

# **Joint Submission to the Human Rights Council at the 39<sup>th</sup> Session of the Universal Periodic Review**

**TANZANIA**

## **Introduction**

1. Dignity Kwanza – Community Solutions, the Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Tanzania.
2. This submission focuses on:
  - i. Gender discrimination in the nationality law;
  - ii. Weak safeguard against deprivation of nationality;
  - iii. Children’s right to nationality; and
  - iv. Protracted refugee situations leading to statelessness.
3. Dignity Kwanza- Community Solutions (DIGNITY Kwanza) is a non-profit organization registered in Tanzania to safeguard and promote the human dignity of marginalized and vulnerable populations for the attainment of social and economic development. DIGNITY Kwanza envisions a Tanzania where every person lives with dignity and is assured of the opportunity to achieve self-fulfilment. In line with its vision and mission, DIGNITY Kwanza’s overall goal is to contribute to the creation of conditions and opportunities for its clients to enjoy their rights, live with dignity, attain social and economic growth and participate in the search for lasting solutions to their needs and the overall nation-building. DIGNITY Kwanza’s targeted population are refugees, asylum seekers, vulnerable migrants, people at risk of statelessness and stateless people, and people living in extreme poverty.
4. The Global Campaign for Equal Nationality Rights (GCENR) mobilises international action for the removal of gender-discriminatory provisions from all nationality laws, through its coalition of over twenty national, regional and international organisations and activists, including steering committee members Equality Now, Equal Rights Trust, Institute on Statelessness and Inclusion, Women’s Learning Partnership and Women’s

Refugee Commission.

5. The Institute on Statelessness and Inclusion (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made over 70 countries specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 37th UPR Sessions.<sup>1</sup>

## Previous UPR of the United Republic of Tanzania under the First and Second Cycle

6. The United Republic of Tanzania (Tanzania) was previously reviewed during the 12<sup>th</sup> and 25<sup>th</sup> sessions of the UPR in 2011 and 2016 respectively.
7. During the 12<sup>th</sup> session in the first UPR cycle, Tanzania received a recommendation from Slovakia to "ensure free birth registration and in this regard conduct relevant awareness-raising campaigns for the public and adopt efficient policies with a view to cover country's remote and rural areas",<sup>2</sup> which it accepted.
8. The Human Rights Council noted that Tanzania had granted citizenship to 162,156 refugees from Burundi and 1,423 refugees from Somalia in June 2010,<sup>3</sup> and encouraged Tanzania to continue its commitment.
9. During the 25<sup>th</sup> session in the second UPR cycle, Tanzania received recommendations from Turkey and Poland to improve birth registration efforts, including by issuing free certificates to all children under the age of 5 and to increase public awareness on the importance of birth registration.<sup>4</sup> Tanzania accepted both recommendations.

## Tanzania's International obligations

10. Tanzania is not a signatory to the 1954 Convention relating to the Status of Stateless Persons<sup>5</sup> or the 1961 Convention on the Reduction of Statelessness.<sup>6</sup> However, Tanzania is a party to several other UN and regional treaties, which obligate the government of Tanzania to protect the right to a nationality and the rights of stateless persons and to take action to prevent statelessness within the country. Tanzania is a

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<sup>1</sup> For more information, see <https://www.institutesi.org/core-activities/human-rights-advocacy>.

<sup>2</sup> UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania' A/HRC/19/4 (8 December 2011), para. 85.71.

<sup>3</sup> Para 9 of <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/172/50/PDF/G1117250.pdf?OpenElement>.

<sup>4</sup> UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania' A/HRC/19/4 (8 December 2011), para. 136.15; 136.14.

<sup>5</sup> See: <https://www.unhcr.org/uk/protection/statelessness/3bbb0abc7/states-parties-1954-convention-relating-status-stateless-persons.html>

<sup>6</sup> See: <https://www.unhcr.org/uk/protection/statelessness/3bbb24d54/states-parties-1961-convention-reduction-statelessness.html>

state party to the International Covenant on Civil and Political Rights (see article 24.3), the International Covenant on Economic, Social and Cultural Rights (see articles. 2.2 and article 3), the Convention of the Rights of the Child (see articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (see article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (see article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (see article 18), and the International Convention for the Protection of All persons from Enforced Disappearance (see article 25). Furthermore, the right to a nationality is protected in Article 15 of the Universal Declaration on Human Rights.

11. Tanzania has ratified the 1990 African Charter on the Rights and Welfare of the Child (ACRWC), which affirms the right of every child to a nationality, also requiring States Parties to grant nationality to otherwise stateless children born on the territory under Article 6. Tanzania has also ratified the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which contains provisions that are relevant to the right to nationality. Tanzania has also ratified the African Charter of Human and People's Rights, and although this does not contain a provision on the right to nationality, the African Commission on Human and Peoples' Rights, which oversees the implementation of the Charter, has found that Article 5, which affirms "[...] the right [...] to the recognition of legal status", includes the right to nationality.<sup>7</sup>
12. Tanzania has also made commitments to eradicate statelessness by signing the Declaration of the International Conference of Great Lake Region's (ICGLR) Member States on the Eradication of Statelessness in 2017. In April 2019, during the ICGLR ministerial meeting in Nairobi, Tanzania made pledges towards the eradication of statelessness in the region by, *inter alia*, pledging to ratify the two Statelessness Conventions. Furthermore, Tanzania took part in the review of the Draft Protocol to the African Charter on the Right to Nationality and the Eradication of Statelessness in Africa.
13. Tanzania also made pledges to, *inter alia*, continue registration and documentation of refugees and asylum seekers, and to improve protection and assistance for refugees and stateless persons during the Ministerial Intergovernmental Event on Refugees and Stateless Persons in 2011.<sup>8</sup>
14. In addition and on the basis of article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, in 2016, the Committee on the Elimination of Discrimination against Women recommended that Tanzania expedite its law review process, with a view to ensuring that all discriminatory legislation, including the Tanzania Citizenship Act (1995) and inheritance laws, is repealed or amended so as to bring it into conformity with the Convention and to ensure that women and men enjoy equal rights to acquire, change, transfer and retain nationality. It also recommended that Tanzania accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.<sup>9</sup>

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<sup>7</sup> Including in African Commission on Human and Peoples' Rights, *John K. Modise v. Botswana*, no. 97/93 (2000).

<sup>8</sup> UNHCR, 'Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons', <<https://www.unhcr.org/4ff55a319.pdf>>.

<sup>9</sup> CEDAW, 'Concluding observations on the combined seventh and eighth periodic reports of the United Republic of Tanzania' CEDAW/C/TZA/CO/7-8 (9 March 2016).

15. In 2015, the Committee on the Rights of the Child reiterated a previous recommendation, namely to:

- . (a) Equip decentralised government authorities at the local level and health facilities to register births and issue birth certificates;
- . (b) Allocate sufficient funds for strengthening birth-registration initiatives;
- . (c) Provide birth registration and issue birth certificates free of charge for children under 5 years of age;
- . (d) Strengthen and expand mobile birth registration to reach universal coverage, in particular for registering children born outside of health facilities and children who have never been registered; and
- . (e) Increase public awareness of the importance of birth registration and the process by which births are registered.<sup>10</sup>

## Snapshot of Statelessness in Tanzania

16. UNHCR does not have an accurate estimate of the number of stateless persons in Tanzania, and Tanzania lacks statistics on the number of stateless people, or those at risk of statelessness. However, there are numerous communities at risk of statelessness, who consequently face barriers to accessing social services and to enjoy basic rights.

17. Moreover, the ongoing exercise of issuing national identification cards to citizens in Tanzania is likely to expose more people to the risk of being stateless. A large number of people specifically in the border regions have been experiencing difficulties in obtaining National ID cards due to strict vetting processes aimed at preventing foreigners from irregularly acquiring Tanzanian citizenship. They are consequently left without any documentation to prove Tanzanian citizenship.<sup>11</sup> Birth registration rates are improving, though registration rates remain low in some regions, including in border regions. This increases the risk of statelessness as birth certificates are compulsory supporting documents when applying for national IDs.<sup>12</sup>

18. Below are some of the profiles of groups at risk of statelessness, and the main factors that may lead to their statelessness or increase their risk of statelessness in Tanzania.

19. **People in long term migration situations** are at risk of being stateless due to prolonged loss of connection with their country of origin. Tanzania has been hosting refugees for over sixty years, some of whom have been in the country for over four decades without a chance of returning to their countries of origin. These include the 1972 Burundian refugees pending naturalisation. Another affected group are the children of Rwandan refugees whose parents were naturalised in 1983 but who, due to lack of awareness of the legal procedures, did not naturalise when they turned 18. These people consider themselves to be Tanzanian. These populations are at risk of statelessness due to prolonged loss of connection with their country of origin.

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<sup>10</sup> CRC, 'Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania' CRC/C/TZA/CO/3-5 (3 March 2015).

<sup>11</sup> <https://www.ippmedia.com/en/news/pm%C2%A0-tight-id-card-filing-border-regions-right>

<sup>12</sup> [https://www.rita.go.tz/files/news/Birth%20Certification%20Rate-Notes\\_FINAL%20VERSION.pdf](https://www.rita.go.tz/files/news/Birth%20Certification%20Rate-Notes_FINAL%20VERSION.pdf).

20. The Tanzania Citizenship Act CAP 357 (R.E.2002) does not contain a safeguard to provide Tanzanian nationality to all children born on the territory who would otherwise be stateless. Childhood statelessness can arise among children whose parents are stateless or when a foreign mother cannot confer her nationality on the child and the father is unknown.<sup>13</sup> Despite efforts to make birth registration accessible to all children born in Tanzania, some children remain at risk of statelessness due to lack of access to birth registration. Numerous factors including fees, and distances to registry offices, especially for those in rural areas, and lack of awareness surrounding the importance of birth registration pose challenges.
21. **Foundlings** are not protected by national laws, which includes the lack of a provision ensuring foundlings' right to nationality. As a result, foundlings in Tanzania are at risk of becoming stateless because the law confers a discretionary power to the minister to decide on the naturalisation of any minor in Tanzania.
22. The **Kamba** community in Holili, Kilimanjaro near the border of Tanzania and Kenya are at risk of statelessness as they are considered immigrants from Kenya by the Tanzanian authorities. During post-colonial times, with the rise of independent states, new borders were drawn and the community was divided between Tanzania and Kenya. As a result, the Kamba are at risk of being victims to inter-generational statelessness and subject to protracted situations of marginalisation and human rights violations.
23. The **Makonde** community in Zanzibar, who originate from Mozambique, migrated to Zanzibar around the 1900s to work on clove plantations. They have been in Zanzibar for many years, and have therefore lost ties with Mozambique. However, they are not recognized as citizens of Tanzania, although all other nationals who were in Zanzibar pre-independence were required to register as citizens post-independence. The nationality laws in Zanzibar excluded people from French and Portuguese colonies as citizens. As a result, they are at risk of statelessness unless they apply for naturalisation. Despite the legal opportunity to apply for naturalised citizenship, most of the Makonde did not naturalise to date, despite the reduced fee of 17% -18%, due to social and economic marginalisation, coupled with the bureaucratisation of the naturalisation process.<sup>14</sup>
24. Also at risk of statelessness are the **Comorian** community in Zanzibar, affected by the nationality laws which exclude those from French or Portuguese colonies. The two islands have had close ties dating back to pre-colonial times. Zanzibar and the Comoros Islands are 400 miles apart, and during the colonial period trading vessels regularly made the journey between the two islands. The Sultans of Zanzibar shared common membership of sharif patrilineages with the Comorian aristocracy, and such kinship links made it easy for Comorian sharifs to trade and settle in Zanzibar since the 1800s, creating movements between the two islands. Post-independence, Comorians were at risk of statelessness due to the nationality law, and have to apply to be naturalised, which is difficult to access, as outlined above.

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<sup>13</sup> For instance, in the nationality law of 25 countries, women do not have equal rights as men to confer their nationality upon their child. For more information, please see: UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2020*, 14 July 2020, available at: <https://www.refworld.org/docid/5f0d7b934.html>.

<sup>14</sup> GLOBALCIT, 'Report on Citizenship Law: Tanzania' (April 2020).

## National Laws

25. Nationality in Tanzania is governed by the **1995 Tanzania Citizenship Act (TCA)** (Cap 357 R.E.2002). The TCA provides that there are three ways of acquiring citizenship: by birth, by descent, and by naturalisation. There are no safeguards in place that guarantee the right to a nationality for all otherwise stateless people in the territory. Also, there is no legal framework in place to protect the rights of stateless people or people at risk of statelessness in Tanzania. However, the below provisions set out different grounds to acquire Tanzanian nationality.
26. Section 5 of the TCA provides that “... every person born in the United Republic on or after Union Day shall be deemed to have become and to have continued to be a citizen of the United Republic with effect from the date of his birth...” unless neither of the parents were citizens of Tanzania; if the father was a foreign diplomat; or either of the parents was an enemy alien and the birth occurred in a place under enemy occupation.<sup>15</sup> While, on the face of it, this preserves *jus soli* acquisition of citizenship, official practice differs significantly to the law and it is common that *jus soli* citizenship must be further supported by *jus sanguinis* citizenship through one parent.<sup>16</sup> In order to acquire Tanzanian citizenship, the person must be born in the country and at least one parent must be a Tanzanian national.
27. The TCA also recognises as a citizen by descent any person born outside of Tanzania on or after the Union Day to a father or mother who is a citizen of Tanzania other than by descent. Moreover, all persons having been born outside either Tanganyika or Zanzibar before Union Day, who were recognised as citizens by descent, retained their status as such under the new law.<sup>17</sup> Risks of statelessness arise for persons born abroad to parents who acquired Tanzanian nationality by descent.
28. The TCA also provides for citizenship by naturalisation. In order to be eligible for naturalisation, one must be of full age and capacity, renounce any other nationality, and must fulfil various conditions, such as being “of good character” and having the intention to permanently reside in Tanzania following naturalisation. Apart from that, the TCA provides for a simplified naturalisation by virtue of marriage. Such facilitated naturalisation includes that the application can be made directly to the minister, unlike other naturalisation applications which must be initiated at a local government office.
29. The Tanzania Citizenship (Amendments) Regulations 2017 reduced the citizenship application fee for some groups of people, including those at risk of statelessness to 17%-18% i.e. from USD 5,000 to TZS 2,000,000 equivalent to USD 862. This applies to people who were born before independence but are not recognised as citizens; those born before or after independence to parents who were not recognised as citizens under the Citizenship Act of 1961 and their children; people who entered Tanzania before or after independence and resided there for a period of time which in the opinion of the Commissioner General of Immigration in consultation with the Minister

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<sup>15</sup> Tanzania Citizenship Act (1995); Section 5(1-2).

<sup>16</sup> Manby, B. *Citizenship in Africa*, p. 80.

<sup>17</sup> Tanzania Citizenship Act (1995); Section 6.

qualifies them and their children to be granted citizenship under this condition; and children born outside Tanzania to parents who are citizens by descent. However, the majority of people belonging to these groups are not able to afford the reduced fee, and therefore still face barriers to naturalisation, leaving them in limbo, at high risk of being stateless.

### Other National laws

30. **Law of the Child Act, Cap. 13 (R.E 2019)** provides that a child has a right to a nationality and the right to birth registration. Civil registration is governed by the **1920 Births and Deaths Registration Act** (CAP 108, R.E 2002), which covers mainland Tanzania, and the **2017 Zanzibar Civil Status Registration Agency Act**, which covers Zanzibar. According to these laws, birth registration is universal for all children born in Tanzania, regardless of their status. The law provides for birth registration fees of TZS 3500 (USD 1.52) for early registration, and TZS 4,000 (USD 1.73) for late registration after less than ten years. For late registration after ten years, the fees are TZS 20,000 (USD 8.66) for applications submitted at the Headquarters, and TZS 10,000 (USD 4.33) for applications made at District offices. Many Tanzanians in rural areas do not have easy access to registration centres and some cannot afford these fees, creating obstacles to birth registration.
31. Since the enactment of the Constitutional Review Act in 2011, Tanzania has been on course to draft a new Constitution. The draft Constitution sets out important provisions that address some of the shortcomings in the national laws (see below), including providing citizenship acquisition for foundlings under seven years of age; and providing that *any* person who marries a Tanzanian citizen may apply for citizenship by registration. However, the draft Constitution contains no provisions to safeguard against the deprivation of nationality. Although the draft Constitution was submitted in December 2013, the referendum to adopt the Constitution was postponed, and following the election of a new president, the draft constitution is awaiting referendum.

## Gender Discrimination in Nationality Laws

32. Tanzania's Citizenship Act does not afford equal rights to women and men to confer citizenship to their spouses, as a married woman cannot pass nationality to her foreign/stateless spouse on an equal basis as a married man. Section 11(1) provides that *"... a woman who is married to a citizen of the United Republic shall at any time during the life-time of the husband be entitled, upon making an application in the prescribed form, to be naturalised as a citizen of the United Republic."* Therefore, while noncitizen women are entitled to naturalisation upon marriage, noncitizen men are not. Gender inequality in nationality laws may lead to statelessness, and can threaten family unity.
33. Moreover, Section 13(3) of the Tanzania Citizenship Act states that *"any woman who is a citizen by birth of who renounced her citizenship upon getting married to a citizen of another country may, where the marriage breaks down, revert to her citizenship by birth on such conditions as the minister may, by regulations published in the Gazette*

*impose*". The law thus allows a woman who renounced her Tanzania nationality due to marriage with a man of a different nationality, to regain her citizenship if the marriage breaks down; however, it does not provide the same protection to men.

34. Furthermore, gender discriminatory provisions exist also in the TCA regarding acquisition of citizenship by descent.<sup>18</sup> Although one can become a citizen by descent if *either* the father or mother is a citizen of Tanzania, this does not apply if the parent's citizenship was solely descent-based. The TCA provides that where one's *father* was a citizen by descent, the child can acquire citizenship through naturalisation. This reneges on the gender-neutral aspects of the primary provision on descent-based citizenship, since a person born outside Tanzania to a Tanzanian mother who is a citizen by descent would not be covered under this provision. Accordingly citizenship does not transmit to the second generation born outside the country, creating risks of statelessness if the child does not acquire the citizenship of the country in which they were born.

## Weak safeguard against deprivation of nationality

35. The TCA contains provisions on deprivation of nationality, at the discretion of the Minister of Home Affairs. The Minister of Home Affairs has the power to order the deprivation of citizenship of a person who is not a citizen by birth, upon satisfaction that the person is of full age and capacity and has voluntarily claimed and exercised in a foreign country, a right that is exclusive to its own citizens, such as the right to vote or the right to be elected into public office.
36. Moreover, the TCA prohibits dual citizenship. Once a person turns eighteen, if they hold another citizenship in addition to Tanzanian citizenship, they shall be deemed to have ceased to be a Tanzanian citizen, unless they had previously renounced their other citizenship and taken the oath of allegiance. The cessation of Tanzanian nationality also applies to persons who turned eighteen before and after the Union Day and continued to hold the citizenship of another country in addition to either their Tanganyikan or Zanzibari citizenship.<sup>19</sup>
37. Moreover, a naturalised citizen can be deprived of their citizenship on various grounds, including obtaining citizenship by fraud; demonstrating disloyalty towards the state, and residing abroad for more than five years without communicating an intention to retain their Tanzanian citizenship. Before the deprivation decision is made, the Minister must determine that a continuation of citizenship is "conducive to the public good" in the broad sense. However, this provision on deprivation of citizenship does not apply to citizens by birth. This creates a hierarchy of citizenship whereby birth citizenship is less precarious than naturalised citizenship.
38. The Immigration of CAP 54 (R.E. 2016) puts the burden of proof of citizenship on the person alleged to be a non-citizen, instead of the State. In 2018, the African Court on

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<sup>18</sup> Ibid. N. 16.

<sup>19</sup> GLOBALCIT, 'Report on Citizenship Law: Tanzania' (April 2020)



Human and Peoples' Rights made a landmark decision concerning the right to nationality. The case concerned the revocation of Tanzanian nationality (and corresponding passport), and subsequent deportation to Kenya, of Mr. Anudo. The court ruled that Tanzania had arbitrarily deprived Anudo of his nationality, violating UDHR Article 15(2); and that the state violated Article 13 of the ICCPR by expelling him arbitrarily. The court subsequently ordered Tanzania to amend its legislation to provide individuals with judicial remedies in the event of a dispute over citizenship, specifically concerning Tanzania's Citizenship Act which contains gaps as it does not allow citizens to exercise a judicial remedy where their nationality is challenged, as required by international law.

39. Under international law, states have traditionally been granted broad discretion in the regulation of nationality matters. This is not, however, an absolute discretion. States' prerogative in nationality matters has been gradually limited by the evolution of human rights law. The Principles on Deprivation of Nationality as a National Security Measure,<sup>20</sup> and the UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality provide important clarification,<sup>21</sup> respectively from a wider international law perspective and more specifically in relation to the 1961 Convention.
40. Accordingly, state discretion in this area is subject to the individual right to nationality,<sup>22</sup> the prohibition of arbitrary deprivation of nationality,<sup>23</sup> the prohibition of

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<sup>20</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>. The Principles were drafted by ISI in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP. They were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas. At the time of submission, they have been endorsed by over 100 individual experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians and diplomats. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice. They articulate the international law obligations of States and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure. More information is available here: <https://www.institutesi.org/year-of-actionresources/principles-on-deprivation-of-nationality>.

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html>. The Guidelines provide authoritative guidance on the interpretation of Articles 5 – 9 of the 1961 Convention on the Reduction of Statelessness. They draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October-1.

<sup>22</sup> Human Rights Council Resolution 7/10, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/7/10 (27 March 2008); Human Rights Council Resolution 10/13, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/10/13 (26 March 2009); Human Rights Council Resolution 13/2, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/13/2 (24 April 2010); Human Rights Council Resolution 20/4, The right to a nationality: women and children, UN Doc A/HRC/RES/20/4 (16 July 2012); Human Rights Council Resolution 20/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/20/5 (16 July 2012); Human Rights Council Resolution 26/14, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/26/14 (11 July 2014); Human Rights Council Resolution 32/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/32/5 (15 July 2016).

<sup>23</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>, Principle 7. See also, the Draft Commentary to the Principles, available at: [https://files.institutesi.org/PRINCIPLES\\_Draft\\_Commentary.pdf](https://files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf).

<sup>24</sup> Ibid., Principle 6.

discrimination<sup>24</sup> and the obligation to avoid statelessness.<sup>25</sup> In this regard, the UN Special Rapporteur on racism has stated that:

*“States’ obligations to ensure equality and non-discrimination with regards to the enjoyment of nationality apply with regard to all citizenship deprivation decisions, not only in cases where deprivation of citizenship might result in statelessness.”*<sup>26</sup>

41. The impact of nationality deprivation on the enjoyment of other human rights, humanitarian and refugee law obligations and standards must be taken into consideration when assessing the legality of citizenship deprivation. These include the right to enter and remain in one’s own country, the prohibition of *refoulement*, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the liberty and security of the person, the right to private and family life, legal personhood and the rights of the child.<sup>27</sup> Any measures to deprive a person of nationality must also comply with due process safeguards and the right to a fair trial.<sup>28</sup>

## Children’s right to nationality

42. Tanzania’s nationality laws give equal rights to men and women to transmit nationality to their children, and the state is one of the African states that provides, on the face of it, *jus soli* acquisition of nationality. However, official practice runs contrary to the provision of the nationality law. Authorities regularly apply a *combination of jus soli and jus sanguinis* citizenship acquisition for children born in the territory, requiring at least one parent to be Tanzanian in addition to the child being born on the territory for the child to be recognised as a citizen by birth. This runs contrary to Section 5 of the TCA, and has remained uncontested in courts of law, effectively altering this aspect of citizenship acquisition under Tanzanian law.<sup>29</sup>
43. This combination of *jus soli* and *jus sanguinis* puts at risk of statelessness, children born to foreign parents, or to parents of unknown nationality, which is particularly problematic given the long-term refugee populations residing in the country. Moreover, Tanzanian law lacks safeguards to provide nationality to children born in Tanzania who would otherwise be stateless, putting children at risk of statelessness.
44. TCA is also silent on granting nationality to foundlings. Moreover, they are only granted birth certificates which do not provide details of the nationality of the parents as they are unknown.

## Birth registration

45. Birth registration is fundamental to the protection of children and prevention of

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<sup>24</sup> Ibid., Principle 6.

<sup>25</sup> Ibid., Principle 5.

<sup>26</sup> UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, ‘Amicus Brief before the Dutch Immigration and Naturalisation Service’ (23 October 2018).

<sup>27</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>, Principle 9.

<sup>28</sup> Ibid Principle 8.

<sup>29</sup> GLOBALCIT, ‘Report on Citizenship Law: Tanzania’ (April 2020), p. 12.

statelessness. As birth registration legally establishes the place of birth, proof of age, and parental affiliation, it serves as important documentary proof to acquire the parents' nationality or the nationality of the State in which the child is born. It also provides children with protection. While the denial of birth registration does not amount to statelessness, there is a crucial link between birth registration and statelessness, with birth registration operating as a key form of proof of the link between the individual and the State. The lack of birth registration greatly increases the risk of statelessness, especially among populations whose belonging is under question by the state.

46. Birth registration in Tanzania is governed by several laws, which provide for universal birth registration for all children born within Tanzania regardless of their status. However, Tanzania has historically had very low rates of birth registration – one of the lowest on the African continent - creating greater risks of statelessness.<sup>30</sup>
47. The Committee on the Rights of the Child has expressed concern about low birth registration rates. The Committee recommended in 2006, and 2015, that Tanzania make greater efforts to expand access to birth registration, particularly in rural areas, by ensuring registration free of charge and making provision for late registration. Moreover, several states have suggested improvement to birth registration during the first and second UPR cycles.
48. There have been several initiatives to ensure universal birth registration. In 2016, the government, in collaboration with UNICEF, rolled out a decentralised birth registration campaign for children under five years.<sup>31</sup> The initiative aimed to make birth registration more accessible and affordable, and aimed to register 230,000 children under the age of five in the Iringa and Njombe regions. The initiative aimed to address barriers to registration by decentralising the process, delegating registration to local authorities; simplifying the process; removing some fees for application; sensitising communities on the importance of birth registration; and trialling mobile birth registration, which speeds up the process and may enable access to hard-to-reach, rural populations.
49. In 2020 the government in collaboration with Norwegian Refugee Council conducted a birth registration drive for refugee children in Nduta refugee camp, whereby more than 20, 0000 refugee children were registered.
50. Recently, the government introduced an initiative where Mother Child Health Centres can issue handwritten birth certificates free of charge, immediately following birth. These initiatives are being piloted in less than half of the country - 11 out of the 26 regions - as in some of the large regions, the distances to the district offices are too far and present a challenge. Birth registration procedures are easy but include fees based on how much time has passed between the child's birth and their registration. For many Tanzanians in rural areas who cannot access free, handwritten birth certificates, fees continue to present barriers to accessing birth registration.

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<sup>30</sup> There have been improvements in birth registration efforts; however, registration levels are still low. For example, although the registration of children under five doubled between 1999 and 2010, it still remained at just over 16 per cent in 2010. This is far below the average for Sub-Saharan Africa, which stands at 44 per cent. Furthermore, only half of the children who are officially registered in Tanzania receive a birth certificate. For more information, please see 'Birth registration in Tanzania: Tigo's support of the new mobile birth registration system' <[https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/07/Birth-Registration-in-Tanzania\\_Tigos-support-of-the-new-mobile-birth-registration-system.pdf](https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/07/Birth-Registration-in-Tanzania_Tigos-support-of-the-new-mobile-birth-registration-system.pdf)>.

<sup>31</sup> UNICEF, 'Advancing the Birth Registration system in Tanzania' (30 November 2016).

## Protracted refugee situations causing statelessness

51. Since the 1970s, many refugees were granted asylum in Tanzania, with second and even third generations being born in the territory. The majority of these refugees are 1972 **Burundian refugees** who have been in the country for more than four decades. In 2010, the Tanzanian government naturalised 162,156 refugees. However, not all were naturalised, and many were not able to lodge their applications, and were even unaware of the process. These refugees are in protracted refugee situations today and are at risk of statelessness as they have lost ties with their countries of origin and live in uncertainty since the government has halted the naturalisation of this population.
  
52. Another community at risk of statelessness are the **Somali Bantu** (Zigua community), who fled from Somalia to Tanzania in the early 1990s. This community sought asylum and were granted refugee status, and designated to live in refugee camps, then in settlements. Most of these refugees trace their origins back to the Zigua tribe who originate from Tanzania, whose ancestors left the country to Somalia almost two centuries ago during the slave trade. In the early nineties, when civil war broke out in Somalia, it pushed many Somalis to flee their country, reversing the path their ancestors had taken. In 2014, 3000 Somali Bantu refugees were naturalised. While many certificates have been offered to those who applied to naturalise, some cases are pending, and some have been rejected.<sup>32</sup> Those who have not been naturalised are at permanent risk of becoming stateless.

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<sup>32</sup> GLOBALCIT, 'Report on Citizenship Law: Tanzania' (April 2020), p. 12.

## Recommendations

53. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Tanzania:

- I. Develop and implement an efficient statistical framework for stateless persons and a dedicated statelessness determination procedure to help map and identify stateless people in the country.
- II. Ensure that all children born in Tanzania are registered at birth by providing accessible and free birth registration.
- III. Amend the nationality law to incorporate a provision for all otherwise stateless children born on the territory to acquire Tanzanian citizenship.
- IV. Amend the nationality law to include provisions on the right to acquire Tanzanian nationality for all foundlings within Tanzania.
- V. Amend the nationality law on provisions that discriminate on the basis of gender to ensure women and men enjoy equal rights to confer nationality to spouses and to children when the parent is a citizen by descent.
- VI. Amend the nationality law to ensure that Tanzanian men are also able to revert to Tanzanian citizenship in the event of divorce from a foreign spouse and loss of foreign nationality.
- VII. Adhere to the provisions of the Tanzania Citizenship Act on *jus soli* and *jus sanguinis*, and not rely on common practice.
- VIII. Consider providing a waiver of the reduced naturalisation application fee to communities at risk of becoming stateless.
- IX. Amend the nationality law to ensure that Tanzanians who, for various reasons, acquire foreign citizenship, are able to revert to Tanzanian citizenship in the event they lose the foreign nationality.
- X. Expedite the immediate naturalisation of the remaining Somali Bantus; the children of the 1983 naturalised Rwandese refugees; and the pending 1972 Burundian refugees.
- XI. Accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.