

RESEARCH & ADVOCACY UNIT

**A Right or a Privilege: Access to
Identity and Citizenship in
Zimbabwe**

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Introduction

Identity documents are tags reflective of an individual's history and heritage. Without identity documents individuals fall into a bureaucratic limbo as procedures for telling who they are, where they are from, and to whom they are connected are lost. Traditional African culture in Zimbabwe also recognized the importance of identity - hence the collective groupings that existed defined along the lines of one's totem; e.g. Dube, Khumalo, Dlodlo, Moyo, Shumba, Ndlovu, etc. Identity links an individual to a society, and, from that link, the individual derives benefits and privileges that could not otherwise be claimable if they were not a part of the group. From an officially recognized identity arise rights and obligations that shape people's lives. As important an item as an identity document is, it should not be denied an individual without good reason.

This report looks into the right to identity from the perspective that women are and have always been disadvantaged in Zimbabwe because of the patriarchal nature of the society in which they live. Although there are standing decisions of the courts and laws that change various social standpoints that previously impeded women's ability to exercise their rights, women still face problems in exercising these rights because of the same patriarchal society standing in their way, or due to legal illiteracy. This report thus seeks to expose the nature of the right to an identity document or officially recognized identity in the Zimbabwean and global context, privileges arising from that right, problems faced by people who are denied that right, and the overall impact of the denial of the right to identity on women in their capacity as mothers, child rearers, bread winners, and civilians in general.

Background information

In 1952, the African Registration and Identification Act was passed entitling "advanced" Africans the right to have an identity document which was different from the ordinary "sithupa"¹ held by every other African.² On 17 November 1972, the House of Assembly of the "illegal" Rhodesian government³ tabled a Bill introduced by the Minister of Internal Affairs. The Bill was passed into law as the Africans (Registration and Identification) Amendment Act, No 48 of 1972. The Act had a number of requirements which included the following:

- Africans were to apply for special leave or secure a permit to move in and out of the country at all times (Section 16 (1) (a) and (b) of the Principal Act);
- They were to surrender these documents upon leaving the country and request their reissuance upon return (Section 16 (6) and (7) of the Principal Act);

¹ The Ndebele terminology for an identity card. Ndebele is one of the two native languages spoken in Zimbabwe.

² **Racism and Apartheid in Southern Africa** –Rhodesia, A book of data by Reginald Austin, The Unesco Press Paris 1975, p 15

³ Rhodesia's unilateral declaration of independence in 1965 was not recognised by Britain.

- They were to pay a maximum fine of \$100 or one year in prison or both for failure to carry valid identity documents at all times (Section 24 of the Principal Act);
- The Act also gave the regime the power to deport foreign Africans who had no registration certificates and to refuse to grant such certificates (Section 5A (7) of the Principal Act);⁴
- The discretion to issue or not to issue identity documents lay solely in the hands of Registration Officers (Section 5A (1) of Chapter 109);
- Africans could not be employed without valid identity documents (Section 13 of the Rhodesian Citizenship Act).

Effectively, what these laws meant was that there was a system of identification of every black person which was different from that of whites. The identity documents served to keep track of the movements of all blacks. The government thus controlled the movement of its people within the country, and external travel as well. No one could move out of the country without being granted special permission. The people were kept within the confines of the Rhodesian border where their attempts to protest the draconian rule of the Smith regime would be quashed easily.

In Zimbabwe, in terms of the Public Order and Security Act (POSA)⁵, every person aged 16 years and above, when in a public place, is required to carry an identity document on his/her person at all times. An identity document includes a national registration card, driver's license, or passport. A Police Officer may at any time require a person to produce his/her identity document.⁶ In certain circumstances, if a person fails to produce his/her identity document immediately on being requested to do so by a Police Officer, he/she may be detained until his/her identity is established to the satisfaction of the Police Officer. These circumstances include when a Police Officer is investigating certain offences⁷; when a Police Officer is manning a roadblock⁸; or at a public meeting or gathering of a political nature⁹. It should be noted that the failure to comply with this requirement does not constitute a criminal offence in terms of the law. It should also be noted that the Police Officer concerned is obliged to give the person detained every reasonable facility to prove his/her identity. However, the police in Zimbabwe have become highly partisan and politicized, and often unlawfully treat the failure to produce an identity document as a criminal offence or construe another offence from such failure. Women are the most affected especially when the police apply the provisions of Section 81 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]¹⁰ in relation to the crime of loitering with intent to solicit for prostitution. The police harass women who move around without their identity documents after dusk and label them as prostitutes. More often than not, women end up having to pay "admission of guilt fines" or pay bribes to

⁴ **The Rhodesian Problem: A documentary record** JSTOR: African Affairs Vol. 75, No 298 (Jan, 1976), pp. 115-117

⁵ [Chapter 11:17] Section 32(2)

⁶ POSA Section 32 (3)

⁷ POSA Section 32 (4) (a)

⁸ POSA Section 32 (4) (d)

⁹ POSA Section 32 (4) (f)

¹⁰ Previously Section 4 of the Miscellaneous Offences Act [Chapter 9:15]

the police in order for them to be released. This is a clear infringement of their freedom of movement and their general security of the person.

It should also be noted that more or less similar provisions which were in the National Registration Act,¹¹ that made it a criminal offence to move around without an identity document, were invalidated by the Supreme Court of Zimbabwe in the case of *Elliott v Commissioner of Police*¹² on the basis that they were in contravention of Section 22(1) of the Constitution of Zimbabwe which guarantees and safeguards freedom of movement.¹³

Surprisingly, and after a bitter struggle for basic freedoms, the repressive legislation of the Rhodesian government has been retained and similar provisions of equal or worse effect have been enacted.

Getting Identity Documents

The issue of access to identity documents is a point of concern for human rights groups in Zimbabwe as reflected in the "People's Charter", adopted following a "People's Convention"¹⁴ of about 4000 delegates from trade unions, civic groups, and social forums in February 2008. The Convention was held with the main objective of assessing the critical situation the people of Zimbabwe are facing and to map the way forward in resolving the crisis that has crippled the country. Paragraph 3 (d) of the Charter states that a new Constitution for Zimbabwe is necessary; should include a guarantee of the right to citizenship for any person born in Zimbabwe; and must make birth certificates, identity documents and passports easily available to all Zimbabwean citizens.

It is important to note that there is a knock-on-effect in the acquisition of identity documents in Zimbabwe. Upon birth, an individual's mother ought to be given a birth record at the maternity home where she delivers her baby. This birth record affirms the day that the child is born, the sex of the child,

¹¹ Section 10(1) (c)

¹² 1997(1) ZLR 315 (S)

¹³ Paragraph D of the Judgement on Page 323

¹⁴ Convened by a broad coalition of civil society organisations including The Crisis in Zimbabwe Coalition, Zimbabwe Lawyers for Human Rights and the umbrella National Association of Non-Governmental Organisations (NANGO) and adopted by the following civic groups and NGOs: Achieve Your Goal Trust, Bulawayo Agenda, Bulawayo Progressive Residents' Association, Christian Alliance, Combined Harare Residents' Association, Chitungwiza Residents and Ratepayers Association, Crisis in Zimbabwe Coalition, International Socialist Organisation, Matabeleland Aids Council, MESA, Media Alliance of Zimbabwe, Media Institute of Southern Africa – Zimbabwe Chapter Media Monitoring Project of Zimbabwe, National Association of Non-Governmental Organisations NASCOH, National Constitutional Assembly, Progressive Teachers' Union of Zimbabwe Restoration of Human Rights, Students' Christian Movement of Zimbabwe Students' Solidarity Trust, Transparency International Zimbabwe, Women of Zimbabwe Arise, Men of Zimbabwe Arise, Women's Coalition, YIDEZ, Zimbabwe Association of Doctors for Human Rights, Zimbabwe Catholic Bishops' Conference, Zimbabwe Coalition on Debt and Development, Zimbabwe Congress of Trade Unions, Zimbabwe Cross-Border Traders Association, Zimbabwe Election Support Network Zimbabwe Human Rights Association, Zimbabwe Human Rights NGO Forum, ZISAP, Zimbabwe Lawyers for Human Rights, Zimbabwe National Pastors Conference, Zimbabwe National Students Union, Zimbabwe Social Forum, ZYCS, Zimbabwe Youth Movement, Zimbabwe Labour Centre. Extracted from www.kubatana.net

the place of birth, the name of the child, and the name of the mother. The birth record of the child will have clear stamps from the maternity home at which the child was born.

The birth record enables one to then get a birth certificate. The child's mother is required to produce her identity document as part of this process. The father's identity card, and if the couple is married, their marriage certificate should also be produced to the registering officer. Physical and personal appearance of both parents at the Registrar General's office is required if they are married, and, if they are not, the man consents to being registered as the father. This latter unnecessary requirement makes the process very long and tedious.

The birth certificate enables an individual to get their identity document. The birth certificate is a core requirement; specifically the "long" birth certificate. Anyone with a short birth certificate is now required to get the long version before they can get an identity document. The requirement for a long birth certificate became mandatory in 2001, prior to the 2002 Presidential election. The "long" birth certificate introduced a new section that included details of the country of origin of the parents of the bearer of the birth certificate. It seems as if the intention of this new requirement was to identify all those people of foreign descent born in or out of Zimbabwe. Critics say the overall objective of this new requirement in the amendment was to disenfranchise all those people of foreign origin, including farmers and farm workers; Zimbabweans of Mozambican, Malawian, Zambian or British origin who were perceived to have voted for the opposition Movement for Democratic Change (MDC) in the 2000 Parliamentary Elections in which Mugabe and ZANU PF were almost toppled.¹⁵ These people were perceived to be opposed to President Mugabe's rule and the land reform programme.¹⁶ These alleged aliens were seen by the ruling ZANU PF party as underpinning the white economy by providing the bulk of the labour on commercial farms. The disenfranchisement was effected through the compilation of the voters roll. An amendment to the Citizenship Act introduced in 2003¹⁷ was interpreted by the Supreme Court as effectively

¹⁵The Zimbabwe parliamentary elections of 2000 to the Zimbabwe House of Assembly were held on June 24 - 25. The electoral system involved 120 constituencies returning one member each, elected by the First Past the Post system, with the President of Zimbabwe then nominating 20 members and ten further members from the Tribal Chiefs sitting *ex officio*. This was the first election in which Robert Mugabe's Zanu-PF party faced any real opposition. The newly formed Movement for Democratic Change challenged Mugabe's control of parliament. The MDC won 57 of the 120 elected seats. Zanu PF won 63 seats : Extract from http://en.wikipedia.org/wiki/Zimbabwean_parliamentary_election,_2000

¹⁶ The land reform exercise began in 2000 and saw thousands of white farmers and their farm workers driven off their farms and sometimes killed. Gross human rights violations were perpetrated on these farms as unruly youths and war veterans went on a rampage using all kinds of coercive methods to get the farmers and farm workers off the land. See Zimbabwe Human Rights NGO Forum (2001), *Politically motivated violence in Zimbabwe 2000-2001. A report on the campaign of political repression conducted by the Zimbabwean Government under the guise of carrying out land reform*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

¹⁷ Citizenship Amendment Act 12 of 2003

disenfranchising non-citizens. A prohibition placed on dual nationality required the renunciation of foreign citizenship in order to retain Zimbabwean citizenship.

Identity cards are only issued to persons over 16. The father's identity card must be produced as part of the application. When photographs are taken for the identity card, women are not allowed to have artificial hair or have their hair braided.¹⁸ [Footnote on proper section]. For children who acquired a passport before they turned 16, this passport must be produced when they apply for their identity documents.

To acquire a passport the applicant must produce his or her birth certificate (the long one), identity card, two passport sized photos, a set of fingerprints taken, and, if both parents are dead, the death certificates of those parents.

Birth Certificates

Child rights campaigners want current Zimbabwean legislation amended to make birth registration easier, as nearly a third of all children do not possess a birth certificate¹⁹, restricting their access to public services such as education, health care, and vaccination. Although birth registration alone does not guarantee that a child will have access to adequate healthcare, receive an education, or be free from abuse or exploitation, its absence leaves a child at a significantly greater risk of a range of human rights violations.²⁰ Birth registration is fundamental to securing the child's rights to a name, identity, and nationality. According to a report by the African Child Policy Forum²¹, birth registration is very important because it is the first point of contact between a child and the state²², and it also represents the first official acknowledgement of a child's existence by the state and is essential if the child is to access their rights.²³

The Zimbabwean Constitution and the Births and Deaths Registration (BDR) Act²⁴ do not expressly state that birth registration is a child's right. This is very worrying considering that Zimbabwe has ratified the African Charter on the Rights and Welfare of the African Child²⁵ and the United Nations Convention on the

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¹⁹ www.newzimbabwe.com/pages/child.11366.html

²⁰ 10 No. 3 Hum. Rts. Brief 32 (2003).

²¹ The African Child Policy Forum is an independent, advocacy organisation working for the realisation of child rights. Founded in 2003, the Forum's headquarters are in Addis Ababa, Ethiopia. Its mission is to contribute towards the development and implementation of effective laws and policies to put African children on the public agenda.

²² **Universal Birth Registration: The Challenge in Africa.** *A paper prepared for the Second Eastern and Southern Africa Conference on Universal Birth Registration Mombasa, Kenya, September 26 – 30, 2005.* Assefa Bequele, PhD, Executive Director, The African Child Policy Forum

²³ (Zambia Country Report, 2005) within the African Child Policy Forum Report *ibid*.

²⁴ [Chapter 5:02]

²⁵ Zimbabwe ratified on the 19th of January 1995 and deposited it on the 22nd of February 1995

Rights of the Child (CRC).²⁶ These two instruments emphasize a child's right to a name and nationality, and make registration immediately after birth compulsory as a fundamental human right. Article 7 of the CRC provides that every child **"shall be registered immediately after birth and shall have the right from birth to a name and to acquire a nationality"**. Similarly Article 6 of the African Charter on the Rights and Welfare of the Child provides that **"every child shall have the right from birth to a name²⁷, shall be registered immediately after birth²⁸ and has the right to acquire a nationality²⁹"**. The International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe also acceded³⁰, also states that every child **"shall be registered immediately after birth and shall have a name'³¹...and has the right to a nationality."³²**

All these provisions serve to emphasise the importance of birth registration as a right that every government ought to recognize. This is because the birth certificate is the first form of identity that links an individual to their state and to every right and privilege that they should be entitled to as a citizen. Due to the government's state obligations under international law which are to respect, promote, ensure and fulfill all human rights, it could be rightfully noted then that, by refusing to grant certain individuals who were born in Zimbabwe birth certificates, the state would be violating these people's human right to a nationality. There is thus an urgent need for redress, and the need to enshrine this as a justiciable rights in Zimbabwean law.

The Registrar General has the discretion to make regulations which determine the form and manner of giving notice of a birth³³, the form and manner in which registration of births shall be effected,³⁴ the places at which notices of births shall be given³⁵, and notices, certificates, or any other documents that could form part of the record of a birth³⁶. The birth record is one such requirement and it has to be presented to the registering officer for a mother to register her child. It can be accessed from the maternity home at which she delivered her child, and she can only get one if she produces her identity card and her maternity fees are fully paid up. Children need to be registered in the area that they were born and such registration must take place within 42 days of the child's birth.³⁷

²⁶ Zimbabwe became a signatory to the Convention on the 8th of March 1990, Ratified it on the 11th of September 1990 and the date of entry into force of the Convention was on the 11th of October 1990

²⁷ Article 6(1)

²⁸ Article 6(2)

²⁹ Article 6(3)

³⁰ On the 13th of May 1991

³¹ Article 24(2)

³² Article 24 (3)

³³ Section 26 (2) (c) of the Births and Deaths Registration Act [Chapter

³⁴ Section 26(2) (d) BDR Act supra

³⁵ Section 26 (2) (g) BDR Act supra

³⁶ Section 26 (2) (f) BDR Act supra

³⁷ Section 11 (2) (a) of the Births and Deaths Registration Act [Chapter 5:02]

Children "born out of wedlock", i.e. children born of parents who are "living together" or those children who were conceived outside marriage and those whose parents are in a customary union (with the payment of lobola), but have not formalized their marriage, can be registered in the mother's name only, unless the father is physically present at registration and has agreed to the inclusion of his name on the birth certificate.³⁸

In Zimbabwe, without a birth certificate as proof of identity, children may face difficulties in accessing health services such as free and subsidized immunization programmes and anti-malarial campaigns where children are given mosquito nets. Unregistered children may be left vulnerable to all kinds of diseases including those that could be prevented e.g. malaria, polio, tuberculosis, measles, whooping cough, tetanus and diphtheria. This amounts to a violation by the state of Article 24 of the UN CRC which says

"States parties shall strive to ensure that no child is deprived of his or her right of access to ... health care services."

Children who do not have birth certificates also find it extremely difficult to get an education because at various stages a birth certificate is a core requirement. For instance, every child, when enrolling for grade one, needs to present a birth certificate, and to sit for any national examination a copy of a birth certificate is required by the Zimbabwe Schools Examinations Council (ZimSEC), so as to ascertain the child's birth registration number and details of birth to avoid impersonation of individuals.³⁹ Without an education children become vulnerable to all forms of exploitation such as child labor, sexual abuse, and early marriage. The result is a violation of Article 28 of the CRC under which states parties make the undertaking to **"recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity."**

One mother related her story...

"I have a 9 year old son, Allen. When I gave birth to my son I had gone to stay with my relatives because my husband and I were having problems. I used my maiden name to book for my maternity so my maiden name is the one that appears on the hospital cards. I gave birth at Mpilo hospital and I stayed in hospital for 5 days because I had some complications when I gave birth. I could not pay the full hospital fees because my relatives did not have the money and I did not have anything because I was not working at that time and my husband had abandoned me. When I was discharged I did not get the birth confirmation record because I had not paid all the fees. I then went back to stay in Harare with my two children. I tried to get a birth certificate for my son but failed to do so because the people at the Registrar General's office wanted the birth confirmation record. Up to now my son does not have a birth certificate. I do not have the money to go and settle my hospital bill at the hospital for me to get the birth

³⁸ The BDR Act (supra)

³⁹ Zimbabwe School Examinations Council Act [Chapter 25:18] Section 35 (d)

confirmation let alone to travel to Bulawayo. For him to get into school I had to persuade the headmaster of the school where I am the secretary of the SDA (school development authority) for him to get a place. I am worried that he might not get to write his grade 7 examinations if I fail to get him a birth certificate before the time he is due to write his exams. If I die today, my son will have a hard time in his life without a birth certificate. I wish I could just get the birth record from any hospital rather than for me to go to the exact hospital where I gave birth.”⁴⁰

Without a birth certificate, a child in Zimbabwe may be denied inheritance rights. Upon the death of a parent, the estate is registered with the Master of the High court. All the individuals that are named as beneficiaries in the deceased person’s will are entitled to their share of the estate. If the deceased had not written a will, then all his/her children born in or out of wedlock are entitled to a share of the estate. This is when birth certificates are particularly important. They are needed as proof that the persons claiming to be the deceased’s children are really his/hers, and are therefore truly entitled to a share of the estate. Without birth certificates children are denied their rightful inheritance and, for some, this could have grave consequences if the deceased person was their bread winner. The child may fail to gain access to basic things like food, school fees, hospital fees, and all the other important things that the deceased may have taken care of when he or she was alive.

All these problems have an effect on a woman as the mother. She has to bear the pain of seeing her children suffering through preventable illnesses, without an education, and with a bleak future ahead of them. It is the mother who goes through the difficult process of getting her children’s birth certificates so that, even though the plight is the child’s, it inevitably becomes the mother’s concern as the child rearer and the one who holds the interests of the child at heart.

One woman recalls her pain...

“I stay with my granddaughter, Tanyaradzwa, my nephew’s daughter who is 5 years old. Tanyaradzwa came to stay with me when her father passed away about a year ago. Her mother came with her for the funeral, left her after the funeral and I have not seen her since. Tanyaradzwa does not have a birth certificate. I have tried getting one for her but the people at the Registrar’s office want her birth record. I do not know where to get the birth record. I do not even know in which hospital Tanya’s mother gave birth. If only I knew where to find Tanya’s mother maybe she would get it or at least I would know where Tanya was born. I have not had problems at hospitals when I go with her when she is sick but I am afraid that she is getting older and next year she will need to go to school and she will not be accepted into school without a birth certificate.”⁴¹

Identity cards

⁴⁰ Interview held with Joice Chirwa, a woman activist at RAU offices, on the 26th of August 2008.

⁴¹ Interview held with Joyce Tuwacha, a woman activist at RAU offices, on the 26th of August 2008.

An Identity Card is an official document used to identify an individual. Every country needs to be able to identify its citizens. In South Africa, all South African citizens and permanent residents, aged 16 years and older, must be in possession of an identity disk⁴². The South African identity disk resembles a passport, but is not valid as a travel document outside South Africa. Although carrying the document is not *de facto* required in daily life, it is necessary to show the document or a certified copy as proof of identity when signing any contract, including opening or closing a bank account, taking up employment, applying for a contract, and interacting with most government agencies, including applying for or renewing a driver's license, applying for a passport, and applying for any social grants⁴³.

In Egypt, all Egyptians, on reaching the age of 16, must obtain a national identification card⁴⁴. This document is essential to conducting transactions as basic as opening a bank account, getting a driver's licence, entering a university, getting a job, or collecting a pension. The Civil Status Department of the Interior Ministry administers these national ID cards, as well as other vital records such as birth certificates, all of which require a person to state his or her religious identity⁴⁵. In Zambia, everyone has to carry an identity card or a passport at all times, or at least photocopies of these⁴⁶. In Mozambique, it is a legal requirement to carry identity documents at all times and present them when requested by the authorities⁴⁷. Police patrols and checkpoints are common⁴⁸.

In Zimbabwe, private and public institutions need proof that you are who you say you are (for example, for banking and to vote). You can get a Zimbabwean ID card if you are a Zimbabwean citizen or permanent resident, and if you are 16 years or older. If your ID card has been lost, stolen or damaged, you can seek for a replacement ID. You can also get a new ID if:

- Your personal particulars have changed.
- Your citizenship status has changed.
- You have changed your marital status (for example if you get married or divorced) N.B. It is not mandatory to change one's name in these circumstances. It should be a personal choice.

A personal appearance is required for photographing and for fingerprints. Generally an Identity Card is one of the easiest documents to get in Zimbabwe, as long as you have all the things that are required. These are the long birth certificate and the father's identity card. Photographing and the taking of fingerprints is done free of charge as long as you are aged between 16 and 18, a measure that has been put in place as an incentive for people to get their identity cards at an early age.

⁴² http://en.wikipedia.org/wiki/Identity_document

⁴³ en.wikipedia.org/wiki/Identity_document

⁴⁴ www.hrw.org/english/docs/2007/11/12/egypt17306.htm

⁴⁵ *ibid*

⁴⁶ http://www.kepa.fi/international/english/kepa_in_south/zambia/information

⁴⁷ <http://www.fco.gov.uk/en/travelling-and-living-overseas/travel-advice-by-country/sub-saharan-africa/mozambique>

⁴⁸ *ibid*

However, there is still a problem for those people who have no birth certificates, as well as those whose fathers have denied responsibility, and who consequentially have failed to get birth certificates. They will not be able to get identity cards for as long as they do not have these birth certificates. To compound the problems that people generally face in getting identity cards, the office of the Registrar General has added certain requirements applicable to women only. Workers at the Registrar General's office require that women should not have artificial hairstyles, a requirement that makes little sense. They also make it a requirement for married women to change their surnames to that of their husbands' if they need to gain access to official documents including passports and birth certificates for their children. This requirement is unlawful. The position of the law is clear⁴⁹; a married woman is legally free to keep her last name. She also has the option to use it in combination with her husband's.

A test case on this issue was launched in the *Violet Mutyamaenza case*⁵⁰. In the case, which was a class action by women against the Registrar General, the leading applicant was seeking exemption from the requirement that women should assume their husbands' surnames before getting a passport for themselves or a birth certificate for their children. Violet Mutyamaenza, a Harare woman, had failed to get a birth certificate for her child because officials at the Registrar General's office demanded that she change her maiden name to her husband's surname in order for her to get their child's birth certificate. This culture by employees at the Registrar General's office of demanding that women change their surnames to their husbands' may partly be traced to the colonial period where the colonizers sought to placate the population by maintaining the status quo in so far as the patriarchal nature of African society was concerned and made it mandatory for married women to adopt their husbands' identity. The central registry continues to demand that women with registered marriages first drop their maiden names before they can be issued with official documents. Only individuals with the means to institute a legal challenge escape this requirement. Certain employees in the Registrar General's office take advantage of many people's legal illiteracy and force women to undergo the change of surname process before they can get birth certificates for their children. This is clearly in violation of the law on this issue⁵¹ and it calls for a probe into the running of the office of the Registrar General to make sure that all its workers abide by a code of conduct that requires respect for the laws of the nation.

Death Certificates

When a person dies, his or her death should be registered with the Births & Deaths Registry. If they die leaving any property, then the nearest relative or connection of the deceased who is at or near the place

⁴⁹ Section 10C of the National Registration Amendment Regulations of 1979

⁵⁰ The case was never completed because Violet Mutyamaenza withdrew the case before judgement was passed.

⁵¹ National Registration Amendment Regulations supra

of death shall lodge a notice of the death with the Master of the High Court, the Assistant Master or a magistrate as the case may be⁵². For the deceased person's property to be properly divided out among the family, the estate has to be reported to the Master of the High Court's Office in Harare or Bulawayo or to the nearest Magistrate's court.⁵³ When one goes to report an estate, an inventory of the deceased's property must be presented together with the deceased's death certificate. The inventory must be lodged by the surviving spouse if the parties were married in community of property⁵⁴, or by the surviving spouse, the children, or next of kin of the deceased person, in that order of importance, if the parties were not married in community of property⁵⁵. For children to benefit from the estate, their birth certificates must also be presented. Death certificates and children's birth certificates are therefore core requirements in the registration of a deceased estate. Inability to get these documents usually leads to children failing to get what is rightfully theirs upon the passing of one or both of their parents.

For women, getting death certificates is important for a number of reasons. As widows, women require death certificates to claim their husbands' pension and other social benefits. More often than not, the deceased husband will have been the family bread winner, so obtaining the pension is important for basic survival. In Zimbabwe, it is common cause that culturally women were not viewed as 'worthy' heirs. There had to be a male heir, so, if the deceased husband had no son, usually his brother would inherit his estate on behalf of his brother's widow and children. Many a times this arrangement ended up with the heir deserting the wife and utilizing the estate for his own selfish ends. Recently because of laws that have been put in place entitling women to inherit from their husbands and female heirs to receive their deserved share of the estate, greedy relatives have resorted to more scornful means of denying surviving spouses an inheritance. They know that the deceased person's relatives are needed at the issuance of a death certificate and at the registration of the deceased estate, and that in their absence the wife will not achieve anything. They refuse to accompany her with the mindset that if they will not benefit from the estate then she will not as well. This recurrent behaviour in relatives has seen a number of women suffering.

In some cases, the women require death certificates to get birth certificates for the deceased's children. Recently, because of the HIV/AIDS pandemic, it has become common that grandmothers become guardians of their grandchildren when the children's parents have passed on. These grandmothers are left with the responsibility of getting birth certificates, and to do this, presenting the parent or parents' death certificates will be necessary.

A clear example of the importance of a death certificate` is portrayed in this woman's testimony:

⁵² Section 5 of the Administration of Estates Act [Chapter 6:01]

⁵³ Section 5(1) of the Administration of Estates Act supra

⁵⁴ Section 12 of the Administration of Estates Act supra

⁵⁵ Section 14 of the Administration of Estates Act supra

"My husband and I were married customarily and we lived in Bulawayo. We did not have a wedding although his relatives knew I was his wife. We had 5 children together. At some point during our marriage my husband decided to go to South Africa to look for a job because we wanted to improve our life. He went there and stayed for a very long time until my relatives decided that maybe I should come and stay with them in Harare for a while until he came back as I was having problems taking care of my family. I stayed in Harare for 5 years. After 5 years I discovered that my husband had died in South Africa and his relatives had buried him without telling me about it. This was very painful to me. His relatives also took the death certificate. When I went to see where they had buried my husband I asked them for the death certificate but they refused to give it to me. I need the death certificate for a number of reasons. There are many times when I need the death certificate to prove that I am a widow. The city council sometimes gives out stands to cooperatives and they usually give these stands to widows first. There are certain donors that help poor children to pay fees and for my children to get assistance in paying fees they need to prove that they are orphans and I need to show the donors that I am truly a widow and the death certificate is the only proof that I could have. I did not get anything that my husband and I worked for. I did not get any money from where he worked. His relatives even took all of his clothes. My children did not get anything. My husband's relatives have the house and they are actually staying there. I wish there was a way in which the Registrar's office could avoid giving relatives death certificates without verifying where the wife is. My 24 year old daughter who is the eldest of my children still does not have a birth certificate because her father died before she had one and when I tried getting it after the father had died they wanted the father's death certificate. She does not have an education because she only went to school up to Grade 7 and could not write her examinations because she did not have a birth certificate. She can not even get birth certificates for her own children because she needs an identity document, which she does not have. All these things are always causing me pain especially when I look at my children and think that all of them can not have a bright future because they do not have birth certificates."⁵⁶

Passports

A passport is an official government document that certifies one's identity and citizenship and permits a citizen to travel abroad. In Zimbabwe, as elsewhere, a citizen must have a valid passport to leave the country. Passports are obtained from the Passport Office, which office falls under the mandate of the Registrar General. Passport offices are regionalized such that there are limited places from which one can get a passport. As it stands, these are:

Midlands Province[Gweru Offices]; Mashonaland West Province[Chinhoyi Offices]; Mashonaland East Province[Bindura Offices]; Mashonaland Central Province[Marondera Offices]; Matebeleland South Province[Gwanda Offices]; Harare Metropolitan Province [Makombe Building Offices]; Bulawayo Metropolitan Province[Bulawayo Offices]; Manicaland Province[Mutare Offices].

Supporting documents for an ordinary passport might include (but may not be limited to) any of the following: a National Identification Card, a Birth Certificate, two passport photos, a completed passport

⁵⁶ Interview held with Rosemary Muriva, a woman activist, at RAU offices on the 26th of August 2008.

application form, the passport application fee, and a set of fingerprints. At the moment passport fees are; \$2 million for adults and \$1 million for a child to get an ordinary passport, \$5 million for an adult and \$4,5 million for a child to get an Executive 24 hours passport and \$15 million for a "so called" emergency, 12 hour passport.

These passports take a long time to process - in some cases even up to 5 years. The result is that some have despaired of ever getting a passport and travelling outside the country. In effect, the government of Zimbabwe has deprived the people that it should be serving of their freedom of movement. Others have resorted to seeking individuals who work at the passport offices "to assist" them to speed up the process and then paying them up to \$15 Trillion (as the writer writes) for this facilitation. This has fuelled corruption and made it virtually impossible for the poor folk to get passports.

To make matters worse, a new policy was put forward with effect from March 2007, stating that anyone in need of an emergency passport would have to pay a fee different from the ordinary passport fee. This fee is levied in foreign currency at US\$20 for the application form and US\$200 for the processing fee. These requirements are absurd coming from a government that is acutely aware of the shortage of foreign currency on the formal market. The government expects individuals to source this money on the black market in order to pay for their passports, thus fostering criminality and hypocritically contradicting its own condemnation of the foreign currency black market, and anyhow US\$200 is way beyond the reach of a large proportion of the population of Zimbabwe. What has happened in Zimbabwe is that a large portion of the population can not legally leave the country, not out of their own will, but because of the policies put in place by their government which effectively deny them freedom of movement. Freedom of movement, including the right to travel, is a human right which ought to be respected and should be enshrined in the constitutions of all states. In essence, freedom of movement means that a citizen of a state should generally have the right to leave that state as and when they wish to do so, travel wherever they are welcome, and, with proper documentation, return to that state at any time.⁵⁷ It also means that every citizen is free to travel to, reside in, and work in, any part of the world the citizen wishes without interference from the state. By denying every Zimbabwean a fair, equal and easy opportunity to get a passport, the government has removed this right, a situation that is unacceptable in any democratic society.

It is also important to look into the reasons why there has recently been a 'passport rush' in Zimbabwe. Inflation in Zimbabwe is currently officially at over 11 million percent per annum, though unofficial

⁵⁷ <http://en.wikipedia.org>

estimates put it much higher⁵⁸. Families can barely assemble a simple meal of "sadza", made from maize meal, which is the staple food in the country and vegetables fried in cooking oil, with onions and tomatoes. Meat, bread and milk are now considered as luxuries for the rich and affluent only. Bathing soap and body lotions are unaffordable for the ordinary people. Jobs are scarce, and most people work in the "informal sector", with many as cross-border traders. Women are the most affected by the unavailability of jobs and food, so it is unsurprising that the majority of cross border traders are women. They leave their families to try and make a living beyond the borders.

By denying these same women access to the identity document, namely a passport that will enable them to engage in this trade, the government of Zimbabwe is violating their right to food. Under the Maastricht Guidelines, at the very least, states are required to undertake specific conduct, such as the adoption of measures (including a plan of action) reasonably calculated to achieve the minimum essential levels of each of the rights enshrined in the Covenant on Economic, Social and Cultural Rights (ICESCR). Thus, for instance, a state in which a large number of people are deprived of essential foodstuffs, prima facie violates the Covenant⁵⁹. These minimum core obligations apply irrespective of the availability of a state's resources or any other factors. Although these guidelines do not carry any legal force, they serve as a conceptual guide to the interpretation of the Covenant (ICESCR). As such, using the Maastricht Guidelines⁶⁰, one can come to the conclusion that when the Government of Zimbabwe fails to provide food to the starving women and their children, and at the same time it quashes their attempts to get the

⁵⁸ Official statistics reported in October put Zimbabwe's annual inflation in July 2008 at 231 million percent: Fanuel Jongwe (2008-10-09). "[Zimbabwe inflation soars to 231 million percent](#)". Yahoo! News. Retrieved on 2008-10-10. The annual rate of price growth was 11.2 million in June: [^ ^](#) Martin Kadzere (2008-10-09). "[Zimbabwe: Inflation Soars to 231 Million Percent](#)". allAfrica.com / The Herald (Harare). Retrieved on 2008-10-10. The Cato Institute's Senior Fellow Steve Hanke released a document estimating Zimbabwe's annualized inflation rate to be 215 Quintillion percent as of November 6, 2008. This is equivalent to prices doubling every 6 days. Retrieved from "http://en.wikipedia.org/wiki/Hyperinflation_in_Zimbabwe".

⁵⁹ University of Zimbabwe, Faculty of Law, Human Rights Class of 2006-2007 ,Lecture Notes-An Introduction to Social, Economic and Cultural Rights by Solomon Sacco-page 7 of 16. Authored By Dr Cephas Lumina, SAHRIT Economic, Social and Cultural Rights Course for Southern Africa, 2004.

⁶⁰ Ten years after the entry into force of the International Covenant on Economic, Social and Cultural Rights (ICESCR), a group of experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, The Netherlands), and the Urban Morgan Institute for Human Rights, University of Cincinnati, USA, adopted the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights ('the Limburg Principles'). The group had been convened to consider the nature and scope of the obligations of states parties to the ICESCR, the consideration of states parties' reports by the (then) recently established Committee on Economic, Social and Cultural Rights, and international cooperation in terms of Part IV of the Covenant. In 1987, the Limburg Principles, all 103 of them were adopted as an official document of the United Nations, E/CN.4/1987.17, designed to address 'the complexity of the substantive issues covered by the ICESCR. On the occasion of the tenth anniversary of the Limburg Principles, another group of experts met in Maastricht, The Netherlands to elaborate on the Limburg Principles with respect to the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies. The outcome of this meeting was the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights ('the Maastricht Guidelines'). The Maastricht Guidelines cover a variety of issues concerning socio-economic rights, including the meaning of violations of these rights, including minimum core obligations (Part II); responsibility for violations (Part III); and remedies and other responses to violations (Part V). Extracted from 'Remedies for Violations of Social, Economic and Cultural Rights' authored by Solomon Sacco, pages 2 and 3 of 14

food themselves through cross border trading by denying them passports, it (the government) grossly violates their right to food.

The problems in getting a passport at the Registrar General's office have also given rise to a number of other issues. Firstly, there has been an increase in the number of border jumpers⁶¹. These people have no other way of gaining entry into foreign countries but illegally, because more often than not they do not have passports and will be avoiding the formal channels of migration where a passport is required for an individual to travel from their country into another. Border jumping is risky and could lead to loss of lives. Border jumpers use routes that they least expect to encounter patrolling immigration officials. These routes usually lead through forests full of wild animals and dangerous snakes. Some even try to cross rivers on boats and may fall prey to crocodiles or drown. This places their lives in grave danger. Secondly, when these people are caught by immigration officers attempting to cross borders clandestinely, they are deported and dumped at the border posts by the police without assistance to get to their homes. They then resort to stealing or prostitution in order for them to get just enough to go back home or to survive until they make another attempt into the country where they would have been deported from.⁶² Again this means risking their lives; some may contract HIV/AIDS and some may end up in prison for theft.

Identity Documents and the right to vote

Article 21 of the **Universal Declaration of Human Rights** states that:

"The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures".

Article 25 of the **International Covenant on Civil and Political Rights** (ICCPR)⁶³ guarantees the right to vote through free and fair elections. Such a guarantee is supported by various other provisions of the ICCPR which provide for a number of rights whose existence will facilitate the holding of free and fair

⁶¹ People who cross borders without going through the formal immigration channels

⁶² www.queensu.ca/samp/migrationnews/index.htm

⁶³ ICCPR, Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

elections these include the following: freedom of expression (Article 19(2))⁶⁴; freedom of assembly (Article 21)⁶⁵; freedom of association (Article 22); and non-discrimination (Article 26).

Voting is thus one of the most fundamental human rights that anyone can exercise. It is vital in a functional democracy that this right should be enshrined in the Constitution because through voting, ordinary individuals can influence the way in which a state is governed. One's vote indicates one's preference for a leader and that preference is usually determined by the kind of rule that the candidate proposes to exercise.

Criticisms have been leveled against the government of Zimbabwe for its failure to create a favourable environment for the holding of free and fair elections. Such criticisms have focused on the areas of freedom of expression, association, assembly and freedom of the media. The focus here is on the effect that the Citizenship Laws of Zimbabwe as well as access to identity documents have had on individual women in so far as their ability to register to vote is concerned.

In Zimbabwe voting is certainly not a right. There are no provisions in either the Constitution of Zimbabwe, which is the supreme law of the land or in the Electoral Act⁶⁶, which is the law that governs voting procedures in Zimbabwe, which unequivocally lay out voting as a fundamental right. What one finds in Zimbabwean laws are provisions disqualifying citizens from voting or disenfranchising so called 'aliens' and 'non citizens'⁶⁷.

There are two main requirements for someone to be registered in a particular constituency in Zimbabwe; namely, an identity document in the form of a passport, or an identity card and proof of residence in the form of a utility bill such as a water bill, electricity bill, or a letter from the owner of the property stating that the individual actually lives at the address that they have indicated as their place of residence. There are various obstacles that stand in the way of women in getting either a passport or an identity card as discussed above. This makes it clear that the Government of Zimbabwe does not recognize and respect voting as a fundamental right that should be available to every citizen and have made it their policy to deliberately frustrate a portion of the electorate. Were this not so, then they would strive to make

⁶⁴ Everyone shall have the right to freedom of expression; this freedom shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

⁶⁵ Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

⁶⁶ [Chapter 2:13]

⁶⁷ See discussions on Citizenship in Zimbabwe to follow.

processes of acquiring identity documents as simple and as easy as possible to ensure that no one is be prejudiced at the registration stage of elections by failure to access identity documents.

One analyst⁶⁸ pointed out that the government was aware that a manipulation of the process of getting identity documents would assist them in manipulating the vote. He alleged that in July of 2007 the government went on a spree of registering its rural folk giving them identity documents without insisting on bureaucratic requirements so as to ensure that they did not face any difficulties in registering to vote as well. He said that supporters from far off places were preferentially given identity cards and passports and registered as voters, in order to reconfigure the Harare and Bulawayo urban constituency voters' rolls ahead of the 2008 harmonized elections"⁶⁹.

Citizenship laws and the link with access to identity

Citizenship is an important concept in the field of human rights. It describes the status of the individual in a state for purposes of enjoying civil and political rights as well as economic, social and cultural rights. As Dugard (2006) noted,⁷⁰ citizenship refers to the internal legal position of individuals, particularly their political involvement in a relationship with their government. Citizenship suggests an individual's total political rights and competence. It is also accompanied by developmental rights such as the right to vote, the right to work, and freedom of movement among others.

Zimbabwe, like many other nations, has vacillated as to whom is entitled to be a citizen. Before independence there were clear provisions allowing for dual citizenship in the Citizenship of Rhodesia Act⁷¹, namely, the ability to hold Zimbabwean citizenship concurrently with citizenship of another country.⁷² This was a deliberate move by the colonial government to strengthen and confirm the relationship between the white citizen in the colony of Southern Rhodesia and the home government of Britain. Citizenship would be available on three conditions: birth, descent, and registration, and this was clearly provided for in the Constitution.

Upon independence, the new Zimbabwean constitution stipulated that anyone, who immediately before the 18th of April 1980 was or was deemed to be a citizen of Zimbabwe, would be a citizen of Zimbabwe from the 18th of April 1980⁷³. This meant that upon independence, dual citizenship remained acceptable in the eyes of the law. Citizenship by birth would only be denied in instances where the parents of the person seeking citizenship by birth had been illegally resident in Zimbabwe at the time of birth, or if the

⁶⁸<http://www.sokwanele.com/articles>

⁶⁹ *ibid*

⁷⁰ Dugard John. 2006. *International Law: A South African Perspective* 3rd Edition

⁷¹ [Chapter 23]

⁷² For whites at least, since many blacks were not educated enough to comprehend the implications of the concept of dual citizenship or even to want to be a dual citizen.

⁷³ Section 4 of the Constitution of Zimbabwe

parents were not citizens of Zimbabwe and were not ordinarily resident in Zimbabwe. For this disqualification to be effective, the parent had to be both a non-citizen and a non-resident. Persons born out of Zimbabwe on or after the 18th of April 1980, but before 6 December 1996, were made citizens by birth if their parents, at the time that they were born, were citizens of Zimbabwe resident abroad by virtue of being in the service of the government, or were ordinarily resident in Zimbabwe. Persons would acquire citizenship by descent if their parents at the time that they were born were citizens of Zimbabwe and the birth was lawfully registered with the Registrar General of Births and Deaths.⁷⁴ This was the position under the original Lancaster House Constitution⁷⁵ until Amendments to that Constitution started pouring in.

Constitutional Amendment No 13 of 1983 repealed Section 8 of the Lancaster House Constitution⁷⁶. Amendment No 13 of 1983 introduced a new Section 2 to the Constitution of Zimbabwe outlawing dual citizenship. The amendment unequivocally stated that “...**no citizen of Zimbabwe who is of full age and sound mind shall be entitled to be a citizen of a foreign country.**” Persons holding dual citizenship were then given up to 31 December 1985 to renounce the alien citizenship or they would risk losing their Zimbabwean citizenship. This provision, coupled with Section 9(1) of the Citizenship Act⁷⁷, [“The Act”] which prohibits any citizen of Zimbabwe of full age and sound mind from being a citizen of another country, means that any person who is a citizen of Zimbabwe by birth, descent, or naturalization can not hold another citizenship simultaneously with that of Zimbabwe. With this Amendment, dual citizenship was outlawed, and it was the beginning in a series of laws that would affect the nationality and ultimately the lives of a vast number of people.

Next came Amendment No. 12 of 2003. The Amendment set out instructions to the effect that any person who was born in Zimbabwe; has continuously resided in Zimbabwe since birth; has not at any time after the date of birth acquired foreign citizenship or a foreign passport and whose parents or one of them was born in a Southern African Development Community (SADC) country, entered Zimbabwe before the 18th of April 1980 as a migrant worker and have/has been continuously resident in Zimbabwe may renounce citizenship of that SADC country in order to confirm citizenship of Zimbabwe[Section2(2)(a)]. In addition, any person who was born in a SADC country; has not at any time after the date of entry into Zimbabwe acquired foreign citizenship; is permanently resident in Zimbabwe at the time of making an application of Citizenship and one or both parents was born in Zimbabwe, left the country on or before the 18th of April for a SADC country as a migrant worker and the parent was residing there at the time of

⁷⁴ Sections 5 and 6 of the Constitution of Zimbabwe.

⁷⁵ The “Lancaster House Constitution” is the Constitution that Zimbabwe accepted as its Supreme Law at the Lancaster House Conference in 1979 when the British Colonial Government ceded power to the new independent state and it is the Constitution that exists in Zimbabwe today, although effected by 18 amending Acts.

⁷⁶ Section 8 dwelt on the issue of dual citizenship and allowed dual citizenship to be practiced.

⁷⁷ [Chapter 4:01]

birth of the applicant also has to renounce foreign citizenship before claiming Zimbabwean citizenship.⁷⁸ This does not make sense. The legislation is self contradictory in that it seems to require the renunciation of a citizenship which has never been acquired.

“The Act” gives the Registrar General discretion to authorize the registration of a person as a citizen of Zimbabwe⁷⁹. Such discretion must be based on the Registrar’s satisfaction that the person is of good character, is a fit and proper person to be registered as a citizen, and that at the date of the application the person has been ordinarily resident in Zimbabwe, either continuously or as an aggregate of a number of periods, for at least 5 years. Placing such a broad discretion, which has enormous implications on the lives of so many other people, in the hands of a single person is as unacceptable as it is unjustifiable.

Among the most affected are young generations of Zimbabweans whose grandparents migrated from Malawi, Mozambique, and Zambia. Previous generations had fled to Zimbabwe from their countries for a variety of reasons including war, famine, and to seek employment in the then productive farms and mines of Zimbabwe. Failure by these people to obtain citizenship means that they also can only obtain identity particulars marked “alien”. These identity documents are difficult to secure because of certain stipulated requirements such as proper documentation from their countries of origin or their parent’s countries of origin which documentation clearly identifies them as originating from those foreign states. Bureaucratic processes make it difficult for them to get the required documentation.

A young woman born in Zimbabwe of a Zambian mother and a Malawian father had this to say.

“I was born in Zimbabwe. My mother was Zambian and my father was from Malawi. Both my parents are late now but before they died they both had Zimbabwean birth certificates, Zimbabwean Identity Documents and Malawian passports. I have a short birth certificate and a Zimbabwean identity document. When my parents were still alive and we were still young they got us Malawian passports and I have always been using a Malawian passport. I took my passport in 1995 and it expired in 2000. I tried to renew my passport and the people at the Malawian embassy processed it but refused to give it to me when I went to collect it, saying that I needed to renounce my Zimbabwean Citizenship before I could get the Malawian passport. To renounce Zimbabwean citizenship I had to prove that I am an alien. Proof that you are an alien is found on the long birth certificate certifying that you are an alien; I have a short birth certificate. The Malawian embassy also asked for a letter from the Village headman of the kraal from which my ancestors in Malawi came from as proof that I am of Malawian origin. I do not know anyone in Malawi and I am sure if I were to go there no one would remember me. My home is in Zimbabwe, I was born here, I grew up here and I know no other place as home but this one. I know that I also will not be able to get a Zimbabwean passport if I try because the Registrar General’s office will also require me to renounce Malawian citizenship and I will have to prove my Malawian origin yet again. My father died with an identity card that showed that he was Zimbabwean. To make

⁷⁸ Migrant workers are defined in the Act as all persons who entered Zimbabwe from a SADC country or left Zimbabwe for a SADC country for purposes of employment as a farm laborer, a mine worker, a domestic employee or any other unskilled occupation [Section 2(2) (b)].

⁷⁹ Section 4 of the Citizenship Act as amended by Act No 12/2003.

matters worse, the people at the Malawian embassy treated me badly. They refused to help me at first because I was not speaking to them in the Malawian language. I speak Shona because that is the language I have been speaking since I was born. I had to struggle to speak to them using the little I know of the Malawian language. One man was holding a long list of chiefs and headmen as he asked me where I said my ancestors came from. Other people who were there were turned away for making a mistake in identifying the correct chief or headman.

Not having a passport has deprived me of my source of livelihood. When I had a passport I used to be a cross border trader. I would go to Botswana and do piece meal jobs such as doing people's laundry, ironing and house cleaning. I could actually get enough money to buy all the things I needed to survive. Now my life is miserable. I do not have any money and I struggle just to get food on the table. Some people have had opportunities to get money which opportunities I have missed out on. There is a woman who stays in our neighborhood who goes to Dubai. She always asks women with passports to accompany her to sell clothes and crafts and she pays for their airfare, stay and will pay them upon return. I can not go because I do not have a passport."⁸⁰

Since the Amendment became law, renewing a passport has become extremely difficult for people of foreign descent who had at one stage been able to get Zimbabwean passports. Their applications for renewal are rejected on the basis that they are no longer regarded as citizens of Zimbabwe but of the country of origin of their ancestors. They are advised to renounce their entitlement to citizenship of the other country if they want to be Zimbabwean citizens. They are also told that they can not be citizens of both countries because dual citizenship is prohibited in Zimbabwean law. Their problems are compounded when they can neither trace their descendants to their country of origin nor substantiate a claim to Zimbabwean citizenship. Resultantly most end up without both Zimbabwean and foreign citizenship.

They are also grounded in the country, deprived of their freedom of movement because they can not get either a Zimbabwean passport or one from their 'so called' country of descent. Their children are also stuck in statelessness, a situation that the Government of Zimbabwe should rectify as it is a signatory to the Convention on the Reduction of Statelessness of 1961⁸¹. Article 1.1 of the Convention provides that every state party to the Convention shall grant its nationality to a person born in its territory who would otherwise be stateless and that such nationality shall be granted at birth.

To understand the depth of the problem surrounding citizenship, there is need to explain the impact of Amendment No 12/2003 on the laws on Citizenship in Zimbabwe. Section 3 of the Amendment provides that if, 'in any document purporting to be a copy of any written law of a foreign country, it is shown that the person applying for Zimbabwean citizenship is by virtue of that law a citizen of that country then it shall be presumed that that person is a citizen of that country.' Clearly the provisions of the Act intend

⁸⁰ Interview with Joyce Chirwa, a woman activist, at RAU offices on the 26th of August 2008.

⁸¹ As of the 31st of October 2008 only 35 States have ratified the Convention and Zimbabwe is not one of them. The government needs to ratify the Convention and implement its provisions for the plight of the stateless to be addressed.

that all those people who have acquired and still hold foreign citizenship need to renounce that citizenship for them to become Zimbabwean citizens. Even the Minister of Justice clarified the legal interpretation to this provision in a Notice that he published in the Government Gazette⁸² stating unequivocally that a potential right or claim or entitlement was not a basis for the requirement to renounce foreign citizenship. Cabinet also endorsed in the same Notice by the Minister of Justice Legal and Parliamentary Affairs the interpretation that one had to have acquired foreign citizenship to be obliged to renounce it and that in the absence of evidence to the contrary, everyone born in Zimbabwe was presumed to be a citizen of Zimbabwe by birth.

The Registrar General has however interpreted the same provision to mean that anyone who has 'a potential' or 'a claim' or 'an entitlement' in terms of the laws of a foreign country to be a citizen of that country should renounce such entitlement.⁸³ What this effectively means is that an individual is forced to renounce an entitlement to a foreign citizenship even if they are not a citizen of that country (and may have no wish to be a citizen of that country) before they can be considered as a citizen of Zimbabwe. Their countries of origin may not recognize them as citizens either because they do not have records of these people from birth since they were not born there, but this does not stop the Registrar General from demanding a formal renunciation of the claim or entitlement.

What the Registrar General has done is to apply the law of blood (*ius sanguinis*) principle of international law, that by virtue of the blood ties between the two, a child born of a parent who was born in another country becomes a citizen of the country to which the parent is a citizen by descent even if the child is born in another country. This view is acceptable if it is not applied in a way as myopic and as plainly incorrect in its interpretation of the law as it is in the Registrar General's case. It is *ultra vires* the Constitution. It is also a usurpation of the powers of the Judiciary as provided in the Constitution of Zimbabwe. The Constitution states that legislative authority vests in the legislature, the judiciary interprets the law and the executive enforces the law. The position of Registrar General is a creature of statute, which was made by the lawmakers, and his powers, discretionary or otherwise are subject to the interpretation of the judiciary and should be enforced through executive arms set for that purpose.

The 2003 Amendment has also been challenged in the Zimbabwean courts. In the case of *Judith Garfield Todd v Registrar General*⁸⁴, Justice Mungwira of the High Court of Zimbabwe concluded that the Applicant, in the absence of evidence to show that she was actually a citizen of New Zealand, rather than having just a claim to such citizenship, appeared to be a citizen of Zimbabwe because she had been resident in Zimbabwe and had been considered so resident since the 31st of December 1985. Thus she

⁸² General Notice 584 of 2002

⁸³ See *Judith Garfield Todd v Registrar General* HH 76/2001.

⁸⁴ *ibid*

was entitled to a renewal of her passport. The court further held that if the Registrar General wanted to maintain that she was a citizen of New Zealand, then he would have to call expert evidence to that effect. The Applicant was born in Zimbabwe although her parents were born in New Zealand. The Registrar General had refused to renew her passport claiming that she had lost her Zimbabwean citizenship because she had failed to renounce a New Zealand citizenship she had never acquired.

Of particular concern are those individuals that were farm workers on previously white owned land until the Land Reform process took place⁸⁵. Most of these people were immigrants, or the descendants of immigrants, from different Southern African countries including, Malawi, Zambia and Mozambique. For generations now these people have known no other place but Zimbabwe as their country of nationality. Most are two or three generations away from the person who initially migrated to Zimbabwe and they do not identify with the country of their descent. In a normal democracy, it would be fair and just that these people would be granted citizenship by birth but due to the undemocratic stance that the Zimbabwean government has taken, more often than not they are denied the right to an identity, regarded as 'aliens' and as a result do not belong anywhere. Although there is a standing decision of the court, the Registrar General disregards this and continues to use his discretionary powers ruthlessly. This brings to light the point made above that his discretionary powers are too broad and there is need for reform of the law on citizenship to address the plight of the stateless. Surely he must conform to what the court says and not what he perceives to be fact. In denying citizenship to individuals who have always identified themselves as Zimbabwean both by birth and registration, the Registrar General has made a large number of people stateless and consequently has breached international human rights law.

These people can not vote because as discussed earlier to vote one has to be a citizen or a permanent resident, be in possession of a valid Zimbabwean identity document and show proof of residence in Zimbabwe. In *Tsvangirai v Registrar General*⁸⁶, Justice Makarau of the High Court of Zimbabwe ordered that all those people who had been struck off the voters roll although permanent residents of Zimbabwe and so regarded since 31 December 1985 and who were above the age of 18 years should be reinstated as eligible voters. Justice Adam in the case of *Tsvangirai v Registrar General & Ors*⁸⁷ stated that the Registrar General was wrong in assuming that a person who had a foreign born parent was automatically a foreign citizen. He also asserted that a Zimbabwean citizen was only required to renounce foreign citizenship if he was actually a foreign citizen not if he merely qualified for it or had a claim to it. These judgments meant that a person born of foreign born parents did not become a foreign citizen because the parents were foreign born. They remained Zimbabwean citizens, eligible to vote. Even if they lost Zimbabwean citizenship they still remained eligible to vote by virtue of being permanent residents.

⁸⁵ Definition of land reform as explained above in footnote 6

⁸⁶ HH 22/2002

⁸⁷ HH 29/2002]

The Supreme Court overturned the decision by Justice Makarau in *Registrar General & Ors v Tsvangira*⁸⁸ when it held that if a person who was permanently resident in Zimbabwe since 31 December 1985 lost their citizenship then they also lost their right to vote. Sandura JA, dissenting, noted that qualification for registration to vote stemmed from two things; citizenship and permanent residence so even if someone lost their citizenship then they would still be eligible to vote on the basis of their being a permanent resident.

The Registrar General, deriving his authority from this erroneous Supreme Court decision, continues to remove people of foreign parentage from the roll. The voters roll ought to only comprise citizens of Zimbabwe who are eligible to vote. Anyone with a birth certificate indicating foreign origin has been ordered to renounce their foreign citizenship failing which Zimbabwean citizenship would be lost. Having lost Zimbabwean citizenship they would then not be entitled to vote. What we see here is a clear use of the law by a government to further its own unjustifiable agenda. In a normal democracy it would be fair and just that these people should be granted citizenship by birth to enable them to participate in the democratic processes that shape up their lives and those of their children and future generations.

This practice by the Registrar General is wrong and the law is peculiar in that Section 2(2) (b) of the 2003 Amendment effectively denies children born of Zimbabwean parents in foreign lands the right to automatically acquire Zimbabwean citizenship by descent yet it wants to impose that “right” on people born of foreigners in Zimbabwe to deny them Zimbabwean citizenship. This is hypocritical. Innocent children continue to be victims of unjust laws as they lead their lives devoid of the protection of the law, growing into a future characterized by uncertainty, without an education, basic social services and without a vision for their own children who are likely to suffer the same fate as their parents.

Recommendations

The system of birth registration in Zimbabwe is over-centralized, with overly stringent requirements - for instance, the stipulation that you can only be registered in the area that you were born. Requirements such as this, pose a hurdle to children, particularly vulnerable children e.g. orphans, as they try to acquire birth certificates. Transport costs to try and travel to the area where these children were born are very high and hence a number of children end up without birth certificates. There is the need, therefore, for the Registrar General to realize the plight of disadvantaged children and loosen this stringent requirement, allowing all children to be registered in the area in which they reside, be it their place of birth or not. For purposes of curbing child trafficking and abduction, it is appropriate to maintain the requirement for the person registering the child to prove that they are the child’s legal guardian.

⁸⁸ S12/01

More emphasis should be placed on the importance of birth registration and this should be done through community empowerment projects. The government should not regard this task as the responsibility of Civil Society and Non-Governmental Organizations⁸⁹ only, but should be at the forefront of mobilizing communities to register their children's births. Zimbabwe should implement its laws and learn from other countries such as the United Kingdom where the law says all births must be registered within 42 days and no later than three months after the child is born⁹⁰, and the law is implemented to the book. Although the law in Zimbabwe does say that children must be registered within 42 days of being born⁹¹ this is rarely done, usually due to bureaucratic processes that have been set up by the Registrar which prevent births from being studiously and quickly registered.

It is also important for the office of the Registrar General to take into consideration the plight of the rural and poor folk where the issue of birth records is concerned. Most people in the rural areas live long distances away from their health institutions, and thus a large number of the rural population end up delivering their babies in their homes. -Presently many major hospitals have either been closed or are operating at very low ebb, so most people have resorted to giving birth at home even in the urban areas. They therefore will not have the necessary birth records and they find it extremely difficult to register their children's births. Some people manage to go to the hospitals and clinics but fail to pay their fees in full and are denied the birth records and this also causes them a lot of problems when they are trying to get their children's births registered.

In the United Kingdom, if neither the mother nor the father is able to get the child registered, the law allows for the following people to register the child: anyone who was living in the house where the child was born; any person present at the birth; and any person responsible for the child.⁹² It would be useful if similar provisions in the Births and Deaths Registration Act⁹³ were to be applied in Zimbabwe as effectively as possible to address the Best Interests of the Child ahead of policy issues and consider that it is the children that suffer more than the policy.

There is also need to address the plight of children born out of wedlock. In terms of the law, these children can be registered in the mother's name only, unless the father is physically present at registration and has agreed to the inclusion of his name on the birth certificate, and the fact that

⁸⁹ Such as the Justice for Children Trust and Zimbabwe Women Lawyers Association (ZWLA), two organisations that advocate children's right to birth registry and a nationality

⁹⁰ http://www.adviceguide.org.uk/index/family_parent/family/birth_certificates.htm#Obtaining_copies_of_birth_certificates

⁹¹ Section 11 (2) (a) of the BDR Act

⁹² www.adviceguide.org.uk ibid

⁹³ Section 11 (1) (a) to (e) of the BDR Act

guardianship of children born out of wedlock vests in the mother was legally determined in the High Court judgment by Justice Smith in the case of *Katedza v Chunga*⁹⁴.

This decision was indeed a victory for women and children's rights since it meant that an unmarried woman could obtain identity documents such as birth certificates and passports for her child without using the child's father's surname and without having to go through the process of begging the father to agree to go and have the child registered. Sadly though, the existence of that judgment has not improved the plight of children born out of wedlock on the ground. Very few women are aware of the existence of this decision due to a number of reasons, amongst which are the low levels of legal literacy in the country and inability to afford legal services where there is need to contest the case in a court of law.

As a consequence, women spend a considerable amount of time trying to convince the fathers of their children to go with them to register the children. In the interim, their children are prejudiced by difficulties in access to vital social services that should be rightfully theirs from the day they are born. It should be the mandate of the office of the Registrar General to create this kind of awareness among the people with the best interests of the children at heart. Although the law is in place, clearly there are no implementation mechanisms available to ensure that the law serves the people. Room is actually created for men to bring paternity wrangles to the fore at a time when the welfare of the child should have priority.

There must be a policy in the office of the Registrar General to make sure that all the employees in that office are aware of any new developments in laws that directly influence their relations with the public in offering them services. This will go a long way to address inconsistencies in the application of the law. In particular, women's problems in getting their children's birth certificate due to the unwillingness of the fathers to go with them will be totally eradicated as it will be clear to the registering officer that as long as the mother is present, and the father is not willing to get the child registered in his name, then it is legally correct for the mother only to register the child's birth on her own.

The Government of Zimbabwe should look at what other countries or regions are saying about citizenship, identity and the importance of identity documents to a citizen. They should evaluate themselves and be able to answer the following question affirmatively: Have they made possession of identity documents and citizenship fundamental rights? Zimbabwe should also approach the issue of the

⁹⁴HC 1043/03 - the case involved a man and a woman who had formerly been in a customary union and were fighting over the name of the child since the mother wanted to give the child her maiden name. The court decided that a single mother has guardianship rights over her child and as such she has the discretion over naming the child.

right to identity with particular sensitivity to the gender aspect of things as is the case in the Americas⁹⁵ in order to address the plight of women.

They should learn to prioritise the human right to identity in achieving Millennium Development Goals (2) and (4) which are; Goal (2) to achieve universal primary education, Target 3 to ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling something that is not possible if a child does not have a birth certificate which is needed to enroll in school and sit for examinations and Goal 4; to reduce child mortality, Target 5 to reduce by two thirds, between 1990 and 2015, the under-five mortality rate, a goal that is also not possible to achieve if children are denied access to vaccines when they do not have proper identification.

and emulate other nations for instance in the Americas The Draft inter-American program for Universal civil registry and the "right to identity" states its purpose as to ensure that by 2015 birth registration, which is used to ensure the right to civil identity, with emphasis on persons in poverty and at risk, is universal, accessible, and, if possible, cost-free; identify and promote best practices and standards for civil registry systems;- address the problems and overcome the obstacles that arise in this area, taking the gender perspective into account and raise awareness of the need effectively to establish the identity of millions of persons.

The Organisation of American States (OAS) proposes in this document to achieve this purpose through a number of means including the following modernisation of their identity registries; updating of vital statistics; simplification of civil registry administrative processes; standardization at the national level of civil registry administrative processes; systematising the basic criteria and standards needed to ensure that national civil registry systems can function properly; registering all girls and boys immediately after birth; promoting massive civil registry campaigns that include routine access by mobile units to rural or remote areas affected by under registration, in order to guarantee access to registration and the actual registration of boys and girls, adolescents, and adults; promoting late registration of those adults who have not been registered, thereby preventing the lack of identification of the parents from being an obstacle to the registration of their children; promoting the development of ongoing sensitization and awareness-raising plans targeting officials and civil servants in all branches of the state, and all sectors of society; emphasizing promotion and protection of the rights to legal personhood, a name, a nationality, and civil registration; fostering and supporting citizen awareness programs and/or campaigns on the importance and necessity of registering the newly born and drawing up a catalogue of best practices,

⁹⁵ Preamble of the DRAFT INTER-AMERICAN PROGRAM FOR UNIVERSAL CIVIL REGISTRY AND THE "RIGHT TO IDENTITY" (Presented by the General Secretariat) DRAFT INTER-AMERICAN PROGRAM FOR UNIVERSAL CIVIL REGISTRY AND THE "RIGHT TO IDENTITY" in which the purpose of the draft is stated as being to Identify and promote best practices, criteria, and standards for civil registry systems and their universalization, in order to address the problems and overcome the obstacles that arise in this area, taking the gender perspective into account, as well as to raise awareness of the need effectively to establish the identity of millions of persons, taking into account vulnerable groups and the rich diversity of cultures in the Americas.

criteria, and standards with respect to civil registry.⁹⁶ The Americans place emphasis on the level of security of identity documents thus they put measures to ensure that their identity documents are counterfeit-resistant, machine readable, and contain at least one biometric identifier (preferably two thumb prints). This is because their IDs work for so many purposes including applying for government welfare or benefits; getting a new job and boarding an airplane. Zimbabwe should work on improving its system and could derive guidelines from this American model.

The powers of the Registrar General should be reviewed. They are too absolute. It is at his discretion that an individual gets his/her identity at birth or not. The Registrar General dictates who gets a passport and who does not get one. He even has powers to withdraw an individual's passport. It is also at his discretion that citizens and non-citizens of Zimbabwe are determined.⁹⁷His role in determining political leadership for the country is too inclusive as the duties to draw up the voters' roll, file nomination papers for candidates, and supervise the count, fall under his mandate. Placing all these crucial roles into the hands of one individual is too risky especially if these powers are abused. As is the case in Zimbabwe where the Registrar General manipulates the voting processes by denying Zimbabweans who should be eligible to vote identity documents which enable them to vote and misrepresenting on the voters roll people's status as some appear dead when they are alive, these shortcomings would be avoided if the Registrar's powers were curtailed by some limitations to his discretion.

Conclusions

It is imperative that the government of Zimbabwe should recognize that every individual has a right to identity and to be a citizen of a particular nation. Instead of making it extremely difficult for citizens to acquire an identity, the government should be working flat out to do everything in its power to grant its citizens an identity. The first step would be to put in place laws that ensure easy access to identity documents and citizenship, secondly to apply these laws to achieve the intended goal and thirdly to put in place monitoring and evaluation mechanisms to decipher the effectiveness of the laws and problems faced in implementing them so as to find solutions and ensure that no person is deprived of a nationality or an identity.

⁹⁶ DRAFT INTER-AMERICAN PROGRAM FOR UNIVERSAL CIVIL REGISTRY AND THE "RIGHT TO IDENTITY" (Presented by the General Secretariat) DRAFT INTER-AMERICAN PROGRAM FOR UNIVERSAL CIVIL REGISTRY AND THE "RIGHT TO IDENTITY"

⁹⁷The Citizenship of Zimbabwe Act

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