



23 April 2015

ZIMBABWE LAWYERS FOR HUMAN RIGHTS

Submissions on Proposal by Registrar General of Citizenship to Reject Accepted Recommendation to Ratify the United Nations 1961 Convention on the Reduction of Statelessness ¹

1. Background

In October 2011, Zimbabwe participated in the United Nations Human Rights Council Universal Periodic Review (UN-UPR) process. The government of Zimbabwe (GoZ) then accepted 130 out of 170 'Recommendations' made by the states that formed the Human Rights Council (HRC) at that time, as well as other United Nations (UN) member states.² This UPR session, conducted in Geneva, Switzerland, presented an opportunity for other UN member states to scrutinise Zimbabwe's progress in implementing its human rights obligations provided in the various human rights instruments it had voluntarily accepted through ratification, accession or succession. Other UN Members suggested possible measures that would lead to GoZ improving the human rights situation in the country.³

ZLHR has recently learnt, with regret, of the proposal by the Registrar General (R-G) to reject one of the recommendations accepted by the GoZ, to ratify **the 1961 Convention on the Reduction of Statelessness**. This proposal is not only unprecedented, but misdirected. Of particular concern is the fact that this proposal by the RG seeks not only seeks to reverse a government decision, but also undermines the authority of the senior government officials who formed part of the government delegation. The GoZ delegation was composed of a team of thirteen government officials, led by the Minister of Justice.⁴ During the actual review Interactive Dialogue Session that was held on 10 October 2011, the delegation accepted 81 *Recommendations*. The delegation then undertook to examine 31 other *Recommendations* and provide feedback no later than the 19th Session of the Human Rights Council in March 2012.

¹ Submitted to the Portfolio Committee on Home Affairs and Defence, Parliament Building, Harare.

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² See Annexure A, About the Human Rights Council Universal Periodic Review Process.

³ See a brief introduction about the Universal Periodic Report process attached to these submission.

⁴ See Annexure B, Report of the Working Group on the Universal Periodic Review, 9 December 2011.

‘Ratifying the 1961 Convention on the Reduction of Statelessness’ as proposed by Slovakia, was one of the 31 recommendations that was to be considered. Four months later, in March 2012, this Recommendation was accepted.

On 15 March 2012, Patrick A. Chinamasa, Minister of Justice and Legal Affairs of Zimbabwe, said that of the 177 recommendations made by Member and Observer States, Zimbabwe accepted 81 and undertook to consider 31. Zimbabwe was pleased to report all the recommendations were now accepted but two. One of these recommendations related to setting a higher age of criminal responsibility for children and taking all necessary measures to establish a specialized juvenile justice system. The other recommendation rejected concerned amending expeditiously the Births and Deaths Registration Act to ensure all children born in Zimbabwe were issued a birth certificate - See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11966&LangID=E#sthash.YkL6NKLh.dpuf>.⁵

The subsequent suggestion to reject an accepted *Recommendation* is of no effect and cannot be allowed. In any event, this proposal to reject an accepted Recommendation after the fact negatively affects the image of the country, and portrays confusion within the GoZ: where decisions made by a Minister with authority to represent a country, can be reviewed and reversed by another government official who does not hold ministerial powers. This can set a very dangerous and bad precedent. ZLHR submits that, in order to maintain an organised image of the government, decisions made during the dialogue session in October 2011 and subsequently in March 2012, cannot be reversed after the fact. Further, any subsequent rejection would undermine the good faith with which such *Recommendations* were accepted.

In any event, Zimbabwe has already taken measures over the years to give effect to provisions of the 1961 Convention on the Reduction of Statelessness through the enactment of relevant laws, and through judicial review.

The issue of whether Zimbabwe is obliged to ratify the Convention on Reduction of Statelessness is now an outstanding issue delaying the adoption and implementation of the National Plan of Action (NPA). The NPA has been drafted, but is yet to be adopted. Implementation is now long overdue as Zimbabwe will be reviewed again in the second cycle in October 2016. The NPA was adopted by GoZ working together with other stakeholders, including civil society organisations, and is a progressive step buttressing the contention that Zimbabwe is willing to work to improve its human rights record.

Through these submissions, ZLHR highlights why Zimbabwe must proceed to ratify the Convention.

2. Why must Zimbabwe Ratify the Convention on Reduction of Statelessness?

⁵ See United Nations Office of the High Commission on Human Rights website ‘Human Rights Council adopts outcomes of the Universal Periodic Review on Venezuela, Iceland and Zimbabwe’ Available at < <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11966&LangID=E#sthash.YkL6NKLh.dpuf>>

Statelessness has a far-reaching impact on the lives of those affected. It was defined in the Convention Relating to Statelessness,⁶ as follows:

‘A person is stateless when they are not considered to be a national under the operation of the laws of any state.’⁷

The inability of a person to establish citizenship in a country by virtue of the operation of the law results in statelessness. A person becomes stateless, for example, if they lose citizenship of one country without having acquired any alternative citizenship. Such a person would not have any nationality under the laws of any state.

Zimbabwe is a state party to the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention complements this Convention. The 1961 Convention guides states with rules for the conferring (granting) and non-withdrawal of citizenship to prevent the occurrence of statelessness. It sets out rules to limit the occurrence of statelessness and gives effect to article 15 of the Universal Declaration of Human Rights that provides that “everyone has the right to a nationality.”

Over the years, ZLHR has assisted many people who have found themselves stateless, or at risk of becoming stateless, due to the actions of the RG’s office. The RG has deliberately misinterpreted the law, and in some cases imposed onerous administrative procedures for those asserting their right to nationality through different means. Many people have not been able to renew their passports as they are advised to firstly renounce citizenship that they do not have. In 2007, ZLHR presented submissions before the Portfolio Committee on Home Affairs and Defence, highlighting the continued misinterpretation of citizenship laws by the RG, and this still persists even after adoption of the new Constitution.

Those affected by statelessness are not able to exercise a number of their fundamental rights and freedoms, including:

Freedom of movement and residence: In most countries, passports are issued to citizens only. Zimbabwe is not an exception (*section 66(1)(c) of the Constitution*). ZLHR has assisted people in at least 30 cases to obtain passports after they had been refused such travel documents. Such cases barely scratch the surface of the true extent of the problem of statelessness as they represent only a limited number of people that have taken steps to enforce their rights themselves and, having then encountered challenges, have been aware of the availability of legal representation to assist with this issue. The cases involve people being advised to renounce any potential claim to foreign citizenship, or to undergo administrative screening procedures, even in cases where it is clear that they do not have citizenship of another country and they were born in Zimbabwe.

Right to an identity: Stateless people are not able to get relevant documents such as Identity Documents, children are not able to obtain birth certificates (*section 81(1)(c)(ii) and section 35(3)(c) of the Constitution*) and this can affect their prospects of registration at schools and registering for exams.

⁶ Article 1 of the Convention Relating to Statelessness.

⁷ Article 1 of Convention Relating to Statelessness.

Right to vote and to be voted into office: Under Zimbabwean law (*section 67 of the Constitution*), only citizens can stand for election, and be voted into office by other citizens.

Right to access information held by the state: The constitution provides that citizens (and permanent residents) can access information held by the state.

Social and Economic rights enjoyed by citizens in Zimbabwe: The right to basic state funded education, and the right to access basic health care services (*section 76 of the Constitution*).

ZLHR hereby attaches its analysis of the Convention on Reduction of statelessness to support its contention that the GoZ must proceed to sign and ratify (or accede to) this Convention (see Annexure c) Most of the provisions of this Convention are already reflected in the provisions of the Constitution. ZLHR will not review the provisions of the Citizenship Act in this paper, as it is yet to be amended to comply with the Constitution. In this analysis the word citizenship is also used, and it basically means the same as nationality (which is used in the Convention)

Conclusion

The accepted recommendation on ratifying the Convention on the Reduction of Statelessness must not be reversed, but be implemented with Zimbabwe depositing its instrument of acceptance as stipulated in article 16 of the Convention on the Reduction of Statelessness. The Constitution has recognised problem of statelessness and includes provisions but there is a need to build on the already existing constitutional foundation in order to further reduce incidents of statelessness.

