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## CITIZENSHIP ALTERITIES: THE CASE OF CHILD BIRTH REGISTRATIONS IN THE TONGOGARA REFUGEE CAMP OF ZIMBABWE

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### ABSTRACT

*This paper focused on the case of Tongogara Refugee Camp in Chipinge, Zimbabwe. It has used this fragile context to explore the citizenship alterities of children born to asylum seekers and refugees who are undocumented and/or stateless persons who reside in this refugee camp. In this specific context of fragility and forced displacement, these undocumented children seemingly inhabit a 'grey borderland' that lies between sovereign states. Within this grey borderland, the status of asylum seekers, not of concern persons and refugees, and the protracted nature of their refugee experience produces generational (undocumented) refugees, which in effect renders them more susceptible to becoming stateless. The paper has pointed to the implications of these citizenship alterities and identified some of the policy and legislative gaps around the documentation of migrant children born in Zimbabwe's refugee camps. Finally, the conclusion outlined policy recommendations for the socio-economic inclusion of undocumented migrant children, refugee children, and children born to asylum seekers and refugees in Zimbabwe to address generational refugeeism and to prevent the proliferation of statelessness.*

**KEY TERMS:** children, citizenship alterities, fragility, refugee(ism), statelessness, Zimbabwe, Tongogara Refugee Camp

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## INTRODUCTION

Every child has the universal right to a name and nationality. This right is entrenched in the 1989 United Nations Convention for the Rights of the Child (UNCRC) and is an essential mechanism for the effective realisation of children's rights. Article 7 of the 1989 UNCRC stipulates that, 'Every child has the right to be registered at birth, to have a name and nationality, and, as far as possible, to know and be cared for by their parents.' Similar to Article 7 of the 1989 UNCRC, the African Charter on the Rights and Welfare of Children of 1990 (ACRWC) also seeks to ensure the rights of all children in the African continent. Notwithstanding these international and regional legal instruments, nearly 230 million children under the age of 5 remain unregistered globally. Out of these unregistered children, 37% reside in Sub-Saharan Africa (UNICEF, 2014a). Birth registration is not only an internationally recognised right, it is also an essential mechanism which ensures that the four General Principles of the UNCRC of: (i) non-discrimination, (ii) the best interest of the child, (iii) the right to life, survival and development, and (iv) the right to be heard are realised for all children, irrespective of their nationality. It is also pertinent for the realisation of socio-economic rights. Despite the importance of birth registration, it remains a global challenge, particularly so for vulnerable members of the international community such as refugees and asylum seekers. In light of the above, this discussion paper focuses on the case of birth registrations in the Tongogara Refugee Camp, highlighting some of the reasons why birth registration poses a challenge for refugee and asylum seeking children in the Zimbabwean context.

The Tongogara Refugee Camp was established in 1984 to house Mozambican refugees. It is located in the Chipangayi area of Chipinge District in Manicaland Province. Manicaland Province has a 27% birth registration rate for children below the age of 5 years – 57% lower than the national average (ZIMSTAT & ICF International, 2016). As a result, the children of asylum seekers, refugees, stateless persons and undocumented persons in the Tongogara Refugee Camp are at greater risk of being undocumented and eventually stateless. With this peculiar precarity in mind, this paper will focus on the case of children born to refugees, asylum seekers and not of concern persons in the Tongogara Refugee Camp of Zimbabwe. It argues that the lack of birth registration and documentation for children born to refugees, asylum seekers, and not of concern persons in the Tongogara Refugee Camp renders them vulnerable to being undocumented and hence *de jure* stateless. According to the United Nations High Commissioner for Refugees (UNHCR, 2017), persons deemed as 'Not of Concern' are persons who have an official 'Asylum Seeker' status as rejected on two appeals, which is in the first instance rejection and the final instance rejection officially making them 'not of concern.' These decisions are both from the Government of the Republic of Zimbabwe refugee status determination processes.

In Zimbabwe, not of concern persons are permitted to continue living in and receiving assistance from the UNHCR while awaiting a solution, which is being negotiated with the Government and UNHCR. Coutin (1999:53) highlights that not only does 'the denial of citizenship [in this case refugee status] result in clandestinity, but also the practices that are created in an attempt to cope with such a denial can themselves constitute claims to membership'. As of July 2017, the Tongogara Refugee Camp hosts 554 not of concern persons, 181 of these persons are children. While the camps hosts 2 709 asylum seekers and 1 431 are children under the age of 18. Asylum seekers and not of concern persons inhabit the transient space of 'grey borderlands' (Sassen, 1991) as they await the award of Refugee status or repeal of the decision on their application for Refugee status. For instance, their ID documentation classifies them as either 'Alien' or 'Refugee' both of which are terms that define the borders of identity in citizenship as they continue to negotiate their lives within a context, which does not offer them full citizen rights.

Further to this, the definition of a 'refugee' is contained in the 1951 UN Convention Relating to the Status of Refugees, its 1967 Protocol Relating to the Status of Refugees and the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. However, Zimbabwe has not ratified the UN Convention. Refugees are defined as 'persons of concern who have an official asylum seekers application granted as 'Refugee' after a successful Refugee Status Determination (RSD) application with credible information.' The majority of these recognised refugees are concentrated in the Tongogara Refugee Camp. As of July 2017, the country population for all refugees and asylum seekers in Zimbabwe was 11 012. Of this 11 012 refugees and asylum seekers, 9 458 (86%) were residing within the Tongogara Refugee.

The 1951 UN Convention defines a refugee as:

*...any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it...*

The 1969 OAU Convention includes this description. However, it extends the definition by adding that:

*The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country*

*of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.*

An asylum seeker is a person who enters a foreign country with or without legally required documents, with the intention of seeking refugee status, and whose status has not yet been lodged or has been lodged but has not yet been adjudicated. In the 2017 mid-year aggregation, the UNHCR recorded that Zimbabwe had a total population of 3 390 asylum seekers, not of concern persons and others of concern. The UNHCR uses the category ‘Others of Concern’ to refer to ‘Zimbabweans who are spouses and children to refugees and asylum seekers’. It highlights, however, ‘that at times parents prefer to register their children with the father’s nationality as a culture, which in the future makes it difficult to register the children under the mother’s nationality as the host parent. Hence according to the UNHCR the total population residing in the refugee camp includes individuals whose application for refugee status has been rejected, where the rejection is on ‘purely formal grounds’ or on substantive grounds that UNHCR would not consider sufficient; or following a process for determination of refugee status that is not procedurally fair. By law, asylum seekers should be considered to have the same rights as refugees, until such time as it is fairly determined that they do not have refugee status. However, evidence from Zimbabwe and across the globe suggests that this is often not the case (UNHCR, 2015).

### **Zimbabwe’s legal framework on birth registration**

Zimbabwe’s legal framework on birth registration is informed by international laws. In addition to this, Zimbabwe has signed and ratified both the UNCRC and the ACRWC. Both these legal instruments place a legal obligation on the signatory state to register every child’s birth. Zimbabwe has domesticated this international obligation through its Births and Deaths Registration Act [Chapter 5:02] of 1986. Section 10 and 11 of this Act put in place measures which ensure that the birth of a child is registered, and includes a provision that enables other parties such as caregivers aged 18 years and above to register a child. It also provides caregivers and parents with a forty-two day grace period within which to register the birth of a child.

Although Zimbabwe signed the UNCRC and ACRWC and established a national legal frameworks for addressing child birth registrations, the national birth registration rate for children below the age of 5 years remains suboptimal; with great differentiations in the birth registration rates from province to province. According to the 2015 Zimbabwe Demographic Health Survey (ZDHS), “Births are registered with civil authorities for 44[%] of children under age 5” of this proportion of legally registered children, 33% had a birth certificate and 11% had their birth registered but did not obtain any birth certificate (ZIMSTAT & ICF International, 2016:7).

### *Limitations*

Due to the lack of a decentralised birth registration system within the camp administered by the Zimbabwe’s Ministry of Home Affairs within the Department of the Registrar General, it is difficult to state conclusively how many children in the camp are undocumented, that is: without a birth certificate. In addition, this discussion paper is unable to speak to the individual experiences of refugees and asylum seekers with the Tongogara Refugee Camp as data is based on population statistics from the UNHCR and not biographical narrative interviews the refugees and asylum seekers in the camp. Thus, there is lack of available, reliable data and research studies on the issue of Birth registration in Tongogara refugee camp. However we note this as an avenue for follow-up research.

## **CONCEPTUAL FRAMEWORK**

### **Fragile state, fragile context**

According to the World Bank (2015) Zimbabwe is a ‘fragile state’. The World Bank (2015) defines the term fragile state as being a low-income country characterised by weak state capacity or weak state legitimacy leaving citizens vulnerable to a range of shocks. A state is also deemed to be fragile if it is eligible for financial aid from the International Development Association (IDA). Zimbabwe embodies the characteristics of a ‘fragile state’ as defined by the World Bank. For example, Zimbabwe is a low income country with an average Zimbabwean living on \$3.24 (United States dollars) a day and 72% of the population living below the World Bank International Poverty line of \$1.90 a day (World Bank, 2015). Zimbabwe is also characterised by climate risks and instability in its economic, political and civic spheres. Hence, Zimbabwe has a heightened exposure to risks combined with a low capacity to mitigate or absorb them (Malek, 2016). Due to Zimbabwe being a fragile state, matters pertaining to the wellbeing of the refugees fall under the responsibility of international non-governmental organisations and development agencies such as the UNHCR and Terre des Hommes (TDH) in Zimbabwe. It is for this reason this paper argues that Zimbabwe is indeed a *fragile* state.

The Tongogara refugee camp is run by UNHCR in partnership with the Zimbabwean state. The Government of Zimbabwe, through the Department of Social Welfare (DSW) within the Ministry of Public Service, Labour and Social Welfare are in close co-operation with other departments within the ministries to oversee the management of the camp with funding support from UNHCR. TDH Zimbabwe is a UNHCR technical support

partner that works towards ensuring that refugees realise rights such as healthcare, education, shelter and sanitation. TDH is responsible for the provision of water and sanitation services, healthcare, distribution of essential relief items and food, self-reliance and livelihood programme. TDH is committed to ensuring that the children remain in school at the refugee camp. It also offers them social protection services and support. These rights also include children's rights such as birth registration, presentation and reduction of statelessness, and the protection of statelessness persons and child protection.

As earlier alluded, the national context is also made increasingly fragile by donor dependency in terms of the provision of social protection for refugees in Zimbabwe. Zimbabwe's status as a fragile state raises questions around the sustainability of the country's refugee policy implementation capabilities. For example, what would happen if the donors were to pull out? The fragility of this context is amplified by the fact that the refugee camp is located within an extremely fragile context of Manicaland Province which has a 70% poverty prevalence (ZIMSTAT & ICF International, 2016). Further to this, as aforementioned, Manicaland Province where Tongogara Refugee Camp is located has a birth registration rate that is 57% lower than the national average (ZIMSTAT & ICF International, 2016). Weak state capacity in the fragile state of Zimbabwe is witnessed in low birth registration rates for citizens, and the vulnerability of refugees and asylum seekers is exacerbated in this fragile with an even higher rate of poverty and lower birth registrations than the national averages.

The confinement of refugees within the Tongogara Refugee Camp brings a range of citizenship alterities to the fore. Whilst the Refugees Act No. 13 of 1978 [Chapter 4:03] as amended by Act No. 22 of 2001 makes no mention of asylum seekers, disquietingly, the Refugees Act is entirely silent on children, and therein overlooks the vulnerabilities of children in contexts of fragility and forced displacement. This in effect contributes to undocumented and statelessness particularly with regards to separated children and unaccompanied minors. As a result, children are marginalised by this legislative framework. Whilst the Constitution of Zimbabwe Amendment Act No. 20 of 2013 provides wider protections for persons at risk of statelessness, gaps remain when considering the protections advanced by the 1961 Convention, to which the country has not acceded. For instance, while Section 38 of the Constitution, provides that persons continually residing in Zimbabwe for at least 10 years and satisfying certain conditions are entitled to apply for citizenship, the law does not entirely protect persons that are stateless or at risk of statelessness. However, there remain policy gaps such as the failure to grant citizenship to the children born of stateless parents.

The fragility and vulnerability underpinned by statelessness is encapsulated by the notion of clandestinity. Clandestinity is a useful concept in that it captures the issue of exclusion based on 'illegality, disenfranchisement ineligibility, and a permeability that fails to differentiate' between types of citizenship alterities (Coutin, 1999:53). Refugees in Zimbabwe negotiate their lives within this fragile context where they experience varying degrees of 'liminal citizenship' and clandestinity can therefore be a barrier to social protection as it fails to differentiate between stateless persons and undocumented persons (Torres & Wicks-Ausbun, 2014).

Children within the refugee camp remain fixed within this fragile context, as this camp is home to more than two generations of refugees. Thus, making them experience their refugee rights within the fixed pocket that is the fragile context of the camp as they do not possess the documentation that allows them access to a number of services like healthcare, education and judicial services. We argue that the Tongogara Refugee Camp is a fragile context in which the inhabitants are bound by the clandestinity and a transient permeability that fails to differentiate their varying degrees of (i)legality. This places them in an uncertain position that we describe as 'temporary permanence' (Ncube, 2014). Controversially, Agamben (1998) might posture to refugee camps as 'modern concentration camp'. Within this grey borderland of the refugee camp of 'bare life', undocumented migrants are sometimes 'reduced to a naked depoliticized state without official status and juridical rights' (Agamben, 1998:57).

As previously mentioned, 'others of concern' are children who inhabit grey borderlands by consequence of the prevalent cultural trend wherein children to refugees and asylum seekers are registered with the father's nationality. As a result, it becomes difficult in future to naturalise these children under the mother's nationality, thereby perpetuating this state of temporary permanence.

Menjívar (2006) states that:

*Lengthy uncertain legal statuses determine if, how, and when immigrants will become fully legal and then citizens (through naturalization). Thus, spaces **between** conventional legal categories affect the immigrants' immediate lives as well as long-term membership, thus raising the possibility of new forms of citizenship through migration.*

The temporary permanence of refugees including not of concern persons and other of concern persons is highlighted by their permeability between undocumented, asylum seeking, Alien and Refugee status. In this way they are suspended between resettlement and repatriation.

## DISCUSSION

### **Tongogara Refugee Camp: a context of fragility**

There is need to draw attention to the children in the Tongogara Refugee Camp. Children make up more than half (52%) of the total refugee population in the Camp. The Camp hosts 127 not of concern persons, 73 (57%) of these persons are children. While the camps hosts 3 263 asylum seekers and 1 711 (52%) are children under the age of 18 excluding not of concern persons. Asylum seekers and not of concern persons inhabit the transient space of grey *borderlands* they await the award of Refugee status or repeal of the decision on their application for Refugee status. The notion of a grey borderland is adapted from Sassen's (1991) notion of the 'border zone' referring to an area where 'where the old spatialities and temporalities of the national and the new ones of the global digital age engage' and highlights the obscure and uncertain space where nationalities engage and are renegotiated through the application for legal citizenship. By way of illustration, the ID documentation of refugees classifies them either as 'Alien' or 'Refugee' – terms that are 'other' to the ordinary citizen, and as a result they must continue to negotiate their lives within a context which does not offer them full citizen rights. Children within the refugee camp remain fixed within this fragile context, as this camp is constituted by generations of refugees. Whilst the Tongogara Refugee is camp is named after Zimbabwean liberation struggle veteran, Josiah Tongogara; the verb 'tongogara' is the future perfect tense in Shona for 'we will (just) stay'. Hence in this context, seems almost sardonically laden with a kind of resignation in the present reminiscent of the future continuous tense – as if to signify the perpetuity of generational refugeeism. Nonetheless, in spite of this inability to access basic human rights and services in the refugee camp, the precarious and protracted nature of refugeeism keeps them suspended in a state of temporary permanence as even their refugee status may be revoked and refugees repatriated at any such time as the status they hold is nullified by conditions such as stability and the end of war. The lack of durable solutions for long stay refugees means status withdrawal hangs like a guillotine, above their heads. They are thus in a permanent yet temporary state. Our concept of the refugee camp as a grey borderland is echoic of what Scott (1985) would call 'hidden scripts', which are like 'loop holes' and 'interstices' (Lee, 2010), where norms are subverted and 'temporariness' can become permanent (Ncube, 2014).

Recent arrival trends show that the highest number of refugee children (including asylum seekers) aged 0-17 years hail from the Democratic Republic of Congo, Mozambique and Rwanda. 739 girls and 820 boys enrolled at Tongogara Primary School – making a total of 1 559 children. Zimbabwe adopts an encampment policy and therefore, refugees and asylum seekers are confined to refugee camps unless extreme circumstances exist which require them to live in urban areas. These circumstances may include employment or the need of medical treatment.

### **Birth registrations: the right to a name and nationality**

While the Government of Zimbabwe has taken commendable steps, as presented in the Zimbabwe's second periodic report submitted by States parties under Article 44 of the UNCRC, to ensure birth registration for children, the overall birth registration situation in the country could be improved. In 2008, the national birth registration rate for Zimbabwe was only 42% – 56% in urban areas and 35% for rural areas (ZIMSTAT & ICF International, 2016). This disparity is largely due to the limited capacity of civil authorities. This challenge is amplified in rural areas where proximity to a civil authority for birth registration may be further than it is in urban areas. In fact, a comparison of the 2005-06 with the 2010-11 ZDHS revealed that the percentage of children under the age of 5 whose births were registered had dropped sharply from 74% to 49% (CSO & Macro International 2007; ZIMSTAT & ICF, 2012). The 2015 ZDHS indicated that the birth registration rate in Zimbabwe for children below the age of 5 year is 84%.

In 2011 the UNHCR anticipated that only 70% of new-born children born in the refugee camp would be issued birth certificates due to a funding deficit (UNHCR, 2015). Symptoms Zimbabwe's weak state capacity are witnessed in the fluctuation in national birth registrations; less than optimal issue birth certificates for children whose birth are registered. As a consequence of Zimbabwe's status as a fragile state, the national and international obligation to register every child's birth within the Camp is contingent on donor funding. In order be to attain a universal birth registration rate in Zimbabwe, there is need to focused measures to be put in place. In many cases, access to socio-economic rights is hindered by the lack of documentation. For example: birth registration is also linked to the right to education (Article 28 of the UNCRC), as children cannot be enrolled in schools outside the camp without a birth certificate. The growing population of the camp has resulted in the camp not having the capacity to cater to the needs of the refugee community. Thus members of the refugee community sometimes take recourse to access healthcare from the local health facilities outside the camp. However, without proof of birth registration for example in the form of a birth certificate, unregistered children of refugees and asylum seekers from the Camp may be turned away from schools and health facilities. For instance in 2014, there was a secondary school shortage in Chipinge, as they only have one high school which can only accommodate 800 students (UNHCR, 2015). Birth registration was employed as exclusion criteria and as a result, 200 children from the

refugee camp were denied entrance into Cheche High School based on the fact that they had no birth certificates. The local registered children were given first preference (UNHCR, 2015).

### **A state of statelessness**

The lack of formal birth registration and issuance of birth certificates can have an adverse impact on unregistered children in Zimbabwe, which can often lead to statelessness and socio-economic exclusion (UNHCR, 2015; UNICEF, 2014b). Birth registration is defined as “the continuous, permanent and universal recording within the civil registry, of the occurrence and characteristics of births in accordance with the legal requirements” of a country (OHCHR, 2014:3). Birth registration is critical in the prevention of statelessness, since it establishes a legal record of where a child was born and who his or her parents are. Therefore, the lack of documentation renders children susceptible to becoming stateless, as without birth certificates or proof of birth registration, they lack the key means of proving their nationality – nationality that would entitle them to certain rights in that country. Furthermore, without a birth certificate, refugee children are unable to maintain their nationality upon returning to their country of origin. However, the cultural tendency towards registering children with the fathers nationality poses a gendered challenge for birth registration in absence of the child’s father or the even that he is an undocumented or stateless person. Thus, there is a need to recognise the complexity embedded within the term ‘stateless’. A stateless person is someone who is not considered as a national by any state under the operation of its law (McAdam, 2010:). A stateless person is accordingly not considered a national of their country of birth nor the country they habitually reside in and are thus without a nationality that they can claim. Stateless persons and undocumented persons are often confused and conflated with one another. On one hand, an undocumented migrant is a person who is not in possession of valid legal documentation which allow her to reside in a particular country (Paspalanova, 2007). Nonetheless, an undocumented person may become a stateless person, however the former does not predispose the latter.

A number of the children at the refugee camp are undocumented and thus likely to become ‘stateless citizens’. Despite the rights children in the refugee camp access, such as the right to health (Article 24 of the UNCRC) and education (Article 28), statelessness remains a challenge for these children. The children remain troubled by the lack of, not only a national identity but also a personal identity therein limiting their enjoyment of a full existence as human beings. Universal human rights may be limited or entirely inaccessible to them due to the fact that they are asylum seekers, refugees or undocumented. It has been noted that a number of children within the refugee camp cannot obtain the recognition of the nationality of (one of) their parents.

### **PROPOSED LEGISLATIVE AMENDMENTS**

In line with the international conventions such the aforementioned 1989 UNCRC and the 1990 ACRWC – which Zimbabwe is a signatory to – this paper recommends that the Government of the Republic of Zimbabwe incorporate the principle of the best interests of the child in all laws. In particular, those concerning nationality and citizenship legislation outside of the family law context. One way is by providing recognised long-stay refugees with durable solutions in Zimbabwe, specifically with reference to the issue of liminal socio-economic inclusion is the amendment of refugee laws to grant citizenship to long stay refugees. In this regard it could draw lessons from South Africa, which grants citizenship to refugees after 10 years of continuous stay in South Africa if they can demonstrate that they will otherwise remain refugees for an indefinite period of time. Such durable solutions for long stay refugees also assists long stay refugee in obtaining social integration, particularly vis-à-vis refugee children born within the Tongogara Refugee Camp. In South Africa, citizenship is conferred to every foreign child born in South Africa on his/her eighteenth birthday, provided that they have valid legal documents, which permit them to live in South Africa. This approach has been instrumental in curbing the state of protracted refugeeism in South Africa and is in line with the best interest of the child mantra (Willie & Mfubu, 2016). Protracted refugeeism denotes a situation in which refugees find themselves in a long-lasting and intractable state of limbo. It is often characterised by lack of access to basic socio-economic rights. Protracted and generational refugeeism extend refugee children’s sense of exclusion through a perpetual state of temporary permanence and legal limbo. The principle of the best interest of a child cannot be divorced from the need to finding durable solutions for children. ‘The best interests of a child [principle is] the avenue through which a durable solution is made and should not be discarded. Children should be provided with a secure, stable life throughout their childhood and beyond’ (Willie & Mfubu, 2016). The principle should be employed in practices and procedures of all state institutions in discharging their duties. It is essential that all children born in Zimbabwe, including refugee children, asylum seekers and undocumented migrant children have access to birth registration regardless of their parents’ citizenship status, country of origin or gender. Zimbabwe must furthermore strive to achieve universal birth registration for children as this right can impinge on integral rights such as education. In addition, the Zimbabwean Refugees Act ought to be amended to explicitly include a process of birth registration for both asylum seekers and refugees. For example, as with the existing procedures for non-citizen birth registration for the children of foreign nationals; that is: visitors and expatriates, procedures ought to be put in place to issue

current birth certificates for refugee children and initial birth certificates born to refugees, asylum seekers and not of concern persons in the Tongogara Refugee Camp and other contexts of fragility. Further to this, the Act should also be amended to include rights and responsibilities of asylum seekers. At an implementation level there is also a need to put in place measures to aid or prevent statelessness of clandestine (that is: undocumented and/or stateless) persons. In order to address statelessness, we recommend that the Zimbabwe establish regularisation options for existing undocumented migrants. Lessons can be learned from the South African legal approach. In an attempt to deal with the increasing numbers of undocumented migrants from its neighbour, Zimbabwe, the Department of Home Affairs introduced the Zimbabwean Special Permit (ZSP) in 2014 and the Zimbabwean Exemption Permit (ZEP) in 2017 for the regularisation of undocumented Zimbabwean migrants in South Africa (DHA, 2017). Both the ZSP and the ZEP relaxed the customary work permit requirements for all undocumented Zimbabwean migrants unlawfully present in South Africa to be regulated and documented. The Government of Zimbabwe should also consider entering into bilateral agreements with sending countries such as the Democratic Republic of Congo, Mozambique and Rwanda Mozambique – all of which have the highest number of refugee children (including asylum seekers), aged below the age of majority (18 years). Refugees and asylum seekers from these countries could be offered special work permits as with the case of the Zimbabwean Dispensation Permit. In this way the State would be addressing existing issues pertaining to clandestine persons. This will consequently eliminate the proliferation of statelessness. Furthermore, the State should consider adopting other legislative measures such as the passing and adopting of an Act which specifically aims to prevent statelessness. The Act should draw on the prevention mechanisms contained in the 1961 UN Convention on the Reduction of Statelessness. Such an Act should have proper procedural avenues which prevent stateless and provide documentation opportunities for those who are stateless or in danger of being stateless in Zimbabwe.

## CONCLUSION

This discussion paper laid out the country's legal frameworks on birth registration and citizenship, highlighting the policy gaps that render refugee children and children of asylum seekers in the Tongogara Refugee Camp especially vulnerable. It has also presented Zimbabwe's socio-economic background in order to provide a better understanding of Zimbabwe as a fragile state. It has also discussed some of the citizenship alterities that arise from this the country's unique landscape. The paper has argued for a human rights-based approach towards refugee and asylum seeking children, and children born of undocumented persons in order to address the vulnerable situation caused by the lack of birth registration. It has recommended certain legislative reforms, which the authors argue will not only optimise birth registrations, but also reduce statelessness. The policy reforms proposed in this paper would allow the State to give effect to the *maxims* of the best interest of the child, thereby giving effect to Zimbabwean's international and national obligations towards birth registration.

## REFERENCES

- Agamben, G.; (1998). *Homo Sacer: Sovereign power and bare life*. Stanford: Stanford University Press.
- Coutin, S. B.; (1999). Citizenship and clandestinity among salvadoran immigrants. *Political and Legal Anthropology Review*, 22(2), 53-63.
- Central Statistical Office (CSO) (2007). Zimbabwe Demographic & Health Survey (ZDHS) 2005-06. Harare: Government of Zimbabwe.
- Department of Home Affairs (DHA) South Africa; Statement by Minister Mkhize on the closure of the Zimbabwean Special Permit (ZSP) and the opening of the New Zimbabwean Exemption Permit (ZEP). Available at: <http://www.dha.gov.za/index.php/statements-speeches/1034-statement-by-minister-mkhize-on-the-closure-of-the-zimbabwean-special-permit-zsp-and-the-opening-of-the-new-zimbabwean-exemption-permit-zep>. Accessed: 14 May 2018.
- Government of Zimbabwe; (2013). Constitution of Zimbabwe Amendment 2013. Harare: Government of Zimbabwe.
- Government of Zimbabwe; (1986). Deaths Registration Act of Zimbabwe Amendment 1994, 2000 and 2001. Harare: Government of Zimbabwe.
- Government of Zimbabwe; (1978). Refugees Act of Zimbabwe Amendment 2001. Harare: Government of Zimbabwe.
- Lee, C. T.; (2010). Bare Life, Interstices, and the Third Space of Citizenship. *Women's Studies Quarterly*, 38 (1&2), 57-81. Available at: <http://www.jstor.org/stable/25679826>. Accessed: 12 May 2018.
- Malek, C.; (2016). UAE to welcome 15 000 refugees from Syria, The National, 22 September 2016.
- McAdam, J.; (2010). 'Disappearing States', Statelessness and the Boundaries of International Law. University of South Wales (UNSW) Law Research Paper No. 2010-2. Available at: <https://ssrn.com/abstract=1539766>. Accessed: 1 May 2018.
- Menjívar, C.; (2006). Liminal legality: Salvadoran and Guatemalan immigrants' lives in the United States. *Journal of Sociology*, 111 (4), 999-1037.
- Ncube, N. N.; (2014). Narratives of the transnational student: a complicated story of cultural identity, cultural exchange and homecoming. Master's thesis. Sociology, University of Cape Town. Cape Town: OpenUCT. Available at: <https://open.uct.ac.za/handle/11427/13703>. Accessed 14 May 2018.
- Office of the United Nations High Commissioner for Human Rights (OHCHR); (2014). Birth registration and the right of everyone to recognition everywhere as a person before the law.
- Organisation of African Unity (OAU); (1969). Convention Governing the Specific Aspects of Refugee Problems in Africa. Addis-Ababa, Ethiopia.
- OAU; (1990). The African Charter on the Rights and Welfare of Children. Addis Ababa: African Union.
- Paspalanova, M.; (2007). Undocumented vs. illegal migrant: Towards terminological coherence. *Migraciones Internacionales*, 4 (3), 79-90. Available at: <http://www.scielo.org.mx/pdf/migra/v4n3/v4n3a4.pdf>. Accessed 13 May 2018.
- Scott, J. C.; (1985). *Weapons of the weak: Everyday forms of peasant resistance*. New Haven: Yale University Press.
- Sassen, S.; (1991). *The Global City: the de-nationalizing of time and space*. Princeton: Princeton University Press.
- Torres, R. & Wicks-Ausbun, M.; (2014) Undocumented Students' Narratives of Liminal Citizenship: High Aspirations, Exclusion, and 'In-Between' Identities. *The Professional Geographer*, 66 (2), 195-204.
- United Nations (UN); (1954). Convention Relating to the Status of Stateless Persons. New York and Geneva, United Nations.
- United Nations (UN); (1951). Convention Relating to the Status of Refugees. New York and Geneva, UN.
- United Nations (UN); (1967). Protocol Relating to the Status of Refugees. New York and Geneva, UN.
- United Nations (UN); (1989). Convention Relating to the Rights of the Child (UNCRC). New York and Geneva, UN.
- United Nations Population Fund (UNFPA); (2016). Boost for Mothers at Tongogara Refugee Camp. 1 August 2016. Available at: <http://zimbabwe.unfpa.org/en/news/boost-mothers-tongogara-refugee-camp?page=0,1>. Accessed: 9 July 2017.
- United Nations High Commissioner for Refugees (UNHCR); (1961). Convention on the Reduction of Statelessness. New York and Geneva, UN.
- UNHCR; (2015). 'I am here, I belong': The Urgent Need to End Childhood Statelessness. Available at: [http://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport\\_ENG15-web.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport_ENG15-web.pdf). Accessed: 29 April 2018.
- United Nations Children's Fund (UNICEF); (2014a). Child Protection from Violence, Exploitation and Abuse: Birth Registration Available at: [http://www.unicef.org/protection/57929\\_58010.html](http://www.unicef.org/protection/57929_58010.html). Accessed: 3 October 2017.

- UNICEF; (2014b). Birth registrations, can we do more? Available at: [https://www.unicef.org/zimbabwe/media\\_15175.html](https://www.unicef.org/zimbabwe/media_15175.html). Accessed: 21 August 2018.
- Willie, N. & Mfubu, P.; (2016). No Future for our Children: Challenges faced by foreign minors living in South Africa. *African Human Mobility Review*, 2(1), 424-42. Available at: <http://sihma.org.za/wp-content/uploads/2016/07/Willie-Mfubu.pdf>. Accessed: 1 December 2018.
- World Bank; (2015). Harmonised List of Fragile Situations: FY14 List of fragile and conflict affected situation countries. Available at: <http://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonized-list-of-fragile-situations>. Accessed: 18 April 2018.
- Zimbabwe National Statistics Agency (ZIMSTAT) Zimbabwe Demographic and Health Survey (ZDHS) 2010-11. Harare: Government of Zimbabwe.
- ZIMSTAT; (2015). Zimbabwe Multiple Indicator Cluster Survey (MICS) 2014, Final Report. Harare, ZIMSTAT.
- ZIMSTAT (2016). Zimbabwe ZDHS 2015: Final Report. Harare, ZIMSTAT.

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