

**UNIVERSITY OF PRETORIA**

**FACULTY OF LAW**



**PROMOTION AND PROTECTION OF CHILDREN'S RIGHTS TO BIRTH  
REGISTRATION IN ZIMBABWE**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF THE  
MASTERS DEGREE IN HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA**

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## **DEDICATION**

This dissertation is dedicated to all the children who are undocumented in Zimbabwe. They have a right to birth registration which must be respected and promoted without discrimination.

## **ACKNOWLEDGMENTS**

I thank God for enabling me to embark on this journey. Opportunities are a blessing.

I am grateful to my supervisors, Dr. Elvis Fokala and Dr. Papa Fara Diallo who gave guidance and support for this mini dissertation.

I am indebted to the Centre for Human Rights, the University of Pretoria for availing me an amazing opportunity to pursue this phenomenal program and to interact with phenomenal students from other African countries.

I appreciate the value deposited by a diverse range of experts on human rights and democratisation in Africa and beyond.

I would like to express my gratitude to the European Union through the Global Campus of Human Rights and the Royal Norwegian Embassy in Pretoria, South Africa for funding the Masters in Human Rights and Democratisation in Africa.

I am grateful for the support of exceptional friends who walked the research journey with me.

To my family, I am blessed and thankful for the unreserved love and support all the way.

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## **ACRONYMS**

<b>ACERWC</b>	African Committee of Experts on the Rights and Welfare of the Child
<b>BDR</b>	Births and Deaths Registry
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>NADRA</b>	National Database and Registration Authority
<b>RG</b>	Registrar General
<b>SMS</b>	Short Message Service
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>ZHRC</b>	Zimbabwe Human Rights Commission



## CHAPTER 1. INTRODUCTION

### 1. Background

Zimbabwe acceded to the African Charter on the Rights and Welfare of the Child (African Children's Charter) in 1995. As a result, Zimbabwe has a duty under international law and, particularly, under the African Children's Charter, to ensure to domesticate the Charter. Even though this dissertation considers the impact of Zimbabwe's acceding to the African Children's Charter, the focus is to examine the extent to which, article 6, on the rights of the child to a name and nationality, through the lens of, article 6(2) of the Charter, a child's right to birth registration has been domesticated in Zimbabwean domestic law.

Like the African Children's Charter, article 7(1) of the United Nations Convention on the Rights of the Child (CRC)<sup>1</sup> establishes a legitimate connection between a child and their country.<sup>2</sup> Without birth registration, children are at risk of being stateless. According to the United Nations Convention Relating to the Status of Stateless Persons (Convention on Statelessness), a stateless person is someone who is not regarded as a national in a particular state.<sup>3</sup> As discussed further in this dissertation, the consequences of being stateless are imminent and will lead to adverse impacts on the enjoyment of all other rights.

Similar to the African Children's Charter and the CRC, the 2013 Constitution of Zimbabwe, (the Constitution) provides in sections 81(1)(b) and (c) for the rights of children to a name and to prompt provision of a birth certificate to children born in Zimbabwe or outside Zimbabwe.<sup>4</sup> Given the supremacy of the Constitution, in, Zimbabwean legal system, this provision, is the minimum standard and norm which guides the strength and practice of national legislation and administration to give effect to these rights of children in Zimbabwe.<sup>5</sup>

The right to a name and nationality under articles 6(1)-(3) of the African Children's Charter encompasses children having a right to a name soon after their born. Immediate registration after birth is then possible when the child has a name and the process of registration confirms the child's nationality.<sup>6</sup> Birth registration is an essential right and establishes a legal identity for children in their country of birth. It suffices in as far as it documents the name of a child and their nationality. However, as stated in the African Children's Committee's General Comment on the right to a name and registration at birth,

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1 United Nations (UN) Convention on the Rights of the Child (CRC), art 7(1). Zimbabwe ratified the CRC on 11 September 1990.

2 African Charter on the Rights and Welfare of the Child (African Children's Charter) art 6.

3 Art. 1 of the UN Convention relating to the Status of Stateless Persons.

4 Constitution of Zimbabwe Amendment (No.20), 2013 sec 81(1)(b) and (c).

5 n 4 above.

6 n 2 above, art 6(1)-6(3).

most African States, including Zimbabwe, have not properly implemented it.<sup>7</sup> In a study conducted in 2007 by the Justice for Children Trust with several factors were highlighted as affecting birth registration, including strict requirements imposed by the Registrar General of births and deaths as well as lack of awareness of birth registration legislation by the citizens.<sup>8</sup>

A study on national documentation conducted by the Zimbabwe Human Rights Commission (ZHRC) in 2019 established that 50.9 percent of the challenges to national documentation were challenges concerning access to birth certificates which is a critical aspect of birth registration.<sup>9</sup> The report highlighted that among other things, birth registration challenges in Zimbabwe are occasioned by a centralised Department of the Registrar General which is not easily accessible, cumbersome registration processes, marginalisation of minority groups, lack of appreciation of the importance of birth registration and migration.<sup>10</sup> This report is primarily relied upon in this investigation as far as it highlights the challenges but a children's rights-based approach and theory of reasoned action will be applied to reach recommendations that go beyond this study. Birth registration is more than just about securing a legal identity but is proof of a child's name, age, and nationality. This facilitates the fulfilment of other rights such as the right to education, to establish citizenship through an identity document, to get married, to vote, and to access a travel document.

The African Children's Charter provides in article 6(4) that state parties shall ensure that their constitutional legislation shall recognise the principles by which children shall acquire the nationality of that state in which they are born. The nuanced interrelatedness of the right to a name and nationality and birth registration can be inferred under article 6 of the African Children's Charter which captures these rights under the same article.<sup>11</sup> Despite the Constitution and legislation providing for the promptness in the birth registration process, the ZHRC study suggests that children's rights to birth registration in Zimbabwe are violated.<sup>12</sup> This is because birth registration is largely not prompt as envisaged by the Constitution.<sup>13</sup> The study seeks to investigate the extent of the violation as this problem is a nationwide concern as raised by the report of the ZHRC. The investigation seeks to proffer solutions based on studies conducted on the subject, analysing the geographical coverage of the problem.

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<sup>7</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) General Comment No. 2 on Article 6 of the African Children's Charter: "The Right to a Name, Registration at Birth, and to Acquire a Nationality" (General Comment) pg 3.

<sup>8</sup> Justice for Children Trust 'Birth Registration of Children in Zimbabwe' (2007) [http://archive.kubatana.net/docs/chiyou/jct\\_birth\\_registration\\_0710.pdf](http://archive.kubatana.net/docs/chiyou/jct_birth_registration_0710.pdf)

<sup>9</sup> Zimbabwe Human Rights Commission National Enquiry Report pg 16.

<sup>10</sup> n 9 above, pg xii.

<sup>11</sup> n 4 above.

<sup>12</sup> n 9 above.

<sup>13</sup> n 4 above.

## **1.1 Problem Statement**

The Zimbabwe Human Rights Commission's national inquiry cited that many children do not have birth certificates in Zimbabwe. This is because of several factors such as mothers being unaware of the registration processes, cultural factors which bar unmarried mothers from registering their children at birth, migration of parents leaving children with extended families with no ability to register children, and legal and policy considerations which present hurdles to birth registration among other findings.<sup>14</sup> These barriers lead to undocumented children being unable to access other rights such as the right to education, health, and freedom of movement.

Throughout their developmental stages, unregistered children are barred from full enjoyment of their other rights as highlighted above. By the time the children reach the stage of writing their end of primary education examinations, they are unable to write their national examinations due to a lack of birth certificates in violation of their right to education. This affects their ability to proceed to high school. For some children who can be accepted into high school as a special arrangement by some concerned headmasters, they are again unable to write any final examinations which determine their transition to tertiary education. The problem does not, however, arise at the point of writing national examinations but commences from birth.

Children disenfranchised from accessing birth certificates are unable to have a legal identity and as a result, are rendered stateless in their own country. This affects the attainment of citizenship and without proof of legal identity, a child's place of birth or name cannot be ascertained. This means children cannot also access travel documents. The study by the ZHRC was conducted following empirical evidence of the widespread nature of the problem in Zimbabwe gathered through the programming work of the ZHRC.<sup>15</sup> The dissertation will investigate the barriers to children's rights to nationality and birth registration as provided under article 6 of the African Children's Charter.

## **1.2 Research question**

This dissertation will seek to answer the question – What is the extent to which children's rights to birth registration as provided under article 6(2) of the African Children's Charter are fulfilled in Zimbabwe?

### **1.2.1 Sub-questions**

The following sub-questions will inform the research:

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<sup>14</sup> n 9 above.

<sup>15</sup> n 9 above. See the Executive Summary.

- a. Has Zimbabwe sufficiently domesticated article 6 (2) of the African Children's Charter?
- b. Do parents have adequate knowledge on how to apply for birth certificates
- c. Does the government sufficiently sensitise parents on the process of accessing birth certificates?
- d. To what extent does the government seek to address the challenges to birth registration in Zimbabwe?

### 1.3 Definition of key terms

**Children** are defined in this study as every human being below the age of 18 years.<sup>16</sup>

**A stateless person** is not considered as a national by any State under the operation of its law.<sup>17</sup>

**Birth registration** is 'an act of recording the birth of a child by an administrative authority. It establishes the existence in law of a child, and sets the foundation for the recognition of the child as a legal persona.'<sup>18</sup>

### 1.4 Research objectives

The research seeks to achieve the following objectives:

1. To evaluate the extent to which Zimbabwe has domesticated article 6(2) of the African Children's Charter;
2. To assess the extent to which the government raises awareness on the process of birth registration;
3. To investigate the reasons for birth registration hesitance or challenges within some communities in Zimbabwe; and
4. To investigate what measures the government is taking to address the challenges.

### 1.5 Relevance of the Study

The research that has been done so far in Zimbabwe presents the problem of birth registration without especially focusing on the extent to which children's rights to birth registration as provided under article 6(2) of the African Children's Charter are fulfilled in Zimbabwe. The gap possibly lies in research deficient of a holistic approach to investigate the root causes of the problem looking at both the duty of parents and the state with regards to birth registration. This

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<sup>16</sup> n 2 above, art 2.

<sup>17</sup> n 3 above.

<sup>18</sup> n 7 above, page 20.

study applies a holistic approach to investigate the problem making it relevant to find lasting solutions to the problem of birth registration in Zimbabwe.

## 1.6 Literature review

The purpose of this literature review is to gain a better understanding of the scope of the problem concerning birth registration in Zimbabwe. There is limited empirical research in this area but the challenges faced have been investigated by the Zimbabwe Human Rights Commission with other literature on birth registration available for review. There is some insightful research that has been undertaken but what necessitates the study is the quest to answer to what extent the government of Zimbabwe is implementing article 6(2) of the African Children's Charter.<sup>19</sup> International normative standards are also analysed to establish a children's rights-based approach that is required in addressing the challenges in birth registration. Several reports present the findings in other jurisdictions and lessons can be gleaned from them. Essentially, the reviewed literature lays a foundation for this study provoking a further analysis of the ensuing facts on the ground in Zimbabwe.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) General Comment No. 2 on article 6 of the African Children's Charter (General Comment No.2) elaborates children's rights to a name and nationality.<sup>20</sup> The ACERWC expands the meaning of article 6 of the African Children's Charter.<sup>21</sup> This right covers the right to a name, registration at birth, and nationality which are essential components to a legal identity.<sup>22</sup> General Comment No. 2 also elaborates on the key ingredients for birth registration and provides a barometer for measuring the Zimbabwean context.<sup>23</sup> In particular, General Comment No.2 highlights the universality of the right to birth registration which should be availed to every child.<sup>24</sup> No child should be left out of the reach of this right. It clarifies any misconceptions that may exist with regards to the different classes of children. This means children whose parents are refugees, asylum seekers, children with disabilities and those falling within minority groups have a right to birth registration under article 6. This particular general comment is most instructive for purposes of evaluating the performance of the government of Zimbabwe with regards to compliance with article 6(2) of the African Children's Charter.

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<sup>19</sup> UNICEF 'A Snapshot of Civil Registration in Sub-Saharan Africa' (2017) <https://data.unicef.org/resources/snapshot-civil-registration-sub-saharan-africa/> (accessed 3 May 2021) and

UNICEF 'Every child's birth right: Inequities and trends in birth registration' (2013) <https://www.unicef.org/documents/every-childs-birth-right> (accessed 3 May 2021).

<sup>20</sup> n 7 above.

<sup>21</sup> n 7 above, pg 20-35.

<sup>22</sup> n 2 above, art 6.

<sup>23</sup> n 7 above.

<sup>24</sup> n 7 above, para 50.

Ncube and Others focus on undocumented children in migrant camps and do not cover the issues affecting undocumented children outside of refugee camps.<sup>25</sup> This study will look at the problem across Zimbabwe and address specific intersectionalities with other vulnerable and marginalised groups. The research does not, for instance, look at women's rights and how these have a bearing on children's rights to birth registration.<sup>26</sup> I draw from the insights in this research to highlight specific issues on births registration to strengthen my case for proposed areas of reform.

The Zimbabwe Human Rights Commission conducted a national inquiry into the challenges of accessing documentation in Zimbabwe which focused on birth registration as part of the national documentation problem.<sup>27</sup> The research covered other aspects of national documentation and as a result, there is a need for research in this area to particularly interrogate the issues. The report however does show that the case of accessing birth certificates is particularly more challenging than with all other documents and will be useful in highlighting some of the barriers to a legal identity beyond mere birth registration. This study will go beyond these findings to apply a children's rights-based approach and theory of reasoned action in understanding the problem and proffering solutions.

The United Nations Statistics Divisions presents guidelines for an effective civil registry.<sup>28</sup> The recommendations are instructive for an improved structural reform that ensures efficiency in accessing legal identity. This document will help inform critical recommendations that are part of overcoming barriers for children's rights to prompt provision of birth certificates.

Amnesty International recently released a report in 2021 titled 'We are like "stray animals" which addresses the challenges to birth registration for different groups of people in Zimbabwe and does not primarily focus on children's rights.<sup>29</sup> The report does offer qualitative case studies that shed more light on the barriers to birth registration. This report will add qualitative value to the study and present the basis on which the problem is established.

A study by Williams, Kusumaningrum, Bennouna, Usman, Wandasari, and Stark on birth registration in Indonesia applies the theory on planned behavior to try and address the

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<sup>25</sup> N Ncube *et al* 'Citizenship alterities: The case of child birth registrations in the Tongogara Refugee Camp of Zimbabwe' (2019) 9 *AJSW* 1.

<sup>26</sup> N Ncube and Others 'Citizenship alterities: The case of child birth registrations in the Tongogara Refugee Camp of Zimbabwe' (2019) 9 *AJSW* 1.

<sup>27</sup> Zimbabwe Human Rights Commission 'Report on national enquiry on access to documentation in Zimbabwe' (2020).

<sup>28</sup> UN Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management (2019).

<sup>29</sup> Amnesty International 'We are like "stray animals."'(2021) <https://www.amnesty.org/en/documents/afr46/3932/2021/en/> (accessed 8 July 2021).

challenges occasioned by parents in securing birth certificates for children.<sup>30</sup> This study draws insights from a similar theory of reasoned action in addressing the challenges to birth registration.

GSMA released a report titled *Mobile Birth Registration in Sub-Saharan Africa: A case study of Orange Senegal and Uganda Telecom solutions* which presents technological solutions to birth registration in Uganda and Senegal.<sup>31</sup> The report presents the role of the private sector in being a part of the solution to legal identity in a growing digital environment. This report contributes to key recommendations presented in this research and opens up the study to explore new ways of addressing the problem in the Zimbabwean context, drawing from technology.

The study looks at the analysis by Doek on the United Nations Convention on the Rights of Children (CRC)<sup>32</sup> to address how birth registration consequently affects the right to nationality of children.<sup>33</sup> The article addresses article 7 of the CRC and adds valuable insights to this study.

Manby looks at the gaps in national laws in East Africa with regards to the right to nationality and makes critical recommendations that will benefit this study.<sup>34</sup> In learning from other jurisdictions, this study focuses on normative frameworks and how these can be improved in solving challenges to birth registration as well.

An article by Fokala and Chenwi analyses the decision by the ACRWC on the case of statelessness of children of Nubian descent in Kenya.<sup>35</sup> Fokala and Chenwi present the causes of statelessness in Kenya including the lack of documentation. The article sheds light on issues of bearing in addressing the problems equally experienced in Zimbabwe. Birth registration is interrogated in the Kenyan context and its nuanced link to the right to a name and nationality under the broad article 6 of the African Children's Charter. The study analyses

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<sup>30</sup> A Williams, S Kusumaningrum, C Bennouna, R Usman, W Wandasari and Lindsay Stark 'Using the Theory of Planned Behaviour to Understand Motivation to Register Births in Lombok, Indonesia' (2018) 32 *Children & Society* 368-380.

<sup>31</sup> GSMA 'Mobile Birth Registration in Sub-Saharan Africa: A case study of Orange Senegal and Uganda Telecom solutions' <https://www.gsma.com/identity/wp-content/uploads/2013/05/Mobile-Birth-Registration-in-Sub-Saharan-Africa.pdf> (accessed 21 August 201).

<sup>32</sup> n 1 above.

<sup>33</sup> J.E Doek 'The CRC and the right to acquire and to preserve a nationality.'

<sup>34</sup> B Manby *Statelessness and Citizenship in the East African Community* (2018).

<sup>35</sup> E Fokala and L Chenwi, 'Statelessness and Rights: Protecting the Rights of Nubian Children in Kenya through the African Children's Committee' (2013) 6 *African Journal of Legal Studies* 357-373.

the *locus classicus* on children's rights to nationality presenting protections within the African human rights system.<sup>36</sup>

Khan interrogates childhood statelessness and presents findings within South Africa and highlights the importance of a human rights approach to children's rights.<sup>37</sup> This study gives another context on birth registration challenges focusing on South Africa and applying international law standards. The study will add value to this research in as far as it interrogates how South Africa does not promote universal birth registration and emphasizes the need for protection of the right under article 6(2) of the African Children's Charter.

Birth registration is presented by Bequele as an essential element to the enjoyment of fundamental rights and freedoms as well as a colonial inherited practice that has now been entrenched in international standards.<sup>38</sup> This paper highlights consequential human rights violations with a focus on socio-economic rights. This study will draw insights and go beyond consequential socio-economic rights to also highlight violations of civil and political rights stemming from the barriers to birth registration in Zimbabwe.

In 2007, the Justice for Children Trust (JCT) researched birth registration in Zimbabwe.<sup>39</sup> The study was similar to the research conducted by the ZHRC<sup>40</sup> but the research occurred before the coming into force of the Constitution of Zimbabwe, 2013. Since 2007, a lot has changed in terms of the political, social, environmental, and legislative context in Zimbabwe. While the report specifically focused on birth registration in Zimbabwe, it covered only 2 provinces, Mashonaland West and Mashonaland Central, unlike the ZHRC report which covered the whole of Zimbabwe. The JCT research remains relevant for this study for purposes of assessing any developments in the environment with regards to the promotion and protection of the right to birth registration. This study will assess the extent of domestication of article 6(2) based on assessing the policy developments from 2007 to date.

This study will also look at normative standards which provide for the protection of children's rights concerning birth registration. At a national level, the Constitution lays down the right to prompt provision of a birth certificate,<sup>41</sup> the Births and Deaths Registration Act, 1986 (Births Registration Act) stipulates that the birth certificate must be attained within 42

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<sup>36</sup> Communication 002/2009 *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v The Government of Kenya*, Com/002/2009

<sup>37</sup> F Khan 'Exploring Childhood Statelessness in South Africa (2020) 23 *PER/PELJ*.

<sup>38</sup> A Bequele 'Universal Birth Registration: The Challenge in Africa' (2005) [https://static1.squarespace.com/static/5519047ce4b0d9aaa8c82e69/t/5551e3dfe4b0ac09774e6170/1431430111352/universal\\_birth\\_registration.pdf](https://static1.squarespace.com/static/5519047ce4b0d9aaa8c82e69/t/5551e3dfe4b0ac09774e6170/1431430111352/universal_birth_registration.pdf) (accessed 201 August 2021).

<sup>39</sup> n 8 above.

<sup>40</sup> n 9 above.

<sup>41</sup> n 4 above.



weeks of the birth of a child<sup>42</sup> and the Citizenship of Zimbabwe Act, 1984<sup>43</sup> states the categories of attaining citizenship in Zimbabwe. These legislative frameworks are relevant to the study and will be measured against international standards, in particular, the Universal Declaration for Human Rights,<sup>44</sup> the International Covenant on Civil and Political Rights,<sup>45</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>46</sup> the African Children's Charter,<sup>47</sup> the African Charter on Human and Peoples' Rights,<sup>48</sup> the CRC,<sup>49</sup> and the Convention on Statelessness.<sup>50</sup>

## **1.7 Methodology**

This study employs a desk research approach aimed at answering the research questions above and measuring the performance of the government of Zimbabwe in respect of promoting and protecting the right to birth registration. The research will review existing literature and examine the relevant national and international normative standards on birth registration. The research will apply a mixed approach – qualitative and quantitative, including the review of data collected online and reports of the ZHRC local and international civil society organisations. A children's rights-based approach and theory of reasoned action will be considered in addressing the problem.

## **1.8 Limitations of the study**

The study is only confined to the right to birth registration as provided under article 6(2) of the African Children's Charter and not to the other rights under article 6, mainly the right to a name and nationality.<sup>51</sup>

## **1.9 Structure**

### **Chapter 1: Introduction**

This section will give a background to the research identifying the problem statement, the research questions to be answered by the study, the research objectives, the relevance of the study, the methodology and theoretical framework, limitations of the study, literature review, and structure of the dissertation.

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<sup>42</sup> Births and Deaths Registration Act, 1986 (Births Registration Act), secs 10 and 11(2)(a).

<sup>43</sup> Citizenship of Zimbabwe Act (Chapter 4:01), 1984 (Citizenship Act).

<sup>44</sup> Universal Declaration for Human Rights (UDHR).

<sup>45</sup> United Nations International Covenant on Civil and Political Rights (ICCPR).

<sup>46</sup> United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>47</sup> n 5 above.

<sup>48</sup> African Charter on Human and Peoples' Rights (African Charter).

<sup>49</sup> n 1 above.

<sup>50</sup> n 3 above, reference to the entire convention.

<sup>51</sup> n 2 above, art 6(1) and 6(3).

## **Chapter 2: Normative standards and theoretical frameworks for birth registration**

This chapter will look at existing national laws and international standards and then highlight the theoretical frameworks on which the study is premised.

## **Chapter 3: The application of birth registration normative standards in Zimbabwe**

In this chapter, I will present the application of birth registration normative standards in Zimbabwe, looking at the challenges and positive strides, if any. The study will also outline the consequential violations of human rights.

## **Chapter 4: Best practices from other countries**

This chapter will draw lessons from other jurisdictions with regards to best practices. Furthermore, similarities may be drawn in the systems of birth registration with a focus on finding solutions to the problem.

## **Chapter 5: The summary, conclusion, and recommendations**

The summary, conclusion, and recommendations will link to Chapter 1 in so far as they seek to answer the research questions in addressing the identified problem. Conclusions will be drawn from the findings in Chapter 3 and recommendations made in line with identified international standards, theories, and lessons from other jurisdictions as presented in Chapters 2 and 4 respectively.

## **CHAPTER 2: NORMATIVE STANDARDS AND THEORETICAL FRAMEWORKS FOR BIRTH REGISTRATION**

### **2. Introduction**

The government of Zimbabwe (the government) must adhere to its obligations under international human rights law and ensure that there is adequate domestication of all duly ratified international instruments to enable a progressive roll-out of international standards at the national level. The Constitution states in section 327(2)(b) that an international treaty does not become part of Zimbabwean domestic law, unless it has been, incorporated in national laws, by an act of Parliament.<sup>52</sup> In this light, this section looks at the international frameworks, applicable to Zimbabwe, and the national legislation as far as it complies with international human rights standards laid out. This analysis is to present the gaps and milestones. Furthermore, this chapter introduces the theoretical and conceptual framework anchoring the investigation on the promotion and protection of children's rights to birth registration in Zimbabwe.

### **2.1 International frameworks**

#### **2.1.1 The UDHR**

The UDHR was adopted on 10 December 1948 and laid down inalienable rights for the nations of the world.<sup>53</sup> The set of rights, contained, in the UDHR, covers all identified and accepted categories of the International Human Rights framework<sup>54</sup> and, importantly, are meant to be inclusive, and to protect, especially vulnerable human groups. The UDHR inspires the obligations imposed on states, through international treaties.<sup>55</sup> Article 6 of the UDHR, for example, lays out the right of everyone to recognition as a person before the law. According to the UN's comment on the UDHR at 70, the content and scope of article 6, is so critical because it is a right that starts and must be obtained at birth. Article 15(1) of the UDHR also stipulates that everyone has the right to a nationality. Birth registration establishes evidence of one's nationality.

#### **2.1.2 The International Covenant on Civil and Political Rights (ICCPR)**

Zimbabwe is a state party to the ICCPR which provides in article 24(2) for the right of every child to be registered immediately after birth and to a name. What is striking about this right is that it is provided for under the same article as the right to a name, suggestive of the interrelatedness of the rights to a name and birth registration. The Human Rights Committee

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<sup>52</sup> n 4 above, sec 327(2)(b).

<sup>53</sup> n 44 above.

<sup>54</sup> These include, Civil and Political Rights and; Social, Economic and Cultural Rights and the right to development and self-determination.

<sup>55</sup> See examples in the preamble to the ICCPR and ICESCR in n 45 and n 46 above.

states that the right to a name is especially pertinent in the case of children born out of wedlock.<sup>56</sup> Article 24 focuses on the rights of children placing the duty to protect children on the family, society, and the state.<sup>57</sup> Article 24(2) has been interpreted by the Human Rights Committee as one that promotes the recognition of a child's legal personality.<sup>58</sup> The right to acquire a nationality is also protected under article 24(3). The extent of the right is not for states to grant nationality to every child born in their territory but to ensure every child has a nationality when they are born.

### **2.1.3 The Convention on the Rights of the Child (CRC)**

Beyond the ICCPR, the CRC is the first international treaty focusing comprehensively on children's rights and came into force on 2 September 1990. Zimbabwe ratified the CRC in 1990. The treaty is widely ratified and because of this, it has transformed to customary international law binding even on states that have not ratified it.<sup>59</sup> The CRC provides for the protection of children, promotion of their rights, and their participation on issues of concern. Article 7(1) of the CRC particularly lays out that children should be registered immediately after birth and should have the right from birth to a name and to acquire a nationality.<sup>60</sup> Article 7(2) provides that states shall ensure the implementation of the rights in article 7(1) in line with national legislation and adherence to the relevant international standards where the child would otherwise be stateless.<sup>61</sup>

The CRC provides in article 4 that states in implementing economic, social, and cultural rights in the CRC, they shall take such measures 'to the maximum extent of their available resources' which provision is criticised for jeopardizing the implementation of economic, social, and cultural rights.<sup>62</sup> As much as birth registration falls under civil and political rights, economic considerations have an impact on how the right is implemented. Governments may imperil the process of birth registration by allocating inadequate budgets to facilitate birth registration in a way that promotes rights.<sup>63</sup>

### **2.1.4 The African Charter on Human and Peoples Rights (African Charter)**

Zimbabwe ratified the African Charter in 1986 and is duty-bound to adopt legislative or other measures to give effect to the rights entrenched in it.<sup>64</sup> National laws and policies must reflect

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<sup>56</sup> Committee on Civil and Political Rights (CCPR) General Comment No. 17: Article 24 (Rights of the child).

<sup>57</sup> n 45 above, art 24(1).

<sup>58</sup> n 56 above.

<sup>59</sup> A Lloyd 'A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child' 2002 (2) *AHRLJ* 13.

<sup>60</sup> United Nations Convention on the Rights of the Child (CRC).

<sup>61</sup> n 1 above, art 7(2).

<sup>62</sup> n 1 above and n 56 above.

<sup>63</sup> United Nations 'Birth registration and the right of everyone to recognition everywhere as a person before the law' para 48.

<sup>64</sup> n 48 above, art 1.

the spirit of the African Charter. Article 2 protects against discrimination based on any status.<sup>65</sup> With birth registration, this means that there should not be any grounds for discriminating against a minority or vulnerable group. The African Charter does specifically refer to children under article 18(3) where the state is mandated to protect the rights of children as provided for in international declarations and conventions. States having ratified other international treaties such as the ICCPR and the CRC are then duty-bound to adopt measures that give effect to international human rights standards as provided in international treaties.

### **2.1.5 The African Children's Charter**

As much as the CRC lays down protection for children's rights, the African Children's Charter embeds African ways of protecting children placing critical responsibilities on parents as critical duty bearers together with states.<sup>66</sup> It is the leading treaty at the regional level on children's rights and sets the tone for children's rights.<sup>67</sup> The African Children's Charter gives better protection to children as it offers both a legal and cultural context to the protection of children in Africa. Zimbabwe acceded to the African Children's Charter in 1995 and was bound to domesticate the Charter per section 327(2) of the Constitution.<sup>68</sup> This treaty is instructive as to the definition of a child which means everyone below the age of 18 years.<sup>69</sup> This is unlike the CRC which gives concession to national legislation to stipulate an earlier age of majority.<sup>70</sup> The CRC also leaves room for states to undertake 'such measures to the maximum extent of their available resources' in complying with its provisions.<sup>71</sup>

The African Children's Charter on the other hand is more peremptory, employing the term 'shall' in placing obligations on states to recognise rights under it as well as to take the necessary measures in line with constitutional processes to give effect to the African Children's Charter.<sup>72</sup> Reference is made under article 1 of the African Charter to the adoption of legislative or other measures in promoting the treaty. The African Children's Charter lays down fundamental principles on child protection which essentially inform a human rights approach to child protection. Articles 3,4 and 5 provide for non-discrimination, the best interests of the child, the right to be heard, and the right to survival and development. These critically establish the basis upon which children's rights are protected. Article 20(1)(a) places responsibility on parents to ensure that the best interests of the child are their basic concern

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<sup>65</sup> n 48 above, art 2.

<sup>66</sup> n 2 above, preamble and art 20.

<sup>67</sup> n 7 above.

<sup>68</sup> n 4 above.

<sup>69</sup> n 2 above, art 2.

<sup>70</sup> n 1 above, art 1.

<sup>71</sup> n 1 above, art 4.

<sup>72</sup> n 2 above, art 1.

at all times. Bearing in mind these critical provisions, article 6(2) states that every child shall be registered immediately after birth.

The General Comment provides that birth registration sets the tone for children to have a legal persona.<sup>73</sup> Furthermore, without birth registration, a child can be overlooked by the government in its protective strides in advancing the rights of children. Birth registration is usually treated as a mere bureaucratic and administrative formality by states when yet it is a permanent and official record of a child's existence.<sup>74</sup> This emphasises the fact that it is beyond a process of administration but a human rights issue that requires seriousness.

## **2.2 The interrelatedness of rights under article 6 of the African Children's Charter**

The rights under article 6 start with the right to a name, then birth registration and nationality showing a clear nexus between articles 6(1), 6(2) and 6(3) of the African Children's Charter.<sup>75</sup> As such, an analysis of birth registration in Zimbabwe cannot be complete without looking at compliance with other rights under article 6. Particularly, there is a strong nexus between article 6(1) and article 6(3) of the same. The right to a name and nationality respectively are not the focus of this study but cannot be severed from consideration. Human rights are interrelated and cannot operate in a vacuum. The right to a name from birth establishes one's identity and the ACERWC has elaborated that the right to a name under article 6(1) of the African Children's Charter includes a name, a surname, and sometimes a middle name where it applies.<sup>76</sup>

Furthermore, it must be possible for a child to have to be registered under the name of his or her mother or father or both, per local custom and parental preference. The ZHRC study shows that one of the barriers to birth registration is the cultural aspect where unmarried mothers are not ready to give their children their maiden names because it is culturally an affront to their traditional ethos which dictate that children should be registered under their father's family name.<sup>77</sup> The cultural connotations of surnames or family names are said to have immense intrinsic immeasurable value because of their link to ancestry and their perceived role as a seal of blood.<sup>78</sup> The Zimbabwean laws do not however impede women from giving their children their family name. However, the perception of doom in this instance affects birth registration negatively. The right to nationality under article 6(1) of the African Children's Charter can be consequentially violated when birth registration does not take

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<sup>73</sup> n 7 above.

<sup>74</sup> n 7 above, para 43.

<sup>75</sup> n 2 above, arts 6(1)-6(3).

<sup>76</sup> n 7 above, para 38.

<sup>77</sup> n 9 above.

<sup>78</sup> *Paunganwa v Registrar of Births and Deaths* (Paunganwa Case) HH406/16.

place.<sup>79</sup> Without birth registration, there is no proof of nationality and subsequently, this results in children being stateless.<sup>80</sup>

## 2.3 National Frameworks

### 2.3.1 The Constitution

The Constitution of Zimbabwe, 2013 provides under sections 81(1) (c) (i) and (ii) for the right of a child defined as a boy or girl below the age of 18 years to the prompt provision of a birth certificate.<sup>81</sup> This current Constitution took over from the repealed Constitution of Zimbabwe, 1980 which did not specifically provide for the right to a birth certificate in Zimbabwe.<sup>82</sup> The process of birth registration is usually followed by the issuance of a birth certificate that confirms birth registration.<sup>83</sup> The birth certificate is proof of registration in Zimbabwe. Section 81(1)(b) provides for the rights of children to a name and a family name.<sup>84</sup> Both provisions are in line with sections 6(1) and 6(2) of the African Children's Charter. There is, however, no provision for the right to nationality under the Bill of rights in the Constitution. Section 36(3) highlights that a child found in Zimbabwe whose nationality and parents are unknown and appears to be under the age of 15 years is presumed to be a Zimbabwean citizen by birth. The link to citizenship is presumed in this case because such a child will be unregistered, therefore with no proof of nationality. Birth registration would cure the need for estimating the age of the child and their nationality. If the Constitution guaranteed the right to acquire a nationality, this could be inferred to tie in with birth registration and ensure that no child is stateless.<sup>85</sup>

Fokala and Chenwi posit that birth registration creates a legal tool that enables the child to 'access other fundamental rights, such as nationality-related rights.'<sup>86</sup> In the *Nubian Case*, The African Committee of Experts on the Rights and Welfare of the Child held that the

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<sup>79</sup> n 7 above para 62. The ACERWC states that birth registration establishes the place of birth and parental affiliation of a child.

<sup>80</sup> n 7 above, para 83.

<sup>81</sup> n 4 above.

<sup>82</sup> Constitution of Zimbabwe, 1980(Lancaster House Constitution).

<sup>83</sup> See UNICEF 'Birth registration right from the start' (2002) 9 *Innocenti Digest* 2 where it's mentioned as follows;

'The registration of a child's birth enables that child to obtain a birth certificate. In some cases, the issuing of a certificate automatically follows birth registration, while in others a separate application must be made. In either case, a birth certificate is a personal document issued to an individual by the state. The registration of a birth and the issuing of a birth certificate are, therefore, two distinct yet interlinked events.'

<sup>84</sup> n 4 above, sec 81(1)(b).

<sup>85</sup> See n 8 above, para 90 in as far as it discusses the importance of children having a nationality from birth. This tied into the rights to a name and birth registration which are time-bound to immediately after birth would also protect the right under article 6(3).

<sup>86</sup> n 35 above, pg 365.

governments not only have a duty to pass birth registration laws but to also ensure all other barriers to it are removed.<sup>87</sup>

### 2.3.2 Citizenship

The Constitution provides that citizenship in Zimbabwe is attained by birth, descent, or registration.<sup>88</sup> With this in mind, birth registration provides proof of birth and is critical to establishing the grounds for attaining citizenship. Furthermore, if a child is found in Zimbabwe and suspected to be below the age of 15 without known parents or nationality, the child is presumed to be a citizen by birth.<sup>89</sup> For rights to then be enjoyed by the child, such presumption must be linked to birth registration for the child to enjoy the benefits which come with citizenship such as voting and getting a passport.

### 2.3.3 The Births and Deaths Registration Act, 1986 (Births Registration Act)

Beyond 20 June 1986 when the Births Registration Act came into effect, registration of births is compulsory.<sup>90</sup> Section 3 of the Birth Registration Act establishes the office of the Registrar-General with responsibility among others, to be the central registry for all the notices of birth registered.<sup>91</sup> This Act provides that it is the duty of a mother or a father of a child to register a birth and if either of them is not alive or unable, anyone of the following can register the birth;

- a. the occupier of the house in which the birth or still-birth occurred, where he had knowledge of such birth or still-birth.<sup>92</sup>
- b. the person in charge of any hospital or other institution in which the birth or still-birth occurred.<sup>93</sup>
- c. the headman appointed in terms of section 8 of the Chiefs and Headmen Act [Chapter 29:01] for the community in which the birth or still-birth occurred, where he knew about such birth or still-birth.<sup>94</sup>
- d. any person who has attained the age of eighteen years present at the birth or still-birth.<sup>95</sup>
- e. in the case of a birth, any person who has attained the age of eighteen years having charge of the child.<sup>96</sup>

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<sup>87</sup> Communication 002/2009 *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v The Government of Kenya* at para 40.

<sup>88</sup> n 4 above, sec 35(1).

<sup>89</sup> n 4 above, sec 36(3).

<sup>90</sup> n 42 above, sec 10.

<sup>91</sup> n 42 above, sec 3.

<sup>92</sup> n 42 above, sec 11(1)(a).

<sup>93</sup> n 42 above, sec 11(1)(b).

<sup>94</sup> n 42 above, sec 11(1)(c).

<sup>95</sup> n 42 above, sec 11(1)(d).

<sup>96</sup> n 42 above, sec 11(1)(e).



f. such other person as may be prescribed.<sup>97</sup>

Several persons can essentially register a birth in Zimbabwe. Despite this list, the ZHRC report still presents that there is a challenge with parents registering their children's births.<sup>98</sup>

For anyone intending to register their name as the father of a child born out of wedlock the Births Registration Act provides that the birth may be registered in the event of a joint request of the mother and the person acknowledging himself to be the father of the child, or if the mother of the child is dead or has abandoned or deserted the child, upon the request of the person acknowledging himself to be the father of the child, or if the alleged father of the child is dead, upon the joint request of the child's mother and a parent or near relative of the alleged father.<sup>99</sup> The Births Registration Act however has its flaws discussed in the findings in Chapter 3 as these form the basis of the birth registration process in Zimbabwe.

### **2.3.4 The Children's Act, 1972**

Despite international frameworks which so aptly lay out the foundation for birth registration, national legislation provides for the substantive right partially in line with article 6(2). Beyond provision for the right to birth registration in the Births Registration Act, the Children's Act, 1972 does not refer to the right to birth registration. Section 7 creates the offence on the ill-treatment and neglect of children. Ideally, the terms ill-treatment and neglect do not encompass a refusal or lengthy delay by parents to register the birth of children. The gap is glaring, disappointingly so, since the Children's Act is custom-made legislation meant to offer protection to children.

### **2.4 Unpacking a children's rights-based approach to birth registration**

In terms of the 2030 Agenda for Sustainable Development Goals, countries under the United Nations expressed a drive to realise universal peace and development eradicating poverty among other noble aims.<sup>100</sup> Sustainable Development Goal 16 is a commitment by states to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.<sup>101</sup> Birth registration is undoubtedly a development concern. The African Committee of Experts on the Rights and Welfare of the Child (the Committee) refers to a child's identity as critical to their development.<sup>102</sup> That identity is facilitated by birth registration.

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<sup>97</sup> n 42 above, sec 11(1)(f).

<sup>98</sup> n 9 above.

<sup>99</sup> n 42 above, sec 12(2)(a)-(c).

<sup>100</sup> UN Resolution adopted by the General Assembly on 25 September 2015.

<sup>101</sup> UN SDG 16 <https://sdgs.un.org/goals/goal16> (accessed 29 October 2021).

<sup>102</sup> n 7 above, para 17.

Where governments have adequate and accurate information on births, they can allocate adequate resources for children's healthcare and education. SDG 16 has several sub-goals like the provision of legal identity for all, including birth registration by 2030. This target seems a fanciful idea at this point with under 9 years to go. The key indicator for achieving the goal is the proportion of children under 5 years of age whose births have been registered with a civil authority, by age.<sup>103</sup> Birth registration must be seen as a developmental issue that can be resolved by a human rights-based approach.

This study posits that a children's rights-based approach is key in understanding the challenges and prescribing the way forward in ensuring the challenges to birth registration are resolved, thereby ensuring compliance with article 6(2) of the African Children's Charter. It focuses on children's rights principles as entrenched in the African Children's Charter. The critical principles in a child rights-based approach are the best interests of the child, non-discrimination, children's survival and development as well as their participation. The Committee points to the implementation of a human/children's rights approach to birth registration.<sup>104</sup> Guided by key principles, state conduct can be influenced positively to give effect to the right.

For purposes of birth registration, this study emphasises the need for the best interests of children to be a primary consideration and for the protection of children from discriminatory treatment. When governments or anyone take any action, the best interests of the child shall be the primary consideration as stated in article 4(1) of the African Children's Charter.<sup>105</sup> This means for any government agency, the best interests of the child principle must guide service delivery. Furthermore, in dealing with children, it is critical to ensure there is no discrimination on any basis whatsoever.

Memzur posits that in history, children were seen as objects and not human beings with rights.<sup>106</sup> The new view of children as rights holders is anchored on international human rights instruments providing the yardstick for a children's rights-based approach. Furthermore, sociologists of childhood advance that children have the 'rights of being' which are unlike the rights to 'having' which are attached to a child's competence and capacity.<sup>107</sup> The right of being

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<sup>103</sup> United Nations Sustainable Development Goal 16 - Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels <https://unstats.un.org/sdgs/files/metadata-compilation/Metadata-Goal-16.pdf> (accessed 8 September 2021).

<sup>104</sup> n 7 above, para 44.

<sup>105</sup> n 2 above.

<sup>106</sup> BD Memzur 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) 23 *SAPR/PL* 1

<sup>107</sup> M Freeman 'The sociology of childhood and children's rights' (1998) 6 *The International Journal of Children's Rights* 442.

is focused on decency and dignity. Birth registration must be seen in the light of children having the decency and dignity that comes with having their births registered.

This study also applies the theory of reasoned action and its application of the theory of behavioral prediction posited by Fishbein and Ajzen (2010).<sup>108</sup> The theory of reasoned action is a part of the theory of planned behaviour premised on that a person's behaviour is determined by their intention to perform and that the intention is influenced by their attitude towards the behaviour.<sup>109</sup> The relevance of the theory with regards to birth registration is to offer a basis of understanding human behaviour presented by government staff in delivering the birth registration service as well as the parents with the responsibility of ensuring children are immediately registered after birth.

From the onset, Fishbein and Ajzen posit that human behaviour emanates from the information and belief at their disposal. Several sources feed the resource base of an individual such a television, personal experiences, education, the Internet, and interactions with family and friends.<sup>110</sup> These beliefs guide people in making decisions to perform a certain behaviour or not to do so. There are effectively 3 forms of behaviours that are identified:

1. **Behavioural beliefs.** People have beliefs about the positive or negative consequences they may experience if they perform the behaviour in question.
2. **Injunctive and discriminative normative beliefs.** People form beliefs that they feel their important people or groups will approve of. If the majority of their important people approve then they are likely to be inclined towards the behaviour.
3. **Control beliefs.** People form a belief based on their personal and environmental factors which help or can be a barrier to their attempt to do the behaviour.<sup>111</sup>

In this study, it is also relevant to note that the African Children's Charter places a responsibility on parents to ensure that the best interests of the child are the primary concern. This is the guiding principle in adherence to the children's rights-based approach and compliance with the children's rights principles listed above. In assessing the promotion and protection of children's rights in Zimbabwe, this study will further look at the extent to which the government of Zimbabwe assists parents with the relevant information to build on their capacity to behave in a way that facilitates birth registration immediately after the birth of children.

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<sup>108</sup> M Fishbein & I Ajzen *Predicting and changing behavior The Reasoned Action Approach* (2010) 20.

<sup>109</sup> n 107 above.

<sup>110</sup> n 107 above.

<sup>111</sup> n 107 above, pg 21.

## **2.5 Conclusion**

Generally, Zimbabwe has obligations under various international human rights treaties which ought to guide its compliance with article 6(2) of the African Children's Charter. The national laws which are led by a progressive Constitution still have to be well implemented to fully realise the right to the prompt provision of a birth certificate. Such implementation is in line with article 6(4) of the African Children's Charter.<sup>112</sup> A children's rights-based approach and theory of reasoned action are key in strengthening domestic laws and influencing behavioral change for better realisation of the rights of children to birth registration.

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<sup>112</sup> n 2 above, art 6(4).

## **CHAPTER 3: THE APPLICATION OF BIRTH REGISTRATION NORMATIVE STANDARDS IN ZIMBABWE**

### **3. Introduction**

As indicated, in chapter 2, a child's right to birth registration in Zimbabwe is contained in Section 81(1) (c) of the Constitution.<sup>113</sup> Parents and the state have the duty and responsibility to act promptly, after birth, to register a child's birth, including giving the child a name.<sup>114</sup> It is a right guaranteed and implemented jointly by parents or responsible persons who have the knowledge of the birth of a child and notify the Department of the Registrar General (DRG) mandated to issue a birth certificate.<sup>115</sup> This section presents the situation in Zimbabwe with regards to birth registration and compliance of the government with article 6(2) of the African Children's Charter. The chapter analyses the birth registration system in Zimbabwe and the challenges and gaps given normative standards identified in Chapter 2. The chapter also looks at the consequential violations which result from the identified gaps and challenges.

### **3.1 The evolution of birth registration process in Zimbabwe – prior and post-independence**

#### **3.1.1 Prior-Independence**

Scanning the history of birth registration, at some stages in the colonial past before Zimbabwe gained independence on 18 April 1980, registration of births was the preserve of white settlers at the time. Birth registration in Zimbabwe was pioneered by the Births and Deaths Act of 1904 which provided for birth registration for non-natives.<sup>116</sup> In 1962 a bill was tabled before the Federal Assembly to propose registration of births and deaths for all races in Zimbabwe, then known as Southern Rhodesia.<sup>117</sup> At that point, compulsory registration became a matter of consideration in Southern Rhodesia, though its implementation was acknowledged to be a process that would take a long time especially for communities in rural areas.<sup>118</sup> The Southern Rhodesia government envisaged designating areas for compulsory registration which did not extend to the remote rural areas.<sup>119</sup> The drive for this new legislation was to address racial discrimination yet the designation of areas for registration to the exclusion of rural areas in itself limited the number of native Africans who would register the births of children.

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<sup>113</sup> n 4 above, sec 81(1)(c).

<sup>114</sup> n 4 above, sec 81(1)(c).

<sup>115</sup> n 42 above, sec 6(1).

<sup>116</sup> Registrar General's Department and Central Statistical Office 'The current status of vital statistics and civil registration systems in Zimbabwe' pg 4.

<sup>117</sup> MI Hirsch 'The Registration of Births and Deaths of All Races in Southern Rhodesia' (1962) *Central African Journal of Medicine* 320 [https://journals.co.za/doi/abs/10.10520/AJA00089176\\_4450](https://journals.co.za/doi/abs/10.10520/AJA00089176_4450) (accessed 18 September 2021).

<sup>118</sup> n 116 above, pg 321. Zimbabwe was at the time called Southern Rhodesia.

<sup>119</sup> n 116 above, pg 320.

### 3.1.2 Post-independence

Post-independence, from 20 June 1986, a notice of births and birth registration in Zimbabwe became compulsory under the Births Registration Act.<sup>120</sup> Zimbabwe has a central registration system under the administration of the Registrar General (RG).<sup>121</sup> The RG also discharges the functions of birth registration through the delegated roles of the district registrars, deputy registrars, and assistant registrars where applicable.<sup>122</sup> This gives this office of the RG a critical role in the promotion and protection of children's rights to birth registration.

According to section 11(2)(a) of the Births Registration Act when a child is born in Zimbabwe, the responsible person with the duty to give notice of the birth as defined must notify the RG's office within 42 days of birth.<sup>123</sup> The process starts with a birth confirmation record given by the hospital where children are born in a health institution.<sup>124</sup> This is taken to the registrar in fulfillment of giving a birth notice according to section 11(2)(a) of the Births Registration Act. The registrar who is given the birth notice then 'may' issue a certified copy of any entry made of birth, which copy is the birth certificate.<sup>125</sup> The Births Registration Act gives the discretion to the registrar to decide whether or not to issue the birth certificate essentially, yet the Constitution is clear that every child has the right to the prompt provision of a birth certificate and article 6(2) of the African Children's Charter prescribes that birth registration should be done immediately after birth.<sup>126</sup> Anyone who wants to register the birth of a child has to supply several documents which vary per the classification of the child concerned.<sup>127</sup> For instance, where the child is born out of the hospital to parents who are not legally married, some of the requirements are a mother's and father's national identity documents and a witness with a national identity document, preferably a midwife.<sup>128</sup>

The United Nations (UN) stipulates that birth registration establishes legal identity and it establishes an entry point into the national identity management system through the issuance of a birth certificate, which is the foundational document necessary to establish one's identity. Civil registration is defined as follows:

'...the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population, as provided through decree or regulation in accordance with the legal requirements.' The efficiency of the system is viewed

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<sup>120</sup> n 42 above, sec 10.

<sup>121</sup> n 42 above, sec 3(a).

<sup>122</sup> n 42 above, secs 3(b) and 3(c).

<sup>123</sup> n 42 above, sec 11(2)(a).

<sup>124</sup> Department of the Registrar General 'Births and Death Certificates' <http://www.rg.gov.zw/index.php/services/birth-and-death-certificates> (accessed 22 September 2021).

<sup>125</sup> n 42 above, sec 6(1).

<sup>126</sup> n 42 above, sec 6(2)(a).

<sup>127</sup> n 42 above.

<sup>128</sup> n 42 above.

in light of the extent to which it effectively achieves the purpose of ensuring all children are registered for purposes of this study.

### **3.2 The abuse of discretion by registrars in the process of birth registration**

This discretionary role given to the registrars under section 6(1) of the Births Registration Act can be subject to abuse in the absence of a children's rights-based approach to birth registration. It must not be left up to the administrative role of the registrars to decide when children can have birth certificates. The children's rights-based approach will ensure that barriers are removed in the process of birth registration to give effect to the best interests of children and non-discrimination. The provision that the registrar may decide to issue a birth certificate or not to do so is problematic as it is the basis by which children's rights are violated at the behest of administrative processes. The best interests of children must be applied as a guiding principle to ensuring at the end of the day, children attain birth certificates promptly. The duty is on both the state and the parents to ensure the process of birth registration is not hindered.

### **3.3 The lack of an independent arbiter on the right to birth registration**

Gukurahundi massacres in Matabeleland and Midlands in 1983-1987 left many undocumented in these communities in Zimbabwe.<sup>129</sup> The failure to address the plight of these affected communities has an effect on children's rights to birth registration. The lack of due process and unchecked discretion of government officials to decide on the issuance of birth certificates and identity cards has been considered one of the causes of statelessness in Africa.<sup>130</sup> Lack of political will to address challenges has adverse effects on children born to undocumented parents. Furthermore, discrimination in birth registration is a way in which statelessness is fueled.<sup>131</sup> The discretionary powers given to the registrar are not subject to an independent mechanism to review the discretion applied. This is more critical where registrars are viewed by the public as furthering a political agenda to maintain the marginalisation of some communities. Section 6(2) and 6(3) state as follows:

'6(2) The Registrar-General or a registrar may—

(a) refuse to issue a certified copy of any entry referred to in subsection (1) where he is not satisfied that such copy is required for a lawful purpose; or

(b) issue a limited number of certified copies of any entry referred to in subsection (1) to an applicant.

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<sup>129</sup> Zimbabwe Lawyers for Human Rights (ZLHR) and Institute on Statelessness and Inclusion 'Joint Submission to the Human Rights Council' (2021), para 17.

<sup>130</sup> Institute of Statelessness and Inclusion *The world's stateless* (2020) 40.

<sup>131</sup> n 130 above.

6(3) If any person is aggrieved by a decision in terms of subsection (2), he may appeal— (a) in the case of a decision by a registrar, to the Registrar-General; or

(b) in the case of a decision by the Registrar-General, to the Minister, whose decision shall be final.<sup>132</sup>

### **3.4 Key findings on birth registration in Zimbabwe**

#### **3.4.1 The Multiple Indicator Cluster Survey (MICS)**

According to the 2019 Multiple Indicator Cluster Survey (MICS) done by the Zimbabwe National Statistics Agency (Zimstats), about 49 percent of children under 5 years had their births registered in Zimbabwe while 38 percent of children born to mothers/caregivers with pre-primary or no education were registered as compared to children born to those educated.<sup>133</sup> Furthermore, the MICS findings revealed that (80 percent) of mothers/caregivers with unregistered children knew how to register their child's birth suggestive of either complacency or inability to register the births of children under the age of 5. UNICEF states that for SDG 16.9 to be achieved for the legal identity for all including birth registration by 2030, a functioning civil registry is key.<sup>134</sup> It further highlights that to leave no one behind, a birth certificate for every child is necessary.<sup>135</sup>

#### **3.4.2 The ZHRC national enquiry report**

The ZHRC is an independent commission with the mandate to conduct investigations on human rights violations as well as to promote protection and development of human rights and conduct research in Zimbabwe.<sup>136</sup> The ZHRC forms part of the protection mechanisms for human rights violations and in light of this mandate, conducted a national enquiry in 2019 into the national documentation challenges in Zimbabwe. The study did not focus especially on the rights of children but broadly on the rights of Zimbabweans to access different national documents such as birth certificates, national identity documents, passports, and marriage certificates. The study would have been more in-depth had it been a series of inquiries focused primarily on each thematic group with regards to documentation. Nevertheless, the study presented relevant findings on birth registration in Zimbabwe falling under 3 categories, registration issues, socio-cultural norms, and economic issues.<sup>137</sup> Below, several challenges cited in the ZHRC and other reports shed light on the extent of the problem of birth registration in Zimbabwe.

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<sup>132</sup> n 42 above, secs 6(2) & 6(3).

<sup>133</sup> Multiple Indicator Cluster Survey, 2019.

<sup>134</sup> UNICEF 'Birth registration' (2021) <https://data.unicef.org/topic/child-protection/birth-registration/> (accessed 18 September 2021).

<sup>135</sup> n 134 above.

<sup>136</sup> n 4 above, secs 243(1)(b), 243(1)(f) and 243(1)(j).

<sup>137</sup> n 9 above, pg 16.



### 3.4.3 Structural barriers to birth registration

The ZHRC report revealed that more than 10 percent of birth registration applicants were turned away by the RG's office due to a lack of awareness of registration requirements. This was established as the primary reason which affects access to documentation, especially for those living in marginalised communities.<sup>138</sup> The evidence gathered also presented that there was a lack of awareness of the requirements for birth registration and on the 42-day period within which children should be registered.<sup>139</sup> It was also revealed that where mobile registration teams were approached by mothers, they would fail to register the children in the fathers' names as they would do so only in possession of the fathers' identity documents without the actual fathers present. The requirements in terms of the Births Registration Act are that the fathers must be present to register the birth and accept their family names being assigned to the children in question.<sup>140</sup>

The ZHRC conducted hearings in all districts of the 10 provinces in Zimbabwe. 20564 people attended the outreaches with 13794 women and only 6770 men present, suggestive that the issues of documentation affect women more than they affect men.<sup>141</sup> The Births Registration Act makes a distinction between children born in or out of wedlock and defines children born in wedlock as those born when the parents were married to each other at the time of conception or birth or then got married.<sup>142</sup> This distinction affects children born out of wedlock in the strictest sense of registered marriages in Zimbabwe. In Zimbabwe, the majority of married people are in unregistered customary law unions and yet children born to this union are considered children born out of wedlock hence the need to satisfy more strict requirements in terms of the Births Registration Act. This position perpetuates discrimination of children born out of wedlock against human rights-based principles of equality and non-discrimination.

### 3.4.4 Bad attitudes interfering with birth registration

2.6 percent of 38 percent of the people who reported registration challenges to the ZHRC stated that negative attitudes from the personnel at the RG's office were also a major affront to accessing registration.<sup>143</sup> The ZHRC confirmed that it noted a glaring case where a woman from the Johane Marange church was given inconsistent information by personnel at the RG's office and only got assisted after numerous attempts when the ZHRC intervened in her

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<sup>138</sup> n 9 above, pg 17.

<sup>139</sup> n 9 above, pg 17.

<sup>140</sup> n 42 above, sec 12(2)(a).

<sup>141</sup> n 9 above, pg 8.

<sup>142</sup> n 42 above, sec 2(2)(b). The Births Registration Act does not consider that the majority of marriages in Zimbabwe are unregistered customary law unions which makes this particular classification prohibitive for women in unregistered customary law unions to register the births of their children using their husband's identity documents alone.

<sup>143</sup> n 9 above, pg 19.

case.<sup>144</sup> She wanted to register the births of her children and could not get help at the RG's office. The woman had suffered trying to get a witness from Gokwe to Harare (over 300km away) who would meet the requirements only to be turned away for not adequately meeting the strictly applied requirements after securing the attendance of her witnesses.

In a Masvingo province case, a woman narrated that she could not register the birth of her child because the officer who served her at the registrar's office stated that she couldn't have given birth to her child at forty-six (46) years, disregarding the fact that she had the relevant witnesses.<sup>145</sup>The RG's office personnel argued that the woman could not have given birth during menopause. This response was a glaring attack on the human dignity of the mother of the child and a barrier to the child being documented, unfounded at law.

This study by ZHRC revealed that some parents do not have adequate information on the requirements for birth registration and the government does not do enough to raise awareness of the requirements. Furthermore, the report showed that some of the RG's office personnel do not seek to promote the rights of children to immediate registration after birth. The perceptions on the ground show that in some communities, the RG's office was regarded as unhelpful and staffed by insensitive personnel with no regard for the best interests of the child or upholding the right to prompt provision of a birth certificate.

Amnesty International conducted a study on statelessness in Mashonaland, Matabeleland North, Matabeleland South, and Manicaland interviewed about 100 people and held about 10 focus group discussions.<sup>146</sup> The study revealed that many of the registrar officials use derogatory and discriminatory language when addressing 'foreign-looking people intending to register the births of children.'<sup>147</sup> This study also aligned with the national enquiry conducted by the ZHRC. Applying a children's rights-based approach in the RG's office is critical, one which sees the rights children have as rights of being and not rights to have as and when they are given.

### **3.4.5 Lack of knowledge**

The problem of children in Zimbabwe being undocumented is also an issue caused by a lack of knowledge on the requirements for registration both by parents of the children and some personnel working at the RGs office.<sup>148</sup> Based on this lack of knowledge, at times parents are advised wrongly on the requirements and as such they get turned away at the RG's office and end up giving up on the process. Proper sensitisation of the processes would help to enable

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<sup>144</sup> n 9 above, pg 20.

<sup>145</sup> n 9 above, pg 20.

<sup>146</sup> n 29 above, pg 18.

<sup>147</sup> n 29 above, pg 18.

<sup>148</sup> n 9 above, pg 41, para 4.13. See also n 10 above, pg 17, para 3.2.1.

parents to promptly register the births of children. Kingston posits that statelessness is something children are born into as a result of their parents' failure to register births.<sup>149</sup> Where information of requirements is availed, implementation becomes easy under the theory of reasoned action.

### **3.4.6 The dilemma called wedlock**

In *Zvikomborero Paunganwa v Registrar of births and deaths and Master of the High Court* the applicant, a widow who was in an unregistered customary law union in Zimbabwe sought for the registrar of births and deaths to issue a birth certificate to her minor child in the family name of that child's father.<sup>150</sup> She was told by the registrar that she could not obtain a birth certificate in her late husband's name in the absence of his relatives in terms of section 12(2) (c) of the Births Registration Act unless there was a court order. The relatives of the late husband refused to assist her. The applicant sought an order to declare that section 12(2)(c) was contrary to the Constitution and hence, null and void.

The court observed that for a child to have a birth certificate they must have a name. The court then delved into custom identifying that a child cannot be simply given a surname from the mere say-so of the mother. Safeguards had to be in place to make sure paternity is not just saddled on anyone without proof of paternity. As such family names are sacred and signify blood ties with a specific family. Such a name should be given after careful consideration. Even though the Births Registration Act places an extra burden on women in unregistered customary law unions, the court still did not find that section 12(2) (c) violated the access to birth certificates for children. Rather the court suggested that the woman could approach the courts to compel the family to give the child the family name after proving her customary marriage first or she could register the child using her name. This judgment when measured against a children's rights-based approach, fails the master test of promoting equality for all children, advancing non-discrimination, and ensuring the best interests of the child as entrenched in international human rights law. These values are also entrenched within the Constitution.

The fact that children born in the so-called out-of-wedlock scenario have to have their mothers embark on a litigation process to secure a paternal family name impedes children classified as born out of wedlock from accessing birth certificates. When the mother is deceased the father of the child born in an unregistered customarily law union does not have

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<sup>149</sup> L Kingston 'Worthy of rights' in T Bloom, K Tonkiss & P Cole (eds) *Understanding statelessness* (2017) 24.

<sup>150</sup> *Zvikomborero Paunganwa v Registrar of births and deaths and Master of the High Court* HH 406-16. See also a discussion on unregistered customary law unions in Zimbabwe in the SALC Policy Brief No.5 of 2019, page 6 at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/09/The-recognition-of-customary-marriage-Policy-brief.pdf> (accessed 21 September 2021).

the same strict requirement to register the birth of the child with the assistance of the maternal relatives of the child. The registrars however still demand the mother's documents in some instances. The application of this law still has an effect of affecting women disproportionately from men, affecting children in the process. In some instances, the registrars misinterpret the provision of section 12(2)(b) and insist on fathers getting the assistance of maternal relatives again affecting the rights of children to birth registration.<sup>151</sup>

Fathers face challenges in registering the children's births without the mother's documents when the mother is alive and has not abandoned the child in terms of section 12(2)(a) of the Births Registration Act.<sup>152</sup> This distinction of children born in wedlock in the Births Registration Act is a colonial outlook.<sup>153</sup> Wedlock as a yardstick for distinguishing children is a term that flies against children's rights in a country where the majority of unions are unregistered customary law unions. The entire section 12 perpetuates discrimination against children based on marital status in violation of section 56(1) of the Constitution.<sup>154</sup>

### **3.4.7 Cultural barriers to children accessing birth certificates**

As identified in the above section, children born out of wedlock are at worse risks of not having their birth registration effected promptly due to the processes that their mothers have to go through to get birth certificates under 12(2)(c) of the Births Registration Act. Many women with undocumented children and who have the required documentation hold the cultural perspective that a child must be given their father's family name. Some women tend to withdraw from registering the births of their children pending the father's acceptance or availability to facilitate the joint registration in terms of section 12(2)(a) of the Births Registration Act or pending the father's relatives consenting to support the registration if the father is deceased, in terms of section 12(2)(c). Women in these instances are sometimes not even aware that they can register the births of children in their names as it seems the norm that children should have their father's family names.<sup>155</sup> Some mothers fear 'ngozi' which is an attack by avenging spirits when a child is not given her proper family name.<sup>156</sup> In addition, where a father of a child has not paid the 'lobola' which is the bride price, his in-laws can refuse

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<sup>151</sup> n 9 above, para 3.3.1.

<sup>152</sup> n 29 above, pg 22-23. Amnesty International reports on Flexen Siziba who struggled to obtain birth certificates for his 11 children. He told Amnesty International that the mother of his children, who also did not have any identity documents, died in 2016 before he had paid her lobola (bride price).

<sup>153</sup> *Centre for Child Law and Director General: Department of Home Affairs and Others* (CCT 101/20) [2021] ZACC 31CCT 101-20 paras 68-70.

<sup>154</sup> n 4 above, section 56(1) and (3). See also the ACERWC General Comment.

<sup>155</sup> n 9 above, pg 57, para 6.6.

<sup>156</sup> n 9 above, pg 36 -37. 'It emerged also that 41 (25%) of women respondents were afraid of the "unknown" if they registered children in their maiden names.'

to assist him to secure a birth certificate for the children where the requirements call for maternal relatives to support the process of birth registration.<sup>157</sup>

The theory of reasoned action posits that human behaviour emanates from the information and beliefs that people have. Through the society that people are a part of, they pick up on indicators that lead them to respond in a certain way. To counter those beliefs, it is critical to then avail the relevant information that can counter the perceptions and build a new reference point that influences positive action. With the relevant information, women can equally facilitate birth registration using their family names where they do not have the father's support.

### **3.4.8 Undocumented parents, resulting in undocumented children.**

Amnesty International interviewed one father whose story below, quoted verbatim, depicts the challenge of undocumented parents as a barrier to birth registration;

'Ganizani Chimkonde's wife was admitted to a mental institution before she could secure birth certificates and IDs for their two children, aged 16 and 14. Ganizani is unable to obtain them and has no identity documents of his own.'<sup>158</sup>

The ZHRC also recorded a 56-year-old woman from Bulawayo who stated as follows;

'I do not have a birth certificate and an ID. My parents separated when I was young and their whereabouts are unknown. I have children and they are un-documented because I don't have documents myself.'<sup>159</sup>

The problem of undocumented children in Zimbabwe stems largely from the fact that a lot of mothers are undocumented and as a result, their children cannot be registered.<sup>160</sup> Undocumented parents need to be registered to fully realise compliance with article 6(2) of the African Children's Charter.

### **3.4.9 Economic factors**

In Zimbabwe, the system is too centralised with communities in rural areas mostly left excluded from easy access to the RG's offices.<sup>161</sup> The *Doma* and *Tonga* people are far removed from the nearest office of the RG.<sup>162</sup> An area called Chapoto in Mashonaland Central,

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<sup>157</sup> n 9 above, pg 57, para 6.6.

<sup>158</sup> n 29 above, pg 23.

<sup>159</sup> n 9 above, pg 28.

<sup>160</sup> n 9 above, pg 51, para 6.3.6. The ZHRC reports the case of a 57-year-old widow from Gwanda Rural District who testified that her three children and five grandchildren were un-documented because she did not have any national documents. This is a case of the generational curse of non-documentation.

<sup>161</sup> n 9 above, pg 37.

<sup>162</sup> n 9 above, pg 37.

for example, is about 105km from the RG's nearest office.<sup>163</sup> The cost of parents from these communities traveling with their witnesses to register births becomes a barrier, affecting children's rights to birth registration immediately after birth. This is a deterrent factor to the prompt provision of birth certificates. The government at times attempts to visit key areas but misses the remote parts. Birth registration has left the preserve for those with the financial means to travel to main district centres to register the births of their children. mobile registration programmes are at times rolled out but these do not help much where the requirements are still stringent and prohibitive.<sup>164</sup> Some communities feel that the mobile registration centres are only part of a political campaign strategy rolled out at election time and are not effective.<sup>165</sup>

Another challenge that is faced in the process of birth registration is the withholding of birth confirmation records by medical personnel in the health institutions where women will have delivered their babies. The birth confirmation records are part of the documents required for the RG's office to register the birth of a child.<sup>166</sup> There is a need for a children's rights-based approach applied across relevant government departments to respect the African Children's Charter and the CRC. A perception change is required to shift the reasoning of health personnel with regards to the role of a birth confirmation record and how it essentially is key in upholding children's rights to birth registration and not a surety document for securing payment of medical fees.

#### **3.4.10 Transitional Justice and birth registration**

Gukurahundi is a scourge of human rights atrocities that were unleashed by the 5 Brigade in Matabeleland and Midlands, an armed unit under the rule of the late former president of Zimbabwe, Robert Mugabe who was then Prime Minister in the early 1980s.<sup>167</sup> In that massacre, homes were burnt and national documentation destroyed leaving communities undocumented. Generations of people in Matabeleland and Midlands do not have documentation to date, affecting children's rights to immediate provision of birth certificates after birth.<sup>168</sup> Children's birth registration is connected to their parents or relatives where parents are deceased having documentation and so the issue of documentation for families affected by Gukurahundi is a necessary issue to be addressed by the government. The lack of national documentation for Gukurahundi affected communities remains a reminder of an

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<sup>163</sup> n 9 above, pg 37.

<sup>164</sup> n 9 above, pg 25.

<sup>165</sup> n 29 above, para 6.2.

<sup>166</sup> n 123 above.

<sup>167</sup> M Killander & M Nyathi 'Accountability for the Gukurahundi atrocities in Zimbabwe thirty years on prospects and challenges' (2015) 48 *The Comparative and International Law Journal of Southern Africa* 463-465. Follow the atrocities of Gukurahundi.

<sup>168</sup> n 9 above, page 39, par 4.10.

unresolved past and there is a need to address the past harms of the atrocities in a way that promotes birth registration for children in line with article 6(2) of the African Children's Charter.

### **3.4.11 The plight of vulnerable children**

The San are a minority group in Zimbabwe and 95 percent of the San community is not documented.<sup>169</sup> This translates to children without birth registration. The study by the ZHRC revealed that most San women gave birth at home and essentially, the requirements for children born at home are stringent. The midwife who helps deliver may however be able to assist with witnessing the birth but the issue is on the mothers not having adequate information on the requirements as well as being far from birth registration centers.

In 2019, the ZHRC conducted a visit that revealed that 769 refugees whose refugee status applications were rejected were living in the Tongogara Refugee Camp undocumented and so are their children undocumented.<sup>170</sup> Children in the camp are over 50 percent of the population which shows a huge case of statelessness. The African Committee of Experts on the Rights and Welfare of the Child Committee has expressed in the General Comment that denying the right to birth registration to children belonging to this vulnerable category is discriminatory and a violation of the right to non-discrimination in Article 3 of the African Children's Charter and other international standards.<sup>171</sup> Children born to refugees in the Tongogara camp are subjected to 'clandestinity' which is a fragile state of being illegality before the law.<sup>172</sup> The children do not have equal protection before the law and are confined to a camp of statelessness. It also goes against the application of a human/children's rights-based approach which upholds equality, non-discrimination, the right of children to develop, and the best interests of the child. These are foundational principles for consideration in promoting the right under article 6(2) of the African Children's Charter.

### **3.5. Other consequential violations**

Apart from obvious violations of equality and non-discrimination mentioned above and violations of children's dignity by being undocumented, many other violations follow children without birth certificates. Rights are interrelated and a violation of one results in the violation of another. The violations that have followed the challenges highlighted above are

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<sup>169</sup> n 9 above, pg 36-37.

<sup>170</sup> n 10 above, pg 39.

<sup>171</sup> n 24 above, pg 68.

<sup>172</sup> n 24 above, pg 67. Ncube and others outline the challenges faced by children in refugee camps as follows; '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 several services like healthcare, education and judicial services.'

insurmountable. Undocumented children in Zimbabwe may face the following human rights violations, without the list being exhaustive;

- **The right to a name.** Children who are classified as born out of wedlock are denied the right to a family name where the mother wants the children to have their father's family name.<sup>173</sup>
- **The right to a nationality.** The Constitution does not guarantee the right to a nationality and yet without a birth certificate in Zimbabwe, the nationality of undocumented children cannot be ascertained. This is the basis of children being rendered stateless.<sup>174</sup>
- **Freedom of movement.** Where children are unregistered at birth, they cannot get passports and this is a barrier to their free movement.<sup>175</sup>
- **The right to education.** Without a birth certificate as proof of birth registration, children cannot write national education examinations in violation of their access to education.<sup>176</sup>
- **The right to health.** In the absence of a clear birth certificate establishing a child's date of birth, the children cannot receive appropriate health care in line with their age children's age.<sup>177</sup>
- **The right to personal liberty.** Where children conflict with the law, their liberty is at risk in the event of being arrested. They cannot be properly treated as children where their age cannot be verified with a birth certificate.<sup>178</sup>

### 3.6. Conclusion

The case of birth registration in Zimbabwe leaves a lot to be desired. Challenges noted in this study point at primarily the legislative frameworks which are in place in Zimbabwe, the RG's office which is marked by attitudes, lack of awareness of requirements for birth registration, and failure to document key persons with the responsibility of ensuring that children are registered immediately after birth. Parents also have responsibilities to ensure the best interests of the children. The recommendations of this study will focus on a children's rights-based approach to service delivery of birth certificates and influencing perception change in attitudes for both parents and personnel from the RG's office.

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<sup>173</sup> n 2 above, art 6(1).

<sup>174</sup> n 25 above, pg 69. See also n 10 above, pg 44, para 5.1.1.

<sup>175</sup> n 144 above. See also n 10 above, pg 44, para 5.1.2.

<sup>176</sup> n 9 above, pg 45, para 5.1.10.

<sup>177</sup> n 25 above, pg 67.

<sup>178</sup> n 9 above, pg 45 &46, par 5.1.8 and 5.1.11.



## CHAPTER 4: BEST PRACTICES FROM OTHER COUNTRIES

### 4. Introduction

Realising the challenges presented in Chapter 3, this chapter studies best practices from other countries with a focus on finding solutions to the challenges to birth registration. Zimbabwe is a former British colony with a birth registration system acquired from the British system, a legacy of colonialism. As such it has a birth registration process under a common law civil registration system common to British colonies and entrenched in a birth and deaths registration act with separate statutes providing for adoption and marriages.<sup>179</sup> On the other hand, French colonies usually have a code on the civil status of family codes all-encompassing of adoption and marriage provisions.<sup>180</sup> Births and deaths registration were introduced in Zimbabwe in 1905, South Africa in 1880, Ghana in 1912, Sierra Leone in 1801 and Tanzania in 1917.<sup>181</sup> This Chapter looks at lessons from South Africa, Ghana, Sierra Leone and Tanzania, former British colonies with births and deaths registration acts. It also refers to other jurisdictions for drawing insights on the roll-out of digital technologies to enhance the process of birth registration.

### 4.1 South Africa

In South Africa, births must be registered within 30 days of birth by a parent, guardian or responsible person<sup>182</sup> The Births and Deaths Registration Act, 1992 (SA Birth Registration Act) is similar to the Zimbabwean Birth Registration Act catering for births and deaths, typical of a civil registration system. The SA Births Registration Act similarly distinguishes between children born in and out of wedlock but a recent judgement condemned this repressive distinction which discriminates against children in violation of their rights to birth registration.<sup>183</sup> The Judiciary has been progressive, a lesson that must be emulated by the Zimbabwean judiciary in a way that departs from judgments such as the Paunganwa case. Children in South Africa are at risk of statelessness because there is no ensured universal access to birth registration.<sup>184</sup> Children in rural areas are mostly affected because the cost of accessing birth registration centers is high and out of reach of those particularly in rural areas among other affected children.

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<sup>179</sup> B Manby “Legal identity for all’ and statelessness: Opportunity and threat at the junction of public and private international law’ (2020) 2 *Statelessness and Citizen Review* 256 <https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/187> (accessed 3 October 2021).

<sup>180</sup> n 173 above, pg 256.

<sup>181</sup> Government of Sierra Leone Ministry of Health and Sanitation Office of the Deputy Chief Registrar Births and Deaths ‘Establishing 21st century identity management in Sierra Leone’ (2014) *African Journal for Legal Studies* pg 9-10.

<sup>182</sup> Births and Deaths Registration Act, 1992 Regulations on the registration of births and deaths, 2014, sec 3.

<sup>183</sup> *Centre for Child Law v Director General: Department of Home Affairs and Others* (CCT 101/20) [2021] ZACC 31.

<sup>184</sup> n 35 above.

In South Africa, there is a system of allocating social grants to children and in the past children without documentation were left out.<sup>185</sup> After a litigation process to challenge the barrier that children without birth certificates or other documentation face, the relevant Department amended the regulations in 2008 stipulating that where the requirements are not met, a sworn statement or affidavit would suffice. This approach may be applied to birth registration by allowing anyone who may be the responsible person and has no documentation to proceed by way of a sworn statement. The social grants in a way also incentivise parents to register births early.<sup>186</sup>

In a recent judgment delivered on 22 September 2021, the Constitutional Court progressively declared section 10 of the SA Births Registration Act a violation of the South African Constitution in as far as it prohibits an unmarried father from giving notice of the birth of his child under his surname, in the absence of the child's mother or without her consent.<sup>187</sup> The distinction of children born in and out of wedlock was ruled to be discriminatory on the grounds of social origin or birth and a violation of section 10.<sup>188</sup> The South African Constitutional Court addressed the use of the term 'born out of wedlock' as a substitute for the archaic use of the term 'illegitimate' used to stigmatise a class of children in violation of their human dignity treating them without respect or concern.<sup>189</sup>

In *AB v Pridwin Preparatory School*, the Court emphasised that children are individual right-bearers highlighting that they are not "mere extensions of [their] parents, umbilically destined to sink or swim with them".<sup>190</sup> The focus on children's rights should be centred on the acknowledgment that children have rights and do not have to follow a rights eligibility test based on the status or being of their parents. This violates the best interests of the child principle. Employing a children's rights-based approach ensures that children's rights are protected despite falling into different categories such as being born to refugees, poor families, married or unmarried persons.

The challenges raised affecting birth registration in South Africa, similar to the Zimbabwean context included the struggle fathers face to register children in their surnames where they do not have consent from the mothers, where the mother has disappeared leaving the children with the father and instances where the mother is undocumented yet the father is

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<sup>185</sup> P Proudlock (ed) *South Africa's progress in realising children's rights: A law review* Children's Institute (2014) 18. See also *Alliance for Children's Entitlement to Social Security v Minister of Social Development* Case No. 5251/2005 TPD.

<sup>186</sup> K4D 'Increasing birth registration for children of marginalised groups in Pakistan' (2021), pg 12-13.

<sup>187</sup> Constitutional Court of South Africa *Centre for child law v Director-General Dept of Home Affairs and Others* CCT101/20, case summary. See n 177 above.

<sup>188</sup> n 177 above.

<sup>189</sup> n 177 above, para 69.

<sup>190</sup> *AB v Pridwin Preparatory School* [2020] ZACC 12; 2020 (5) SA 327 (CC); 2020 (9) BCLR 1029 (CC), para 234.

documented.<sup>191</sup>The matter was brought by the Centre for Child Law, a non-governmental organisation that sought to assist children and has made a ground-breaking contribution to good jurisprudence on children's rights to birth certificates, giving effect to a human rights-based approach to human rights. A progressive judiciary coupled with active civil society organisations goes a long way in removing barriers to birth registration. Civil society organisations promoting human rights and more so, children's rights in Zimbabwe ought to diligently challenge the judiciary to consider the paramountcy principle in passing decisions on matters concerning children.<sup>192</sup>

In the case of *Centre for Child Law and Others v Minister of Basic Education and Others* promoting children's rights to education, the High Court in South Africa emphasised the best interests of the child as paramount stating that section 28 of the Constitution of South Africa does not limit itself to specific classes of children but generally to every child, even those who are not documented.<sup>193</sup> In that case, children were being denied access to schools because of a lack of documents. The matter was brought before the court by the Centre for Child Law and the High Court of South Africa stated that clause 15 of the admission policy for admitting children into schools was unfairly discriminating against undocumented children.<sup>194</sup> South Africa has since ensured that the admission policy ensures that undocumented children gain access to education without discrimination. The role of organisations such as the Centre for Child Law in advancing children's rights through the judiciary is particularly commendable.

## 4.2 Ghana campaign success

The Registration of Births and Deaths Act, 1965 in Ghana provides for a parent guardian or responsible person to register births and this is a typical common law system of birth registration, with British influence.<sup>195</sup> The birth registration rates in Ghana rose from 44% to 71% between 2003 to 2008 following a focused campaign to address the challenge of exorbitant fees for registration, the lack of registration centers within rural communities as well

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<sup>191</sup> n 177 above, pg 4-5.

<sup>192</sup> A Moyo 'Reconceptualising the 'paramountcy principle'. Beyond the individualistic construction of the best interests of the child' (2012) 12 *African Human Rights Law Journal* page 143 where A Moyo says: 'The term 'paramountcy principle' is used loosely to refer to what is commonly known as the best interests of the child.' A Moyo however critic the principle which argument I am not subscribing to for purposes of this study. See also n 4, above, section 81(2) which states, 'A child's best interests are paramount in every matter concerning the child.'

<sup>193</sup> *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG), para 76 where the courts stated as follow; 'The South African government has agreed through its signature and ratification of several instruments, including the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child to give primary consideration inter alia to children's interests at all times. These Conventions recognise the importance of holding paramount the best interests of the child in all matters concerning them.'

<sup>194</sup> n 183 above, para 83. Section 15 of the Admission policy for ordinary public schools has since been amended to ensure undocumented children can still be admitted into schools thereby guaranteeing their right to education.

<sup>195</sup> Registration of Births and Deaths Act of 1965, sec 8(4).

as lack of adequate personnel.<sup>196</sup> The government of Ghana then rolled out a campaign to address the challenges from 2004 which included holding a Birth Registration Annual Day in September 2004 and 10000 births were registered nationwide.<sup>197</sup> The Births and Deaths Registry (BDR) in Ghana partnered with Plan International and the United Nations Children's Fund to implement the birth registration campaign.<sup>198</sup>

The government essentially leveraged key stakeholders to address the challenge of birth registration effectively. Furthermore, the BDR collaborated with the Ministry of Health, training nurses to register births as well as ensuring that birth registration offices were near health institutions, although not all health institutions.<sup>199</sup> This linking of health care services and birth registration is a model that ensures wide birth registration coverage especially when it is rolled out in all health institutions and clinics. Where children miss birth registration immediately after birth, upon immunization, the nurses can pick up the issue and encourage birth registration. The system ensures constant supervision by health care workers, ensuring that children's births are registered promptly. FAA Dake & K Fuseini posit that birth registration is sometimes delayed until children are enrolling in schools, which is when parents then see the need for registration at that time.<sup>200</sup> The Ghana birth registration campaign focused on the challenges and from that end, rolled out awareness-raising activities.

Furthermore, mobile community registration volunteers were appointed in remote areas to cater for the accessibility challenge and the fees for late registration of birth were waived for a certain period to motivate parents registering births.<sup>201</sup> The campaign therefore deliberately focused and targeted at the outcome of addressing birth registration. This approach was aimed at empowering communities to register births, which essentially is a human rights-based approach to increasing birth registration. An adequately informed citizenry is also empowered to find reason in action aimed at promoting birth registration. This Ghana success story can be replicated in Zimbabwe to address the challenges.

### 4.3 Sierra Leone

Sierra Leone is a former British colony with a long history of civil registry with its compulsory birth registration for natives and non-native births and deaths having been introduced in 1801. Currently, at least 78 percent of children under 5 years have their births registered. During the Ebola crisis, a lot of children were left unregistered and the Ministry of Health and Sanitation

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<sup>196</sup> n 180 above, pg 10.

<sup>197</sup> n 180 above, pg 10.

<sup>198</sup> S Fargenas & J Odame 'Birth registration and access to health care: an assessment of Ghana's campaign success' (2013) *Bull World Health Organ*.

<sup>199</sup> n 182 above.

<sup>200</sup> FAA Dake & K Fuseini 'Registered or unregistered? Levels and differentials in registration and certification of births in Ghana' (2018) *BMC International Health and Human Rights*.

<sup>201</sup> n 183 above.

partnered with the World Health Organisation, UNICEF, and Plan International to conduct mass registration of births linked to immunisation drives.<sup>202</sup>The following impact was recorded in Sierra Leone;

'A 3-day integrated measles, polio and birth registration campaign was conducted that reached 97% of children under the age of five. The campaign registered births and issued certificates for an estimated 200,000 children born at home during the Ebola outbreak and those not registered at birth prior to the outbreak.'<sup>203</sup>

#### 4.4 Tanzania

The birth registration system in Tanzania is centralised and about a quarter of births registered are certified.<sup>204</sup> The Registration Insolvency and Trusteeship Agency (RITA) of Tanzania in 2011 developed a five-year strategy supported by UNICEF to improve birth registration in Tanzania.<sup>205</sup> The government agency went on a decentralization of birth registration pilot project from 2012 -2016 which process improved the numbers of births registered that were certified in several districts.<sup>206</sup> An analysis of the success of the project showed that centralisation of birth registration systems beyond the district level enhances the process.<sup>207</sup>The government of Tanzania also launched the Under-Five Birth Registration Initiative (UFBRI) which was aimed at ensuring that children under the age of 5 years are registered.<sup>208</sup> The initiative proclaimed that health facilities and Ward Executive Offices were birth registration offices enabling birth registration to be facilitated at ward level in communities.<sup>209</sup>

#### 4.5. Digital Technology and Birth Registration

The use of digital technologies in increasing birth registration is particularly beneficial taken with the right standards to safeguard the data collected. The United Nations Convention on the Rights of the Child General Comment General Comment No. 25 (2021) on children's rights in relation to the digital environment (GC25) under paragraph 79 is most instructive on the use of digital technologies for birth registration, the benefits and safeguards.<sup>210</sup>Essentially, the use

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<sup>202</sup> Plan International 'Innovations in Birth Registration' [https://www.ohchr.org/Documents/Issues/Children/BirthRegistrationMarginalized/PlanInternationalGeneva\\_3.pdf](https://www.ohchr.org/Documents/Issues/Children/BirthRegistrationMarginalized/PlanInternationalGeneva_3.pdf) (accessed 10 October 2021).

<sup>203</sup> n 195 above, pg 16.

<sup>204</sup> C Sanga *et al* 'Decentralization of birth registration to Local Government in Tanzania: the association with completeness of birth registration and certification' (2020) *Global Health Action*.

<sup>205</sup> GSMA 'Innovations in Mobile Birth Registration: Insights from Tigo Tanzania and Telenor Pakistan' (2017) at page 8. <https://www.gsma.com/mobilefordevelopment/resources/innovations-in-mobile-birth-registration-insights-from-tigo-tanzania-and-telenor-pakistan/> (accessed 25 October 2021).

<sup>206</sup> n 192 above.

<sup>207</sup> n 192 above.

<sup>208</sup> n 192 above.

<sup>209</sup> n 192 above.

<sup>210</sup> United Nations Convention on the Rights of the Child General comment No. 25 (2021) on children's rights in relation to the digital environment (GC25), Part VI (F). See the recommendations of GC 25 below;

of digital technologies is encouraged to enhance the birth registration process and ensure marginalised and vulnerable children are reached. GC25 also proposes legislative and policy frameworks that ensure the data protection and privacy of children.<sup>211</sup>

Plan International has come up with a guide that ensures that digitised birth registration (DBR) systems comply with human rights standards in the process of increasing birth registration.<sup>212</sup> The benefits of a digitised birth registration system are the streamlining of registration processes, the quality of data collected is enhanced and the geographical barriers being removed.<sup>213</sup> In the context of Zimbabwe were the findings presented in Chapter 3 reveal that the people view the RGs office as hostile and insensitive, digital technologies will minimise the interactions with personnel of the registrar and effectively ensure the efficiency of the process.

The form of digital technology commonly relied on is a collaboration between mobile telecom network providers and the government to roll out a digitised system of birth registration. In Pakistan, the digitised birth registration (DBR) system was applied in Sindh and Punjab as a pilot project rolled out by UNICEF, the Departments of Local Government and Health, the National Database Registration Authority (NADRA) and mobile telecom network operator Telenor.<sup>214</sup> An app was created by Telenor for use by medical offices and marriage registrars where data is uploaded on the app such as the name of the child, the parents' details and other aspects then transferred to the Union Council office (typical of a civil registration office) for a verification leading to the issuance of a birth certificate.<sup>215</sup> Significantly, birth registration rates improved from 30 percent to 90 percent in six months.

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'States parties should promote the use of digital identification systems that enable all newborn children to have their birth registered and officially recognized by the national authorities, in order to facilitate access to services, including health, education and welfare. Lack of birth registration facilitates the violation of children's rights under the Convention and the Optional Protocols thereto. States parties should use up-to-date technology, including mobile registration units, to ensure access to birth registration, especially for children in remote areas, refugee and migrant children, children at risk and those in marginalized situations, and include children born prior to the introduction of digital identification systems. For such systems to benefit children, they should conduct awareness-raising campaigns, establish monitoring mechanisms, promote community engagement and ensure effective coordination between different actors, including civil status officers, judges, notaries, health officials and child protection agency personnel. They should also ensure that a robust privacy and data protection framework is in place.'

<sup>211</sup> n 197 above, Part VI(E) & (F).

<sup>212</sup> Plan International 'Identifying and addressing risks to children in digitised birth registration systems: A step by step guide.' On page x it is explained that 'DBR employs digital technology to facilitate collection, processing, storing, and/or sharing of birth data.'

<sup>213</sup> n 194 above, pg vi.

<sup>214</sup> n 180 above pg 16.

<sup>215</sup> n 180 above, where the following is stated;

'The initiative involves authorised personnel visiting homes and logging details of newborns on their mobile phones. Alternatively, parents can visit DBR franchises – Telenor distribution centres – where facilitators enter their data on the app. Data fed in includes the date and time of the child's birth, parents' names and NIC numbers, address and photos of NIC cards. This data is transferred to the Union Council office for verification, and then uploaded into the UC office database and issued a Civil Registration Management System (CRMS) number (NADRA unique ID). Parents can then collect the birth certificate.'

The National Demographic and Health Surveys revealed that in 2005 55 percent of children in Senegal and 21 percent in Uganda were registered.<sup>216</sup> Many challenges were noted in both Senegal and Uganda, mainly that those in rural areas have no easy access to birth certificates, bureaucratic processes with months being taken from registration to accessing a birth certificate in Uganda as well as lack of awareness on registration processes.<sup>217</sup> The challenges are generally the same in Africa. In addressing the problem, a proactive non-governmental organisation called Aide & Action (AA) concerned about access to education of children proactively went into the field to raise awareness among village chiefs on birth registration. This entry point can be part of a creative strategy employed in Zimbabwe to raise awareness and change perceptions of the community on cultural concerns through traditional leaders, thereby influencing a paradigm shift where custodians of customs in communities become advocates for birth registration. In Senegal, the village Chiefs were able to then mediate birth registration between the remote communities and the births registration offices.

AA collaborated with a mobile operator, Orange to try out a pilot birth declaration service project in Kolda region, Senegal. The system involved the deployment of mobile phones with specific java software to 30 village chiefs who then took on the role to capture data regarding births in their areas and convey it to the Senegal State Registrar.<sup>218</sup> In turn, the Senegal State Registrar's office has a mobile phone which then receives updates on births and the information is recorded in registers and online. A number is then allocated upon review which is sent to the village heads to pass on to the parents or guardians of the children concerned. Equipped with the birth registration numbers, birth certificates can then be collected.<sup>219</sup>

In Uganda, UNICEF partnered with Uganda Telecom to roll out a birth registration initiative. Mobile operators, as part of their corporate social responsibility partnered on a critical role to enhance birth registration, bearing in mind the need to reach the remotest communities. The project rolled out was two-pronged. A 3G connection was installed in hospitals to get access to a web-based application for registration of births and there was reliance on key registration agents who were the village heads or regional administrators. The key registration agents were the link with the registration offices, their role being to register the births and once birth certificates were processed, they were sent to the hospitals or registration agents to distribute.

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When they do this, the data is transferred from the UC office to the provincial office of NADRA and then to its head office as a permanent record.'

<sup>216</sup> n 29 above.

<sup>217</sup> n 198 above, pg 7.

<sup>218</sup> n 198 above, pg 8

<sup>219</sup> n 198 above, pg 8.

100% of children were registered in the target area in Senegal during the rollout of the pilot project while 80% registration was achieved in Uganda. Digital technology has a far-reaching capability that enhances access to information as well as the birth registration process. While the figures are impressive, technology comes at a cost to acquire and there is a need to ensure there are correlating data protection laws that ensure the safeguarding of personal data collected through mobile operator enabled platforms.

In Tanzania under the UFBRI made use of digital technology to improve the birth registration process. RITA supported by UNICEF collaborated with Tigo Tanzania, a telecommunications company to harness technology for improving birth registration.<sup>220</sup> Through free mobile phones, data and SMS support birth registration data was uploaded to a central database, completed application forms were scanned and shared with the registrar's office for validation.<sup>221</sup>

Threats to children can come in the form of privacy violations and identity theft or fraud.<sup>222</sup> Plan International identifies key technologies as enablers of birth registration such as automated systems which enhance data collection and enhance the efficiency of the civil registration system, system interoperability linking health institutions with the births registry offices to ensure an eGovernment system that is efficient for registration of births, making use of social media to enhance communication and notification of births for specific target groups and the use of mobile phones to reach remote communities.<sup>223</sup>

Plan International further proposes challenging orthodoxies such as the belief by governments that it is only the district offices that can register births.<sup>224</sup> Dismantling such perceptions opens the way for innovative solutions to the problem. The other likely perception is the 'we have always done things this way' mentality which is counter-productive. Perception change is an enabler of action that is likely to utilise existing stakeholders for collaborations and embracing technology to realise children's rights to birth registration.

## 4.6 Conclusion

There is a need for solutions to be drawn from other countries to see what can best address challenges as they apply to the Zimbabwean context. The presented case studies reflect the need for a multi-sectoral approach to the challenges raised in Chapter 3. An all-hands-on-deck approach to birth registration can best achieve an effective campaign. Collaborations between government, civil society organisations, mobile operators and the village chiefs

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<sup>220</sup> n 193 above pg 8.

<sup>221</sup> n 192 above.

<sup>222</sup> n 194 above, pg 7-8.

<sup>223</sup> n 195 above, pg 18.

<sup>224</sup> n 195 above, pg 21.



among other community members with influence in communities goes a long way in achieving birth registration. In addition, a progressive judiciary and the use of incentives to motivate communities to register births is a possible solution to the situation experienced.

## **CHAPTER 5: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

### **5. Introduction**

Having analysed the international frameworks, uncovered the situation in Zimbabwe on birth registration and outlined the best practices from other countries in the preceding 3 chapters, this chapter presents the concluding observations from the study conducted and seeks to answer to what extent children's rights to birth registration as provided under article 6(2) of the African Children's Charter are fulfilled. In assessing the Zimbabwean track record on the above-mentioned question, key findings measured against article 6(2) and other international standards lead to conclusions that can glean solutions from other jurisdictions and from theories on which this study is centred. Key recommendations are proffered in finding lasting solutions to the problem and in that vein, meaningful solutions gleaned from other jurisdictions.

#### **5.1 Domestication of article 6(2) of the African Children's Charter**

This study establishes that Zimbabwe is a state party to the African Children's Charter which stipulates in article 1(1) that member states shall among other pertinent steps in line with constitutional processes come up with legislative or other measures to give effect to it.<sup>225</sup> For purposes of the conclusions drawn, this is what sufficient domestication of the treaty looks like. It is a state of being where provisions of the treaty are backed by the constitution, entrenched in legislation, supported and implemented by any other measures necessary. The Constitution in section 327 states that for a treaty to be binding on Zimbabwe, it must be approved by Parliament and only form part of the law of the country upon being incorporated into law through an Act of Parliament. The Children's Act under section 7 provides for other forms of ill-treatment of children as an offence but makes no provision for the deliberate failure to register births of children as an act of ill-treatment of children. Such a provision coupled with awareness-raising would buttress the importance of birth registration.

#### **5.2 Inadequacies of the law**

The Constitution does provide for the right to prompt provision of a birth certificate which entrenches the right under article 6(2) of the African Charter. The Births Registration Act provides for registration of births within 42 days of the child being born, which period is reasonable and passes for falling in the category of immediate registration. When considering the letter of the Constitution, it appears that there is the domestication of the right under article 6(2) of the African Children's Charter. However, other contentious provisions, in particular, section 12 of the Births Registration Act creates an unpalatable distinction between children

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<sup>225</sup> n 2 above, art 1(1).

born in and out of wedlock allaying a basis for violating the same provision to prompt provision of a birth certificate.

Effectively, such a section, discriminatory and against the best interests of the child flies in the face of children's rights to immediate registration after birth and queries the sufficiency of the domestication. Domestication is therefore partial until there is the alignment of the Births and Deaths Registration Act to the Constitution. The Birth and Deaths Registration Act does not also provide for the judiciary to have the final word on the registration of a birth where the Registrar General has denied a birth certificate to a child. The appeal process ends with a Minister yet section 81(3) defers the upper guardianship of children to the High Court.

### **5.3 Bad service delivery**

For domestication to be meaningful, the service delivery at the Registrar General's offices must serve the purpose for which the office is created. The public perceptions show that the office of the Registrar is failing to discharge a mandate that is focused on promoting principles of children's rights. The best interests of the child are not of primary consideration and the process of acquiring birth certificates cumbersome due to the attitudes of the personnel in the Registrar General's offices. Without a children's rights-based approach to service delivery, there is a subtraction from the domestication of article 6(2) of the African Children's Charter.

### **5.4 Lack of awareness-raising**

A look at the findings presents that the process of birth registration is a mystery to many parents, especially in remote and marginalised communities. The information gap on the process of registration creates a barrier to the immediate registration of births. Without sufficient information, the perceptions of the parents cannot be steered in the direction of compliance with the law when they do not know it or appreciate its importance. The San community lacks adequate information on the registration of births where children are born at home and not in a medical institution. As a result, most births in this community are not registered. There is not enough being done to sensitise the parents on the process of birth registration.

### **5.5 Compliance with commitments to end statelessness**

In 2014, the government of Zimbabwe pledged to 'simplify and improve access to birth registration procedures, including the issuance of birth certificates to descendants of former migrant workers and failed asylum seekers to ensure universal birth registration' by 2024, a

pledge expiring in about 3 years under the #IBelong Campaign.<sup>226</sup> To date, the simplicity and improvement of access have not reached the people within its border. The failure to adhere to international commitments is counterproductive. Children in refugee camps are not being sufficiently assisted and remain in statelessness because of the status of their parents despite being born within the confines of Zimbabwe.

### **5.6 Failure to address the plight of undocumented parents**

The failure to register births immediately is exacerbated by the conundrum of unregistered mothers who are undocumented. There is strict adherence to policy in the Registrar's Offices which bars fathers from easily registering the births of children where the mothers are undocumented. The curse of being unregistered is passed on to children and the cycle mutates all over again when the children evolve into adulthood.

Critically, the study also unearthed that the survivor communities of Gukurahundi bear the brunt of having their documents destroyed during the atrocities of the time. The government is not doing much to address this concern and this has given the communities concerned the perception that there is no solution to their plight. This hopeless situation as perceived leaves children unregistered in affected communities. The control belief is such that the political and social environment is not conducive for birth registration and so this can be changed by a children's rights-based approach applied to guarantee non-discrimination to children in historically affected and marginalised communities.

### **5.7 Economic concerns**

The migration occasioned by the economic impasse in Zimbabwe has a lot of children staying with their grandparents or other relatives. Where the mother's documents are not present and there are no birth records, the grandparents or other relatives living with undocumented are turned away from the registrar's offices for not having the relevant documentation. This is the end of the attempt to register births because of the perceived hopelessness of the situation. Furthermore, parents in remote areas cannot easily access registration offices. They cannot afford to travel with witnesses to district offices and as such, abandon the exercise.

### **5.8 Cultural fears**

The study revealed that some unmarried women fear '*ngozi*' as a bad curse that follows if they give their children their family names. As a result, where the father is away or disappears, the women do not register the births of their children. This perception, drawing from Fishbein and Ajzen, is a behavioral belief and as such it guides women in making a decision not to register

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<sup>226</sup> UNHCR 'Results of the High-Level Segment on Statelessness' <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/> (accessed 10 October 2021).

the births of children. In applying a children's rights-based approach to this challenge, the government must seek to ensure that the best interests of children are of paramount importance. Such application calls for a study of the fears and addressing them through reliance on traditional leaders to spearhead awareness-raising campaigns that empower unmarried women to register births in their family names if they so wish. This may help translate behavioral beliefs to injunctive beliefs influenced by custodians of customs. The purpose of embarking on such initiatives is to influence behavioral change for the good of children.

## **5.9 Key Recommendations**

The government and parents must ensure the successful realisation of children's rights to birth registration. As such, the key recommendations below are made.

### **Legislative reforms**

1. The government must amend the Birth Registration Act by removing the distinction of children born in and out of wedlock. Section 12 must in effect be repealed and a more efficient system proposed which ensures that children are easily registered. The Births and Deaths Registration Act must provide for a judicial appeal procedure against the decision of the Registrar General's office to register births.
2. There is a need for the right to nationality to be included under section 81 of the constitution as a guaranteed right for children to ensure that this becomes a matter of concern. This will create an impetus for promoting nationality rights through the process of birth registration.
3. It is critical to amend the Children's Act under section 7 to include in the offence of ill-treatment of children the deliberate failure to register births as a punishable offence.
4. Corollary to the use of digital technologies, the government must enact an adequate data protection law that protects children as data subjects, ensuring a children's rights-based approach to the processing and management of children's personal data.

### **Institutional reforms**

1. There is a need for the government to undertake a study into the cultural beliefs of parents concerning birth registration to formulate campaigns that best influence behavioral change.
2. It is pertinent for the government to conduct training for all personnel at the Registrar General's offices nationwide on children's rights to birth registration. An appreciation of the extent of children's rights will avail adequate information to the personnel to

change their beliefs and aid in behaviour that furthers a children's rights-based approach.

3. The government must come up with a practice direction for all personnel to consider the best interest of the child in their service of the public which includes values of respect for the public and zero tolerance for discrimination.
4. The government must consider a robust campaign on birth registration, coming up with a national day on birth registration and a nationwide 10-day campaign targeting all 10 provinces in Zimbabwe to raise awareness on birth registration.

In rolling out such a campaign, the government must use a multi-sectoral approach to the problem by collaborating with civil society organisations, traditional and religious leaders, community volunteers, and the private sector who as part of their corporate social responsibility have a duty to promote children's rights. In addition, the campaign will also need an all-hands-on-deck approach within government agencies and so an effective campaign will be executed by collaborative action between the relevant Ministry of Primary and Secondary Education, Ministry of Health and Ministry of Home Affairs.

5. Beyond the recommended campaign, the Ministry of Home Affairs must share its powers of registering births with the Ministry of Health and ensure all clinics and hospitals are empowered to register births. The use of community volunteers to collaborate in the process of registration must also be considered with the necessary data protection mechanisms to ensure the safeguarding of the information collected.
6. The government must be innovative in addressing birth registration, in particular, consider rolling out the use of digital technologies to ensure an efficient process of registration that reaches the remotest of areas in Zimbabwe. Partnering with the private sector on this will ensure a sustainable digital transformation aimed at improving birth registration.
7. The Ministry of Health must stop the practice of withholding birth records from mothers because of non-payment of maternity fees.

### **The Zimbabwe Human Rights Commission**

1. The Zimbabwe Human Rights Commission must conduct an investigation into the violations of children's rights to birth registration. A more children's rights-focused empirical study on children's rights to birth registration is necessary.<sup>227</sup>

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<sup>227</sup> n 10 above.

## **Parental Responsibilities**

1. Parents need to prioritise prompt birth registration within 42 days of birth. For parents and responsible persons with undocumented children, there is a need to register the children as a matter of urgency to avoid further violations of children's rights. For instance, unmarried mothers can register births in their family names.

## **Compliance with commitments**

1. There is a need for the government to comply with its pledge under the #IBelong Campaign and increase its efforts to realise SDG16.
2. The government must generally audit its performance with regards to achieving meaningful domestication of article 6(2) of the African Children's Charter and adopt necessary measures to give effect to the treaty provision.

## **5.10 Complementary Recommendations**

Acknowledging that the key role is on the government to meet its international obligations and for parents to execute their parental responsibilities, the recommendations below are complementary and pertinent.

### **Civil Society**

1. There is a need for coalition building and joint advocacy action to drive government action on increasing birth registration.
2. Civil society needs to avail its expertise to train personnel at the Registrar General's offices to foster a culture that is respecting of children's rights and influences behavioural change.
3. Civil society advancing children's rights needs to proactively litigate more to influence jurisprudence on children's rights to birth registration in Zimbabwe.

### **Private Sector**

1. The private sector in the telecommunications and ICT sector must come on board a campaign to promote children's rights to birth registration offering lasting solutions that mobilise digital technologies for reaching marginalised communities.

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