




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

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)

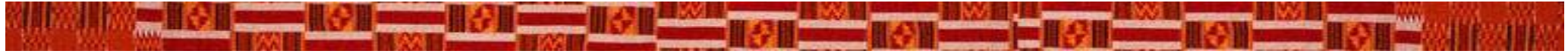
➤ **Cross border populations**

- 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

- 
- 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