraging step taken by the government in January 2019 to reduce birth registration fees for people who are Zimbabwean by descent. The organization urges the government to build on such positive moves and take urgent steps to create the climate and the means by which people are able to claim the legal status to which they are entitled. Only by eradicating statelessness will citizens be released from the grim cycle of poverty, inequality and marginalization, and participate fully in the life of the country.

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<sup>97</sup> Section 42(e) of Zimbabwe Constitution, Amendment No. 20/2013

# 12. RECOMMENDATIONS

## TO THE ZIMBABWEAN AUTHORITIES

- Allocate an adequate budget for a comprehensive 2023 census which will identify populations who are stateless and at risk of statelessness using disaggregated data by gender, age and status, in consultation with the UNHCR, the Zimbabwe Human Rights Commission and civil society organizations working on statelessness.
- Adopt reasonable and inclusive administrative policies to ensure universal registration, including late registration, of descendants of victims of Gukurahundi in Matabeleland North and South Provinces without the requirement to produce their parents' death certificates.
- Take adequate measures to ensure the registration and restoration of Zimbabwean nationality to all who are entitled, including all those born in Zimbabwe to foreign parents.
- Take progressive steps to ensure that everyone has the right to the opportunity to gain their living by work of their choice, including by ensuring that adults who are eligible to work in Zimbabwe have the necessary documents to enable them to seek employment.
- Take progressive steps to fulfil the right of everyone, including stateless people, to enjoy the highest standards of physical and mental health that will permit them to live with dignity, equal and free from discrimination, protected by various international human rights instruments to which Zimbabwe is a party.
- Take progressive steps to guarantee the right of everyone to access basic health care, including reproductive health care services in line with Section 76 of the Constitution.
- Ensure the participation of civil society organizations and the Zimbabwe Human Rights Commission in implementing adequate measures to prevent and eradicate statelessness and discrimination against stateless individuals.
- Conduct research on statelessness and develop a national action plan by 2023 to reduce, prevent and eliminate statelessness in Zimbabwe.
- Support the adoption of a Regional Action Plan to end statelessness in the Southern Africa Development Community (SADC) region so that SADC states take a regional approach to eliminating statelessness.
- Amnesty International urges the authorities in Zimbabwe to take administrative and legislative steps to ensure that it prevents the statelessness of children, in line with General Comment No. 2 on article 6 of the African Children's Charter.

## TO THE MINISTRY OF HOME AFFAIRS AND CULTURAL HERITAGE

- The Minister of Home Affairs must take steps to decentralize registration centres and offices to ensure they are nearer to where people live.
- The Registrar General must draft and make public simplified and harmonized regulations that outline clear, accessible and affordable procedures for birth registration, renunciation of foreign citizenship and/or confirmation of Zimbabwean citizenship in respect of all people born in Zimbabwe, including former migrant workers and their families.

- Registry offices must issue birth certificates to stateless school children on the strength of a letter from a school head or traditional leader or an affidavit from a parent or legal guardian regardless of the migration status of their parents or the non-existence of the parents' death certificate to ensure universal registration.
- Remove the Registrar General's unfettered powers to grant birth registration in situations where birth or death occurred after 20 June 1986.
- All stateless descendants of migrant workers from Malawi, Mozambique and Zambia must be granted citizenship in line with the 2013 Constitution which allows dual citizenship and descendants of migrant workers born in Zimbabwe, and all descendants of victims of Gukurahundi at risk of being stateless must be granted birth certificates and IDs without the requirement to furnish death certificates of their deceased parents.
- Amend the Births and Deaths Registration Act to remove the unfettered discretion by the Registrar General to reject late registration of births. The Minister must draft and make public clear, accessible and simplified regulations on the registration of births and deaths.
- Initiate legislation for the establishment of the Citizenship and Immigration Board which shall have oversight over conferment of nationality and simplify and decentralize citizenship determination processes in line with section 41 of the 2013 Constitution and principles of devolution.
- Take adequate steps to eliminate all administrative barriers to acquiring birth certificates, death certificates and citizenship certificates for all persons deprived of their nationality or at risk of being stateless.
- Take adequate measures to prevent future arbitrary restrictions and deprivation of the right to nationality based on the parents' ancestry or migration status, and eliminate onerous requirements that restrict the registration of the birth of their children and the acquisition of identity documents.
- Allow fathers to obtain birth certificates for their children without the administrative requirement to produce non-existent identity documents of undocumented mothers, in line with section 11 of the Births and Deaths Registration Act.
- Allow grandmothers and other recognized legal guardians to obtain birth certificates for their grandchildren whose parents are either deceased or unavailable to register births of their children.

#### **TO THE MINISTRY OF JUSTICE**

- In consultation with civil society organizations, amend the Citizenship of Zimbabwe Act and the Births and Deaths Registration Act to, among other key issues, recognize dual citizenship, late registration of birth and the right to Zimbabwean nationality for all those migrants from SADC states born in Zimbabwe if one of the parents is a Zimbabwean citizen or a citizen of a SADC state, in line with the 2013 Constitution and relevant international norms.
- Ratify the UN 1961 Convention on the Reduction of Statelessness and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a demonstration of their commitment to reduce and prevent statelessness and protect migrant workers' rights in Zimbabwe.
- Ratify the African Union Protocol to the African Charter on Human and People's Rights on Specific Aspects of the Right to a Nationality and Eradication of Statelessness in Africa as soon as it is adopted in 2021.

#### **TO THE MINISTRY OF PRIMARY AND SECONDARY EDUCATION**

- Allow children without birth certificates and IDs to sit public examinations on the strength of affidavits from school heads, parents or legal guardian.
- Document all children without birth certificates and submit the information to provincial and district registries to facilitate universal registration of all children in primary and secondary schools.
- Provide data to the Annual Education Statistics Profiles on children who have failed to enrol in schools and complete their primary and secondary education due to unavailability of birth certificates and IDs, as well as on those who have failed to sit public examinations. This will enable authorities to address their lack of documents and reduce the risk of them being rendered stateless.

- Ensure equitable access to education throughout the country and take steps to reduce the drop-out rate, particularly in the Matabeleland provinces and in Manicaland.

#### **TO INTERNATIONAL ORGANIZATIONS AND DONORS**

- Assist the Zimbabwean government to identify and document stateless populations and implement measures to eradicate statelessness.
- Support Zimbabwe human rights non-governmental organizations, including through funding, in effectively advancing the eradication of statelessness and monitoring the implementation of measures taken to prevent and reduce statelessness.

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# WE ARE LIKE “STRAY ANIMALS”

## THOUSANDS LIVING ON THE MARGINS DUE TO STATELESSNESS IN ZIMBABWE

The United Nations High Commissioner for Refugees (UNHCR) estimates that there are many millions of stateless people globally – of which approximately one third are children. In Zimbabwe approximately 300,000 people are currently at risk of statelessness, according to the UNHCR. The phenomenon of statelessness affects migrants who migrated to Zimbabwe before independence from Southern Africa and victims of Gukurahundi. Lack of official data means that the exact number of people affected by statelessness is unknown.

This report reveals how these population groups have been deprived for decades of their rights as citizens. Denied the documentation enabling them access to education, work, health care and other basic rights, hundreds of thousands of people have been rendered stateless, stripped of any legal status in the country where they have raised families and which they regard as home.