Nationality and Statelessness in the Great Lakes Region

Bronwen Manby

Regional Ministerial Conference
Nairobi, 16-18 April 2019
The importance of statelessness

➢ A human rights issue
➢ A humanitarian issue
➢ A development issue
➢ A peace and security issue
Terminology: nationality and citizenship

➢ Nationality and citizenship are synonyms in international law
➢ In international law, “nationality” is the term more commonly used (in both French and English)
➢ At national level, “citizenship” more commonly used in the common law countries; “nationality” (nationalité) in civil law

➢ In non-legal usage, “nationality” sometimes implies an ethnic component, “citizenship” the participatory aspects
Nationality in national laws

- Attribution by operation of law (*nationalité d’origine*)
  - Birth in the territory (*jus soli*)
    - *Beware of the confusion relating to “citizenship by birth” in English*
  - Double *jus soli* (born + one parent also born in the territory)
  - One parent (or grandparent) who is a citizen (*jus sanguinis*)
  - Presumption for unknown parents / stateless

- Acquisition on application
  - Delayed *jus soli* (birth + residence during childhood)
  - Adoption (may also be in family code)
  - Marriage (automatic, option, registration)
  - Long residence (naturalisation / registration)
Who is a stateless person?

Stateless person: a person who is “not considered as a national by any State under the operation of its law”

« une personne qu’aucun État ne considère comme son ressortissant par application de sa législation »

(Art 1, Convention relating to the Status of Stateless Persons, 1954)

UNHCR: a “mixed question of fact and law”

« une question faisant intervenir des éléments à la fois de droit et de fait »

(Handbook on Protection of Stateless Persons, 2014, para 23)
Common misconceptions

stateless persons ↔ refugees
stateless persons ↔ migrants
stateless persons ↔ foreigners

stateless persons ↔ undocumented persons
“A mixed question of fact and law”

➢ Gaps in the law

➢ Problems with the procedures
Gaps in the law

- Attribution of citizenship at independence
- Gender discrimination
- Weak rights attached to birth in the country
  - even if otherwise stateless
- No provision for children of unknown parents & birthplace
- No provision for orphaned or adopted children
- Racial, ethnic, religious discrimination
- Restrictions on transmission for those born abroad
- Restrictions on transmission by naturalised citizens
- Naturalisation very difficult to access
Legal gaps for prevention of childhood statelessness in Great Lakes Region

➢ Child of unknown parents:
  ➢ Provision exists: Angola, Burundi, CAR, Congo Rep, DRC, Kenya, Rwanda, South Sudan, Sudan, Uganda, Zambia
  ➢ No provision: Tanzania

➢ Child who cannot acquire nationality of parents
  ➢ Provision exists: Angola, DRC, Rwanda
  ➢ No provision: Burundi, CAR, Congo Rep, Kenya, South Sudan, Sudan, Tanzania, Uganda, Zambia

➢ Gender discrimination: Burundi, Sudan (& others to lesser extent)
Problems with the procedures

➢ Civil law vs common law heritage

➢ Importance of adjudication systems: due process, (para)legal assistance, reasoned decisions & effective appeal to a court

➢ Birth registration & possibility of other forms of evidence

➢ Requirement for consular registration of births outside the country

➢ Family codes & proof of descent if birth out of wedlock

➢ Child protection systems (abandoned infants, orphans, street kids)

➢ Vetting systems & burden of proof for issue of ID cards & passports

➢ Lack of a document that is conclusive proof of nationality

➢ Official and unofficial costs
# Birth registration

% birth registration U5 y.o. / % in possession of birth certificate

<table>
<thead>
<tr>
<th>Country</th>
<th>% Registration U5 y.o.</th>
<th>% in Possession of Birth Certificate</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>25 / 13</td>
<td></td>
<td>(DHS 2015-16)</td>
</tr>
<tr>
<td>Burundi</td>
<td>84 / 66</td>
<td></td>
<td>(DHS 2016-17)</td>
</tr>
<tr>
<td>CAR</td>
<td>61 / ?</td>
<td></td>
<td>(MICS 2010)</td>
</tr>
<tr>
<td>Congo Rep.</td>
<td>92 / 84</td>
<td></td>
<td>(DHS 2011-12)</td>
</tr>
<tr>
<td>DR Congo</td>
<td>25 / 14</td>
<td></td>
<td>(DHS 2013-14)</td>
</tr>
<tr>
<td>Kenya</td>
<td>67 / 24</td>
<td></td>
<td>(DHS 2014)</td>
</tr>
<tr>
<td>Rwanda</td>
<td>56 / 3</td>
<td></td>
<td>(DHS 2014-15)</td>
</tr>
<tr>
<td>South Sudan</td>
<td>35 / 10</td>
<td></td>
<td>(MICS 2010)</td>
</tr>
<tr>
<td>Sudan</td>
<td>67 / ?</td>
<td></td>
<td>(MICS 2014)</td>
</tr>
<tr>
<td>Tanzania</td>
<td>26 / 14</td>
<td></td>
<td>(DHS 2015-16)</td>
</tr>
<tr>
<td>Uganda</td>
<td>32 / 20</td>
<td></td>
<td>(DHS 2016)</td>
</tr>
<tr>
<td>Zambia</td>
<td>12 / 4</td>
<td></td>
<td>(DHS 2013-14)</td>
</tr>
</tbody>
</table>
Taxonomy of statelessness

- Migrants and their descendants
  - Pre-independence migrants (e.g., Makonde in Kenya)
  - Undocumented & stranded contemporary migrants (incl. in detention)
  - “Returnees” to a country of origin (e.g., deportees from Europe, Israel)
  - Asylum seekers, refugees & former refugees (Angola, Liberia, SL, Rwanda)

- Cross border populations
  - Communities divided by international borders or where borders contested
  - Nomads / pastoralists

- Vulnerable children (who become adults)
  - Undocumented foreign parents, born out of wedlock, abandoned infants, orphans, street children, trafficked …
Solutions

➢ Persons of undetermined nationality living in their “own country”
  ➢ Confirmation of nationality
  ➢ Facilitated acquisition of nationality

➢ Stateless migrants
  ➢ Confirmation or acquisition of nationality of country “of origin”
  ➢ Protection as a stateless person, with facilitated naturalisation
Solutions: law reforms

➢ End discrimination based on gender & birth in/out of wedlock
➢ Measures to ensure statelessness not created by presumptions based on ethnic group
➢ Child protection
  ➢ Unknown or stateless parents or cannot obtain nationality of parents
  ➢ Adopted (formal and informal)
  ➢ Children incl. with parents’ naturalisation
➢ Strengthen rights to acquire based on birth & residence
➢ Strengthen judicial oversight of executive decisions
➢ Nationality/statelessness determination procedures
Solutions: procedural reforms

- Universal birth registration
- Child protection: children separated from parents
- Clarity on requirements to acquire ID document/passport
- Burden of proof shared: if a person holds a document recognising nationality for the state to show not valid
- Document that is proof of citizenship (nationality certificate)
- Facilitated naturalisation in appropriate cases
- Outreach to nomadic pastoralists & border populations
- Strengthened consular registration
- Inter-state collaboration to resolve undetermined nationality
Regional cooperation
is badly needed…

- Integration with AU freedom of movement agenda
- Harmonisation of laws to facilitate understanding
- Bi- & multi-lateral commissions to determine nationality
- Regional standard-setting on state obligations