



# Nationality and Statelessness in the Great Lakes Region

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# The importance of statelessness

- 
- A human rights issue
  - A humanitarian issue
  - A development issue
  - A peace and security issue

# Terminology: nationality and citizenship

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- **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”

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- Gaps in the law
  - Problems with the procedures

# Gaps in the law

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- 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

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- 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

Angola	25 / 13	(DHS 2015-16)
Burundi	84 / 66	(DHS 2016-17)
CAR	61 / ?	(MICS 2010)
Congo Rep.	92 / 84	(DHS 2011-12)
DR Congo	25 / 14	(DHS 2013-14)
Kenya	67 / 24	(DHS 2014)
Rwanda	56 / 3	(DHS 2014-15)
South Sudan	35 / 10	(MICS 2010)
Sudan	67 / ?	(MICS 2014)
Tanzania	26 / 14	(DHS 2015-16)
Uganda	32 / 20	(DHS 2016)
Zambia	12 / 4	(DHS 2013-14)

# Taxonomy of statelessness



## ➤ **Migrants and their descendants**

- Pre-independence migrants (eg Makonde in Kenya)
- Undocumented & stranded contemporary migrants (incl. in detention)
- “Returnees” to a country of origin (eg 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

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- 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